

**CALIFORNIA COASTAL COMMISSION**

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# Th14a

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Staff: TG-A  
Staff Report: 8/22/2024  
Hearing Date: 9/12/2024

## STAFF REPORT: MATERIAL AMENDMENT

**Application No.:** 1-08-017-A2

**Applicant:** Wiyot Tribe

**Agent:** Ashton Hamm, Uxo Architects

**Location:** On the eastern side of the island of Tuluwat in Humboldt Bay, east of State Route 255, Eureka (APNs 405-011-02 and 405-011-10)

**Approved Project:** Phase I of the Tuluwat Restoration Project, which involves (1) placing a temporary causeway within the bay mudflats to transfer construction materials from barges to the island during lower tides; (2) repairing the existing bulkhead; (3) removing debris and demolishing various dilapidated structures on the island; (4) excavating approximately 17 cubic yards of PCP-contaminated midden soils; (5) installing a protective soil and geotextile cover across the majority of the upland portion of the 1.5-acre parcel; and (6) installing a shoreline revetment structure (as a footing to the proposed protective soil/geotextile cap) consisting of approximately 130 lineal feet of carbon reinforced fiberglass sheet piling.

**Proposed Amendment:** Additional phased development to support the continuation of the World Renewal Ceremony and the cultural and ecological restoration of the island, including constructing two redwood plank dress houses, a temporary ceremonial dance wall,

informational signage, a temporary-use floating dock, pedestrian paths, a vault toilet, a dining pavilion, and demolishing an existing storage shed.

**Staff Recommendation:** Approval with conditions

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### **SUMMARY OF STAFF RECOMMENDATION**

The Wiyot Tribe is requesting to modify CDP 1-08-017 to allow for phased development of site improvements on Tuluwat Island to support the continuation of their cultural ceremonies (including the World Renewal Ceremony) and the cultural and ecological restoration of the island. The proposed improvements include: (1) constructing two redwood plank dress houses (seven feet tall each with a total footprint of 48 square feet), (2) installing a temporary ceremonial dance wall (12 feet long and seven feet tall) prior to each event, (3) installing informational signage, (4) staging a temporary-use floating dock in the same location as the temporary causeway previously approved by CDP 1-08-017, (5) minor vegetation clearing in upland areas around the structure sites and along pedestrian paths between buildings; (6) installing a vault toilet; and (7) installing a dining pavilion at the location of the existing shed on the site, which is proposed to be demolished. All structures to be developed, except for the vault toilet, will be built with redwood planks and other natural materials using traditional Wiyot building methods. No water, power, gas, or sewer infrastructure is proposed as part of the proposed amendment.

The primary issues raised by this amendment application include the project's consistency with the Coastal Act's policies regarding archaeological and cultural resources, and flood hazard risks. The project area is the site of the former Wiyot village of Tuluwat. Representing over 1,000 years of continuous human occupation, the village was built on a portion of a roughly 4.5-acre shell midden formed from the shallow lands of the island by the accumulation of discarded marine shell debris. In 2007, the Wiyot Tribe proposed the Tuluwat Restoration Project to achieve their goal of restoring the cultural and environmental integrity of their land on Tuluwat Island, including Tuluwat Village, on the northeastern end of Tuluwat Island in Humboldt Bay.

Tuluwat Island is considered to be the spiritual center of the Wiyot universe and as such, a sacred place. Each year in the past, the Tuluwat Village on the northeastern end of the island hosted a World Renewal Ceremony to ask the creator's blessings for all people and the land for the coming year with tribal members gathering from the other Wiyot villages that lined Humboldt Bay. The revival dance gathering would typically last eight to ten days in duration.

On February 26, 1860, settlers massacred an estimated 200 Wiyot people gathered for the World Renewal Ceremony at the Tuluwat village site. Beginning in 1861, land reclamation activities were initiated to increase the amount of pasture and farmland on Tuluwat Island. Between 1870 and approximately 1990, a ship repair yard with a drydock and marine ways, plus other structures, was established and operated on the

site. A Final Environmental Impact Report certified by the City of Eureka in 2008 identified four phases of the Tuluwat Restoration Project including: (1) Cleanup and Remediation, (2) Public Access, (3) Cultural Development, and (4) Ecological Restoration.

The Coastal Commission conditionally approved Phase I of the Tuluwat Restoration Project on July 11, 2008 as CDP 1-08-017 involving cleanup and remediation of the 1.5-acre former boat yard area in coordination with the U.S. EPA and the North Coast Regional Water Quality Control Board. With exception of the use of a temporary floating dock during limited occasions, the currently proposed development is located within the upland area previously excavated, remediated, and capped under Phase I site restoration efforts. Nonetheless, Special Condition No. 14 of the original permit remains in full force and effect and requires among other things, that cultural monitors and professional archaeologists be on site for all excavation and ground disturbing activities, provides the cultural monitors/ archaeologists the ability to temporarily halt excavations to investigate finds and recover significant data using hand tools and more fine-tuned instruments, allows the archaeological team to screen and/or inspect soils to the extent feasible to recover and document diagnostic artifacts and sensitive findings, and includes both appropriate procedures to follow in the event that Native American burials or other sensitive finds are discovered, and reporting requirements.

The project site, along with most of Tuluwat Island, is subject to potential flood hazards from tsunami inundation and flooding associated with high waves and with tidal and storm events. With a proposed minimum finished grade elevation of ~12 feet above MLLW, the proposed new structures will be safe from nuisance flooding for their design life. Importantly, structures that are proposed to be constructed for ceremonial purposes will be built using natural materials that can be easily removed or relocated.

Nevertheless, given that the applicant has chosen to implement the project despite the risks associated with building in an inherently flood-prone area, the applicant must assume the risks. In its approval of the original CDP the Commission imposed an Assumption of Risk and Waiver of Liability requirement as [Special Condition No. 13](#). Staff recommends modifying and reimposing Special Condition No. 13 to require the applicant to assume the risks of flooding of the property and waive any claim of liability on the part of the Commission. Through reimposition of this condition, the applicant is notified that the Commission is not liable for damage resulting from approval of the permit amendment for the proposed 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 authorized development to withstand hazards.

Staff also recommends including [Special Condition No. 20](#) requiring the removal of the approved development, including but not limited to the vault toilet and associated wastewater holding tank, if and when it is threatened by coastal hazards in such a way as would necessitate armoring to protect the development in the future.

1-08-017-A2 (Wiyot Tribe)

The standard of review is the Chapter 3 policies of the Coastal Act. As conditioned, the project can be found consistent with the Chapter 3 policies of the Coastal Act, and staff recommends **APPROVAL** of the coastal development permit amendment application 1-08-017-A2 as conditioned.

In addition to acting on the permit itself, the Commission will need to act on a request by the applicant that the Commission waive the \$7,355 application fee for the permit amendment request. The Wiyot Tribe has committed to the Tuluwat Restoration Project that involves site cleanup, remediation, and hosting ceremonial and interpretive events that will provide a public service for tribal members and other members of the community. Section 13055(h)(1) of Title 14 of the California Code of Regulations directs the Executive Director to waive the CDP application fee when requested by resolution of the Coastal Commission. Staff recommends that the Commission approve the fee waiver. However, if the Commission determines that a fee waiver is not appropriate, **Special Condition No. 24** requires payment of the application fee prior to issuance of the CDP.

**The Motions to adopt the Staff Recommendation are found on [Page 6](#).**

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## **I. Motion and Resolution**

### **A. MOTION AND RESOLUTION FOR APPROVAL OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-08-017-A2 AS CONDITIONED**

#### **Motion:**

I move that the Commission **approve** the proposed amendment to Coastal Development Permit 1-08-017 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 amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **Resolution to Approve CDP Amendment No. 1-08-017-A2:**

The Commission hereby **approves** the coastal development permit amendment on the grounds that the development as amended and subject to conditions will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the 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.

### **B. MOTION AND RESOLUTION FOR WAIVER OF FILING FEE**

#### **Motion:**

I move that the Commission direct the Executive Director to waive the permit amendment application fee for Coastal Development Permit Amendment No. 1-08-017-A2 pursuant to the staff recommendation.

The staff recommends a **YES** vote on the foregoing motion. Approval of this motion will result in the permit amendment application fee being waived. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **Resolution Directing Fee Waiver:**

The Commission hereby directs the Executive Director to waive the permit amendment application fee for Coastal Development Permit Amendment No. 1-08-017-A2 submitted by the Wiyot Tribe.

## II. Changes to Conditions

**NOTE:** The Commission approved Coastal Development Permit (CDP) 1-08-017 on July 11, 2008 with five standard conditions and 18 special conditions. Unless specifically altered by this amendment, all standard and special conditions attached to CDP 1-08-017, and reflected in [Appendix B](#), remain in effect. Permit Amendment 1-08-017-A2 is granted subject to the following amended standard and special conditions shown below. Language to be added is shown in underlined format. Language to be removed is shown in ~~strikethrough~~.

### A. Standard Conditions:

2. **Expiration.** If development authorized by CDP Amendment No. 1-08-017-A2 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 amendment must be made prior to the expiration date.

### B. Special Conditions

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

By acceptance of this permit, as amended under CDP Amendment No. 1-08-017-A2, the applicant, ~~on behalf of (1) itself; (2) its successors and assigns and (3) any other holder of the possessory interest in the development authorized by this permit,~~ acknowledges and agrees (i) the installation of the protective soil/geotextile cap and associated shoreline revetment footing may subject the project area and development authorized under CDP Amendment No. 1-08-017-A2 within the project area to hazards from outflanking, wave uprush, flooding, and other geologic hazards which will worsen with future sea level rise; (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; (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; and (v) to agree to include a provision in any assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (i) through (iv).

**19. Protection of Eelgrass.** The Permittee shall adhere to the following mitigation measures as proposed in the application materials dated March 18, 2024:

- A. The floating dock approved by Coastal Development Permit Amendment No. 1-08-017-A2 shall not be deployed during times of storm risk or high wave action and shall not be deployed for greater than 30 consecutive days.
- B. All temporary metal pipe piles and/or anchors used to temporarily secure the floating dock approved by Coastal Development Permit Amendment No. 1-08-017-A2 shall be removed when the dock is not in use.
- C. The permittee shall undertake all development authorized by Coastal Development Permit Amendment No. 1-08-017-A2 in accordance with the Final Eelgrass Protection Plan approved August 15, 2008, including, but not limited to, avoiding direct placement of the temporary floating dock within eelgrass beds or patches of eelgrass, which will negate the need for conducting eelgrass surveys each time after the floating dock is removed.

**20. Coastal Hazard Response.** Development authorized by this permit is authorized only so long as (1) the City or any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for use due to damage or destruction from waves, flooding, tsunami run-up, liquefaction, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of shoreline protective devices; (2) essential services to the site can no longer feasibly be maintained due to coastal hazards listed above; (3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies. In addition, the development approval does not permit encroachment onto public trust lands, and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

**21. Monitoring and Maintenance of Vault Toilet.**

- A. As proposed by Mitigation Measure 3.5.3b in the 2008 Final EIR for the Tuluwat Restoration Project (SCH No. 2004122022) and consistent with the application materials received March 18, 2024, PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE VAULT TOILET AUTHORIZED BY CDP AMENDMENT 1-08-017-A2, the Permittee shall submit a Wastewater Management Plan to the Executive Director for review and written approval. The Wastewater Management Plan shall, at a minimum, include the following components:

- (1) The vault toilet shall be maintained throughout the life of the project to ensure the protection of the water quality of Humboldt Bay, including but not limited to a minimum periodic pumping when the toilet reaches 80% capacity;
  - (2) Best management practices and a clean up response plan for ensuring protection of water quality during maintenance of the vault toilet.
  - (3) The Permittee shall exercise due diligence in at a minimum annually inspecting the condition of the vault toilet installed under this permit, and if necessary shall obtain further coastal development permit authorization from the Commission for repair and maintenance activities or improvements to the structure.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

## **22. Other Agency Approvals.**

- A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-08-017-A2, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, or authorizations for the proposed development as amended have been granted by all other applicable agencies, including the North Coast Regional Water Quality Control Board, U.S. Army Corps of Engineers, Humboldt Bay Harbor, Recreation, and Conservation District, or evidence that no such authorizations are required from each of these entities for the proposed development as amended. The Permittee shall inform the Executive Director of any changes to the project required by any other authorizations. Any such changes shall not be incorporated into the project until the Permittee obtains a further amendment to this permit, unless the Executive Director determines that no amendment is legally required.
- B. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASES II AND III OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-08-017-A2, the Permittee shall submit to the Executive Director written evidence that Design Review approval has been obtained from City of Eureka for the development of the vault toilet proposed as Phase II and the construction of the dining pavilion proposed as Phase III.

## **23. Final Building Elevation and Site Plans for Vault Toilet and Dining Pavilion.**

- A. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF PHASES II (vault toilet) AND III (dining pavilion) OF COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1-08-017-A2, the Permittee shall submit to the Executive Director for review and written approval, final building elevations and floor

plans for the new vault toilet and dining pavilion. The final plans must demonstrate the following:

- (1) The vault toilet shall be no larger than the approved 120 square-foot structure (with a maximum roof height of ten (10) feet and vent stack height of 14 feet) authorized by CDP Amendment 1-08-017-A2;
- (2) The dining pavilion shall be no larger than the approved 16-foot-tall, 1,700 square-foot structure in the same footprint of the shed to be demolished, as authorized by CDP Amendment 1-08-017-A2;
- (3) Materials used shall be designed to resemble traditional Wiyot redwood plank houses, using natural materials to the extent feasible. The intention is for the new structure to have less of a visual impact than the existing shed.

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

**24. If Fee Waiver Denied.** If the Commission denies the request to waive the application fee, the applicant shall, PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT 1-08-017-A2, submit to the Executive Director the required fee amount of \$7,355. The coastal development permit shall not be issued until the required fee is received.

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

#### **A. Permit Background and Amendment Description**

##### **Proposed Amended Development**

The applicant, Wiyot Tribe, seeks authorization to modify CDP 1-08-017 to allow for phased development of site improvements on Tuluwat Island, to support the continuation of their cultural ceremonies (including the World Renewal Ceremony) and the cultural and ecological restoration of the island. The proposed improvements include: (1) constructing two redwood plank dress houses (seven feet tall each with a total footprint of 48 square feet), (2) installing a temporary ceremonial dance wall (12 feet long and seven feet tall) prior to each event, (3) installing informational signage, (4) staging a temporary-use floating dock in the same location as the temporary causeway previously approved by CDP 1-08-017, (5) minor vegetation clearing in upland areas around the structure sites and along pedestrian paths between buildings; (6) installing a vault toilet; and (7) installing a dining pavilion at the location of the existing shed on the site, which is proposed to be demolished ([Exhibit 2](#)). No water, power, gas, or sewer infrastructure is proposed as part of the proposed amendment.

All structures to be developed, except for the vault toilet, will be built with redwood planks and other natural materials using traditional Wiyot building methods. The structures will be supported by redwood posts embedded between two and four feet into the ground. No concrete will be used. The temporary ceremonial dance wall will be installed at the edge of the Primary Ceremony Zone ([Exhibit 2](#)). The temporary dock will be placed within the same location as the previous temporary causeway and deployed for up to 30 days during annual World Renewal Ceremonies, and as needed to support construction and ecological restoration activities. Approximately 150 square feet of vegetation will be cleared from within previously disturbed upland areas to accommodate pedestrian pathways and structure sites.

The proposed vault toilet will be a ten-foot-tall, prefabricated structure serviced on site when needed. If construction of the vault toilet is determined infeasible by the Wiyot Tribe, a portable toilet barge will be used to support ceremonial events, as has been used previously during the World Renewal Ceremony. As further detailed in the 2008 Final EIR, the barge would be serviced by professional septic disposal services upon returning to the mainland.

The proposed dining pavilion structure, to be located in the same footprint as the existing 1700-square-foot shed to be demolished, will be designed to resemble traditional Wiyot redwood plank houses, using natural materials to the extent feasible.

### **Permit Background**

On August 13, 2007, the City of Eureka Planning Commission certified an Environmental Impact Report (EIR) for the Tuluwat Restoration Project (SCH #2004122022),<sup>1</sup> and on April 14, 2008 the City adopted the EIR. The Wiyot Tribe proposed the Tuluwat Restoration Project to achieve their goal of restoring the cultural and environmental integrity of their land on Tuluwat Island (see Site History below). The four phases evaluated as part of the Tuluwat Restoration Project EIR include: (1) Cleanup and Remediation, (2) Public Access, (3) Cultural Development, and (4) Ecological Restoration. In 2008, the City issued Conditional Use Permit (CUP) No. C-04-011 authorizing ceremonial use of the site in addition to the educational, restoration and enhancement, and public access uses that are all conditionally permitted within the NR zoning district applicable to the site. The project approved under the City's CUP No. C-04-011 is the same project described as the "Proposed Project" alternative in the EIR.

The development proposed under this amendment request includes components included in the project evaluated under the 2008 EIR, including construction of ceremonial buildings and interpretive signage, clearing of vegetation for trails and a ceremonial circle, use of the temporary dock causeway, installation of a vault toilet,

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<sup>1</sup> Refer to CEQAnet's website for information on SCH#2004122022 at: <https://ceqanet.opr.ca.gov/Project/2004122022>

demolition of an existing shed and of the construction of a dining pavilion. Past permit actions associated with the project site are summarized in [Appendix C](#).

## **B. Site History and Environmental Setting**

### **Site History**

Tuluwat Island lies within the ancestral lands of the Wiyot people and represents a focal point for the tribe's cultural rehabilitative efforts. Tuluwat Island is considered to be the spiritual center of the Wiyot universe and as such, a sacred place. Each year in the past, the Tuluwat Village on the eastern end of the island hosted a World Renewal Ceremony to ask the creator's blessings for all people and the land for the coming year with tribal members gathering from the other Wiyot villages that lined Humboldt Bay. The revival dance gathering would typically last eight to ten days in duration.

On the morning of February 26, 1860, in a series of raids conducted simultaneously on three villages in the Eel River/Humboldt Bay area, a group of approximately 80 to 100 sleeping Wiyot men, women, and children, exhausted from a week of ceremonial dance on the island, were caught unaware and brutally slain by a group of white settlers armed with hatchets, clubs, and knives who had paddled across the bay from Eureka. Altogether, the death toll from the massacre at the three villages is estimated at approximately 200.

Following the massacres, U.S. troops collected the surviving Wiyot people from the villages between the Mad and Eel Rivers, initially placing them in protective custody at Fort Humboldt near the community of Bucksport, now southwestern Eureka. The survivors were later removed to the Klamath River Reservation. After a disastrous flood on the Klamath River, the reservation internees were taken in turn to the Smith River Reservation at Fort Dick in present-day Del Norte County and later confined at the more inland Hoopa and Round Valley Reservations.

In the wake of the Wiyot diaspora from the Humboldt Bay area, Tuluwat Island was acquired and occupied by white settlers. Upon obtaining the island in 1860, Robert Gunther and other settlers constructed a series of dikes and drainage channels in the hope of reclaiming the island for cattle ranching and upland agriculture. These modifications changed the tidal action along the shore, accelerating erosion at the bay edge of the shellmound. Remnants of the dikes and drains that crisscross the island continue to allow bay waters to inundate portions of the island that would normally lie above the tidal range, degrading the brackish habitat therein. Falling into disuse and subsequently deserted, much of the island reverted to Federal or City ownership. Currently there are only eight privately-owned parcels on the southeast side of the island over one-half mile from the project site across State Route 255.

Around 1870 a shipyard repair facility was built on the portion of the property now owned by the Tribe. The shipyard operated sporadically until the early 1990s when it was abandoned, leaving the site contaminated by creosote, solvents, and other chemicals used in ship repair and maintenance. Dilapidated buildings and tons of

scattered metal and wood debris littered the area until only recently, when beginning in 2000 volunteer cleanup efforts initiated by the Wiyot Tribe began at the site.

Between 1913 and 1985, an estimated 2,000 cubic yards of the shell mound were lost to erosion at the bay edge with the midden edge undergoing approximately 100 feet of retreat. In addition, the shellmound was the site of uncontrolled scavenging and pilfering-related excavation in the early part of the 20<sup>th</sup> century. One amateur archaeologist was said to have looted as many as 500 gravesites. For the most part, structures of the Tuluwat village that were still visible in 1913 are now gone, having been destroyed or carried away by wind and waves.

Although decimated in numbers, exiled to distant lands, and incarcerated against their will, the displaced original inhabitants of the Wiyot villages along Humboldt Bay and their descendants never lost hope of a return to their homeland and rebuilding their broken culture. In 1908, a local church group donated 20 acres of land in the Table Bluff area approximately 17 miles south of Eureka for tribal members to return to live. In 1981, the Wiyot Tribe became a federally recognized tribe with the rancheria holdings granted sovereign land status and expanded by acquisition of adjoining lands to the 88 acres that comprise the current Table Bluff Reservation.

In 1964, the Tuluwat village site was designated a National Historic Landmark by the U.S. Department of the Interior and identified as "Gunther Island Site 67." In the early 1990's, Wiyot tribal members began a renewed effort to resurrect their lost heritage and repatriate the site formerly referred to as "Indian Island." In 1992, a public candlelight vigil was held on the anniversary of the 1860 massacre, later becoming an annual community event. This remembrance served as a catalyst for fund-raising efforts by the Tribe to reacquire the island.

In March 2000, the Tribe initially purchased the 1.5-acre parcel where the shipyard had been constructed. After the Tribe acquired the property in 2000, one and a half tons of non-hazardous materials were removed from the site including household and industrial garbage such as hardware, hand tools, small electric motors, cables, rope, chains, plastics, hoses, transmission gears, woody debris, tables, sinks, and more. As part of that effort, various flammable, corrosive, aerosol, and/or toxic hazardous material was also removed from the site, inventoried, and containerized. This included 29 lead/acid batteries, spray paint and aerosol cleaners and solvents, fire extinguishers, zinc plates, and various other paints, solvents, varnish, resin, etc.

Between 2001 and 2005, the U.S. Environmental Protection Agency (EPA) funded a Targeted Brownfields Site Assessment of the property, which resulted in four reports (Phase I Report, Phase II Investigation Final Report, Phase II B Addendum, and the Interim Site Cleanup Plan). This assessment identified areas of concern on the property in soils and groundwater with levels of contamination that exceed federal benchmarks for total petroleum hydrocarbon as oil (TPH-o), Polynuclear Aromatic Hydrocarbons (PAHs), metals (arsenic, lead, aluminum, copper, iron, and various others), pentachlorophenol (PCP), dioxins, and other materials.

In 2018 the U.S. EPA highlighted in a case study<sup>2</sup> the efforts of the Wiyot Tribe in collaboration with various partners to clean up Tuluwat Island and improve the water quality of Humboldt Bay while preserving and protecting archaeological artifacts and protecting human remains. The case study acknowledges that in 2017,

“...in recognition of the Wiyot Tribe's leadership, innovation and collaborative partnership, EPA's Pacific Southwest Region selected the Tuluwat Village site for its Excellence in Site Reuse Award. This was the first reuse award to be given by the region and it was also the first EPA reuse award in the country to be given to a tribe. “EPA works hard to collaborate with tribes in a way that respects their governmental independence and cultural traditions,” noted EPA's regional Superfund Reuse and Redevelopment Coordinator Gary Riley. “While EPA provided some funding and did some work at the Tuluwat Village site, the success of the project is due to the tenacity and hard work of the Wiyot Tribe.””

On May 20, 2004, the City of Eureka ceded title to an additional 40 contiguous acres to the Wiyot Tribe. Efforts are ongoing to acquire additional portions of the island, restore the Tuluwat village, reinstate the World Renewal Ceremony, and conduct linguistic, native craft, and natural history guided interpretation events at the site.

The proposed project site has not been put into federal trust or granted sovereign status. Although the Tribe has acquired a fee or easement interest in parts of the island, the proposed amended development will be undertaken on non-federal trust lands owned by the Tribe in fee over which the state retains a public trust easement.

### **Environmental Setting**

With exception of the proposed placement of a temporary floating dock during ceremonial events, site construction, and site restoration activities, the currently proposed development is located within the upland area previously excavated, remediated, and capped under Phase I site restoration efforts ([Exhibit 5](#)).

Generally, the 270-acre Tuluwat Island is the largest of a cluster of islands situated at the northern end of the roughly 1.5-mile-wide strait between the northern and southern lobes of Humboldt Bay (see [Exhibit Nos. 1-3](#)). The island lies approximately one-half mile north of downtown Eureka across State Route 255 and four miles from the bay's entrance to the Pacific Ocean. The project site is located on the northeastern side of the island. Although traversed by a state highway, there is no vehicular access onto the island or to the project site.

The project site is situated within the boundaries of the City of Eureka on lands and tidelands over which the State retains a public trust easement. The project site lies

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<sup>2</sup> March 2018. U.S. EPA Case Study: “Environmental Stewardship and Cultural Preservation on California's Coast” accessible online at <https://semsub.epa.gov/work/HQ/100001200.pdf>

within Natural Resource (NR) and Water Conservation (WC) zoning districts under the City's Coastal Zoning Regulations.

Vegetation cover on and around the project site is composed of a mixture of native coastal scrub plants and exotic species. Native species include coyote brush (*Baccharis pilularis*), cow parsnip (*Heracleum maximum*), pearly everlasting (*Anaphilis margaritacea*), yarrow (*Achillea millefolium*), evergreen huckleberry (*Vaccinium ovatum*), and scattered tree species such as red alder (*Alnus rubra*), arroyo willow (*Salix lasiolepis*), wax-myrtle (*Morella californica*), and Sitka spruce (*Picea sitchensis*). Nonnative species include Himalaya blackberry (*Rubus armeniacus*), Queen Ann's lace (*Daucus carota*), and black acacia (*Acacia melanoxylon*). Wetter areas adjacent to the bay are vegetated with a variety of emergent saltmarsh vegetation, including pickleweed (*Salicornia virginica*), saltgrass (*Distichlis spicata*), scirpus (*Isolepis cernua*), and invasive Chilean cordgrass (*Spartina densiflora*).

### C. Jurisdiction and Standard of Review

The proposed project site has not been put into federal trust or granted sovereign land status and is subject to the Coastal Act's coastal development permit requirements. In addition, the proposed project site is located in the Commission's retained permit jurisdiction. The City of Eureka has a certified LCP, but the site is within an area shown on State Lands Commission maps over which the State retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

### D. Other Agency Approvals

The original project required approvals from other agencies, including from the U.S. Army Corps of Engineers, the North Coast Regional Water Quality Control Board, and the Humboldt Bay Harbor, Recreation, and Conservation District. To address any amendments to these prior approvals that may be needed for the proposed amendment development, added new **Special Condition No. 22(A)** requires submittal of these other agency approvals and consultations prior to commencement of construction.

Commission staff outreached to Humboldt County Department of Environmental Health and to North Coast Regional Water Quality Control staff regarding the proposed vault toilet, and both concurred that the proposed vault toilet would be eligible for use at the site consistent with Humboldt County Code requirements (including HCC section 613-4(c)) because the vault toilet is necessary for public health, safety and welfare where an onsite wastewater treatment system is infeasible, where a vault toilet would provide the safest and most acceptable method of sewage handling and is maintained by a public entity (in this case, the Wiyot Tribe).

Additionally, although the applicant obtained Design Review approval from City of Eureka (#AA-23-0005) for the dress houses phase of the proposed project, additional Design Review is required for development of the vault toilet and constructing the dining pavilion. Therefore, **Special Condition No. 22(B)** requires submittal of Design Review

approval(s) prior to commencement of construction of these project components. The applicant is required to inform the Executive Director of any changes to the project required by any other authorizations. Any such changes would not be incorporated into the project until the applicant obtains an amendment to this CDP, unless the Executive Director determines that no amendment is legally required.

## **E. Archaeological and Cultural Resources / Tribal Consultation**

Section 30244 of the Coastal Act states the following:

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 current and ancestral territory of the Wiyot Tribe. At the time that Euro-Americans first made contact in this region, the Wiyot people 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.

As indicated in Finding III.B (Site History) above, Tuluwat Island is located in the central portion of Wiyot ancestral territory and is the spiritual center of the Wiyot universe. The project area represents a significant Native American cultural heritage site and is listed in the National Register of Historic Places and as a threatened National Historic Landmark.

Two Wiyot villages were known to have existed on the island: Tuluwat (CA-HUM-67) and Etpidol-wotperol (CA-HUM-68). The first recorded Euro-American settlement of Tuluwat Island occurred in 1858. On February 26, 1860, settlers massacred an estimated 200 Wiyot people gathered for the World Renewal Ceremony at the Tuluwat village site. Beginning in 1861, land reclamation activities were initiated to increase the amount of pasture and farmland on Tuluwat Island. Between 1870 and approximately 1990, a ship repair yard with a drydock and marine ways, plus other structures, was established and operated on CA-HUM-67 in the subject project area. The project site is located on the northeastern side of the island around the former boat repair yard.

Representing over 1,000 years of continuous human occupation dating back to 900 AD, the village site covers approximately 4.5 acres and is comprised primarily of discarded organic matter containing a variety of bivalve shells and other food wastes interspersed with interred cultural artifacts and human remains. Before its destruction, the site consisted of a large shellmound, encompassing approximately 6 acres and attaining depths of up to 14 feet above Mean High Water. The village consisted of eleven house pits accommodating approximately 50 full-time residents, numerous burial plots and funereal remains, and other cremated and inhumed cultural artifacts. As one of the largest Wiyot villages, Tuluwat typified the late prehistoric period and was instrumental

in outlining the prehistory of the northern California coast, especially with regard to the stylization of the stone-carved burial accompaniments, its concentration of large woodworking tool relics, and the unique presence of fired clay figurines, collectively referred to as the “Gunther Phase” or “Pattern.” The site is also nationally significant for the large amount of archeological research material remaining.

Prior to submittal of the proposed permit amendment application and throughout the application review process, Commission staff have worked closely with the Wiyot Tribe representatives to understand cultural resource issues associated with the project and reasonable mitigation measures that may be considered to protect resources. Additionally, as part of the Commission’s permit review process and consistent with its adopted Tribal Consultation Policy, Commission staff reached out to other tribes with known interest in the project site, including (on February 13, 2024) cultural and environmental representatives from the Bear River Band of Rohnerville Rancheria and the Blue Lake Rancheria. On March 1, 2024 Commission staff received a response from the Tribal Historic Preservation Officer (THPO) of the Bear River Band requesting consultation on the proposed project, and on March 5, 2024 Commission staff received an email from the Bear River Band THPO with project comments that included requesting access to the island at various project stages of construction and post-construction, and inadvertent discovery protocol adherence as a standard condition ([Exhibit 7](#)). Commission staff coordinated with Bear River Band representatives to meet on March 13, 2024 and provided them with comments that Bear River Band had previously submitted during the EIR phase of the project that demonstrated prior support of the project as proposed ([Exhibit 7](#)). Although the meeting was convened, Bear River Band representatives were unable to attend and efforts to reschedule the meeting were unsuccessful. Commission staff has not received any additional comments on the proposed amendment as of the date of publication of the staff report.

The Commission’s review of the original project described mitigation measures and protocols that had been established through the project’s CEQA and permitting processes to address sensitive archaeological resources in the area. These measures include having cultural monitors and professional archaeologists on site for all excavation and ground disturbing activities, providing the cultural monitors/ archaeologists the ability to temporarily halt excavations to investigate finds and recover significant data using hand tools and more fine-tuned instruments, allowing the archaeological team to screen and/or inspect soils to the extent feasible to recover and document diagnostic artifacts and sensitive findings, appropriate procedures to follow in the event that Native American burials or other sensitive finds are discovered, and reporting requirements. The measures and protocols were memorialized in a Memorandum of Agreement (MOA) between the Wiyot Tribe, U.S. Army Corps of Engineers (ACOE), and the California State Historic Preservation Officer (SHPO).

Additionally, as part of the CEQA process, the City of Eureka, as the lead agency, prepared an Environmental Impact Report and Mitigation Monitoring and Reporting Program (MMRP) for the project, which stipulates additional mitigation measures to reduce the project’s impacts to a less than significant level. These include ([see Exhibit No. 8](#)), among others, (1) requiring the Tribe to implement the provisions stipulated by

the MOA described above (which is a confidential document); (2) using only low ground pressure tracked equipment at the project site to minimize disturbance to the archaeological deposit; (3) re-interring cultural resources unearthed during excavation and removal of contaminated material directly back into soils on site only if dioxin levels are demonstrated (to the satisfaction of the North Coast Regional Water Quality Control Board) to be at or below naturally occurring background dioxin levels for the Humboldt Bay Area; and (4) only re-interring unearthed cultural resources with suspected or confirmed dioxin levels above naturally occurring background levels back into the soil on site if first placed in a waterproof stainless steel container deemed acceptable and sufficient by the NCRWQCB.

The original permit includes Special Condition No. 14, which requires the permittee to undertake development in accordance with the protocols and measures of the MOA and MMRP ([Exhibit No. 8](#)), as summarized above. With exception of proposed placement of a temporary floating dock during ceremonial events, site construction, and site restoration activities, the currently proposed development is located within the upland area previously excavated, remediated, and capped under Phase I site restoration efforts ([Exhibit 5](#)). Nonetheless, Special Condition No. 14 remains in full force and effect.

Therefore, the Commission finds that the amended development, as proposed and conditioned, is consistent with Coastal Act Section 30244, as reasonable mitigation measures have been provided to minimize impacts to archaeological and tribal cultural resources.

## **F. Coastal Hazards**

Section 30253 of the Coastal Act states in relevant part:

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 requires that the Commission take the effect of sea level rise into account, stating:

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.

Coastal Act section 30604(h) states:

When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

The amended development involves construction activities within an approximately 200-foot-wide portion of Tuluwat Island within Humboldt Bay, the second largest estuary in California. Although the site is subject to risks of several coastal hazards as discussed below, the proposed amended development facilitates the Wiyot Tribe's access to its culturally sacred site and enables continuation of a broken tradition of hosting the annual World Renewal Ceremony within the Tuluwat Village. As detailed in Finding III.A above, the applicant proposes installing a vault toilet with a minimum finish floor elevation of 12 feet above MLLW.<sup>3</sup> The existing shed on the property is situated on a concrete slab at an elevation of 11.5 feet (MLLW) and once removed as proposed, a dining pavilion without utilities will be constructed in the same footprint. The dining pavilion will be constructed of redwood and other natural materials using traditional Wiyot building methods. Other project components, include ceremonial dress houses, a temporary ceremonial dance wall, and informational signage, are relatively minor in nature and/or temporary/seasonal and constructed of natural materials for the purpose of supporting the continuation of the World Renewal Ceremony and other ceremonies and cultural and ecological restoration of Tuluwat Island.

### **Flooding and Sea Level Rise**

The project site, along with most of Tuluwat Island, is subject to potential flood hazards associated with high waves and with tidal and storm events. Coastal Act Section 30253 requires the amended development to assure long-term stability and structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. The Commission's findings for approving the original project acknowledged the significance of section 30253 to the original project given the dynamic shoreline environment within which the original project would be placed, finding in part:

Since hydraulic forces increase with the square of the water height, a small increase in water depth and wind wave height can cause a significant increase in wave energy and potential structural damage. Thus, a small rise in tidal waters can expose bay front development to increased live and static hydraulic forces associated with inundation, scour, and wave attack.

The project area is entirely located in Zone AE, which is a Special Flood Hazard Area subject to inundation by the 1% Annual Chance Flood as designated on the flood maps

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<sup>3</sup> The final plans approved by CDP 1-08-017 and the analysis in the 2008 Final EIR reference mean lower low water (MLLW) as the tidal datum. For purposes of the 2008 Final EIR, the mean low, low water elevation (MLLW) is considered 0.0 feet

prepared by the Federal Emergency Management Agency (FEMA)<sup>4</sup>. There is no current base flood elevation determined.

Sea level rise will also result in changing groundwater dynamics that could lead to flooding impacts. In general, as sea levels rise, a higher marine water level will push groundwater tables upwards (becoming shallower) and inland. Depending on a variety of factors including local geology and soil permeability, the groundwater table could rise above the ground surface, resulting in emergent groundwater flooding.

With 1.6 feet of sea level rise, areas along the shoreline of the project site are anticipated to be inundated by rising groundwater. Groundwater levels are anticipated to be within 0-6 feet bgs in areas where existing and proposed structures will be located.

The California Ocean Protection Council's State of California Sea-Level Rise Guidance 2024 Update<sup>5</sup>, and the Commission's Public Review Draft of its Sea Level Rise Policy Guidance 2024 Update<sup>6</sup>, both contain a set of sea level rise scenarios for 14 tide gauges throughout California, and both agencies recommend using these scenarios and related information as best available science on sea level rise in California. The values included in these scenarios are slightly lower than the projections included in the 2018 version of the Sea Level Rise Policy Guidance, reflecting the updated body of research on global and regional sea level rise. Table 1, below, provides the scenarios for Humboldt Bay (measured at NOAA's North Spit Tide Gage), which has the highest relative rate of sea level rise in the State due to active land subsidence.

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<sup>4</sup> FEMA FIRMETTE map of the project site is accessible online at [http://msc.fema.gov/arcgis/rest/directories/arcgisjobs/nfhl\\_print/agolprintb\\_gpserver/je539585ea1094e3c8ed1aa1e837a8162/scratch/FIRMETTE\\_d078c79c-fb46-4e0f-9313-cad9d81a1402.pdf](http://msc.fema.gov/arcgis/rest/directories/arcgisjobs/nfhl_print/agolprintb_gpserver/je539585ea1094e3c8ed1aa1e837a8162/scratch/FIRMETTE_d078c79c-fb46-4e0f-9313-cad9d81a1402.pdf)

<sup>5</sup> Ocean Protection Council Sea-Level Rise Guidance: 2024 Update is accessible online at: <https://opc.ca.gov/wp-content/uploads/2024/05/Item-4-Exhibit-A-Final-Draft-Sea-Level-Rise-Guidance-Update-2024-508.pdf>

<sup>6</sup> The California Coastal Commission's Public Review Draft of the Sea Level Rise Guidance 2024 Update is accessible online at: [https://documents.coastal.ca.gov/assets/slr/CCCSLRPolicyGuidance\\_2024Update\\_PublicReviewDraft.pdf](https://documents.coastal.ca.gov/assets/slr/CCCSLRPolicyGuidance_2024Update_PublicReviewDraft.pdf)

**Table 1. Median Values of Sea Level Scenarios\* for North Spit, Humboldt Bay<sup>7</sup>**

	Intermediate	Intermediate-High	High
2030	0.6	0.6	0.7
2050	1.2	1.4	1.6
2070	1.9	2.7	3.5
2100	3.9	5.5	7.3

\*Values are displayed in feet

Per the Commission’s adopted 2018 and draft 2024 sea level rise guidance, “temporary structures, ancillary development, amenity structures, or moveable or expendable construction may identify a relatively short, expected life such as 25 years or less,” and the low risk aversion scenario may be used for projects that would have limited consequences or a higher ability to adapt. As this proposed development does not include critical infrastructure, residential living space, or provide another critical need, but rather provides ceremonial, recreational, and interpretive uses proposed to be built using natural materials without concrete foundations that can be easily removed or relocated, the inherent risk to the public regarding if and when the structures are subject to coastal hazards risk is relatively low. Thus, in this particular case, the project life is evaluated presuming a potential 25-year project life and low risk aversion scenario.

Evaluating the project’s safety for a 25-year lifetime, by 2050 and low risk aversion scenario, projections indicate 1.2 feet of sea level rise. The current mean higher high water (MHHW) elevation on Humboldt Bay is 6.85 feet (using MLLW vertical datum) based on the National Tidal Datum Epoch (NTDE) from 1983-2001. Thus, future MHHW levels in the year 2050 are projected to be approximately 8 feet (MLLW) (i.e., 6.85 feet + 1.2 feet of sea level rise), whereas the proposed dress houses and dining pavilion will be sited at an elevation of approximately 11.5 feet. (For the North Spit tide gage in Humboldt Bay, the MLLW datum corresponds to an elevation of 0.34 feet below NAVD88, meaning anticipated king tide events with 2.7 feet of sea level rise would be anticipated to be approximately 11.2 MLLW.) Thus, even considering intermediate-high or high scenarios or a longer design life, the siting and design of the proposed structures minimizes flood risks consistent with section 30253.

Because the proposed vault toilet will be constructed on a concrete foundation and will be in place year-round and not as easily removable as the other proposed structures, consideration of the intermediate-high risk scenario is appropriately precautionary in this case. Under the intermediate-high risk scenario cited above, future MHHW levels in the year 2070 are projected to be approximately 9.55 feet (MLLW) (i.e., 6.85 feet + 2.7 feet of sea level rise) and future average annual king tides are projected to be approximately 11.5 feet NAVD88 (8.8 feet NAVD88 + 2.7 feet). With a proposed minimum finished

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<sup>7</sup> Source: 2024 State of CA <https://opc.ca.gov/wp-content/uploads/2024/05/Item-4-Exhibit-A-Final-Draft-Sea-Level-Rise-Guidance-Update-2024-508.pdf>

grade elevation of 12 feet above MLLW, the new vault toilet also will be safe from nuisance flooding for its design life.

Nevertheless, given that the applicant has chosen to implement the project despite the risks associated with building in an inherently flood-prone area, the applicant must assume the risks. Thus, [Special Condition No. 13](#) is modified and reimposed to require the applicant to assume the risks of flooding of the property and waive any claim of liability on the part of the Commission. Through reimposition of this condition, the applicant is notified that the Commission is not liable for damage resulting from approval of the permit amendment for the proposed 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 authorized development to withstand hazards.

The applicant has indicated that Tribal Ceremonial Leaders will determine if and when the site is no longer usable for ceremonial purposes due to the effects of rising sea levels and structures will be removed if they are damaged beyond repair.

To minimize risks from coastal hazards, [Special Condition No. 20](#) requires removal of the approved development, including but not limited to the vault toilet and associated wastewater holding tank, if and when it is threatened by coastal hazards in such a way as would necessitate armoring to protect the development in the future.

### **Storm Events and Erosion Risks**

In its original approval of CDP 1-08-017, the Commission found in part that the project site is less vulnerable to storm surge impacts than other parts of the bay due in part to the geographic position of part of the island where development is proposed. Specifically, the Commission found in part the following:

Although the currents generated on the bay by tidal flood and flow can be substantial, especially in areas in proximity to Humboldt Bay's relatively narrow entrance, typical tidal velocities in the shoreline areas adjacent to the Middle Channel offshore of the site are much less, estimated at approximately 0.6 feet/second. In addition, being situated on the leeward side of the island with respect to prevailing storm wind direction, the site is exposed to less intense storm surge, generally not exceeding two feet in wave height.

In 2004 the Commission approved Coastal Development Permit No. 1-03-024 which authorized installing a 20-25-foot-wide band of revetment materials along a 400-foot-long segment of the island's northeastern shoreline for the purpose of stabilizing the eroded banks of the island and preventing further coastal erosion of cultural resources. Additionally, the original approval of the subject CDP No. 1-08-017 included authorization for installing a shoreline revetment structure (as a footing to the approved protective soil/geotextile cap) consisting of approximately 130 lineal feet of carbon reinforced fiberglass sheet piling. The 2008 approval also involved repairing an existing concrete bulkhead that covers approximately 2,485 square feet, thereby linking the bulkhead to the shoreline revetment authorized under CDP 1-03-024. The revetment

and bulkhead authorized by CDP No. 1-08-017 further protect cultural and archaeological resources while also containing residual contamination on site. Both the original shoreline revetment approved by CDP 1-03-024 and the new revetments approved by CDP 1-08-017 were designed to withstand the tidal and stormwater forces, including storm surge and other hydraulic forces that the site is subjected to, during the economic lifespan of the improvements.

In approving CDP 1-08-017, the Commission imposed Special Condition No. 12 requiring the applicant to submit for the Executive Director's review and approval, final design and material plans demonstrating the revetment was of the same design and materials as the revetment approved under CDP No. 1-03-024. The applicant satisfied the requirements of Special Condition No. 12 on August 11, 2008, thereby ensuring that the approved revetment has been designed to withstand storm surge forces. As part of the application for the proposed amended development, the applicant has indicated that there is no evidence of any erosion along the revetment structures, and they remain in good condition.

### **Tsunami Hazards**

The proposed amended development is located within the mapped tsunami inundation area as depicted on the Tsunami Inundation Map for Emergency Planning (California Geological Survey, March 11, 2021).<sup>8</sup> The inundation area represents the maximum considered tsunami runup from several extreme, infrequent, and realistic tsunami sources.<sup>9</sup> There is no alternative location for siting the proposed amended project that would avoid the tsunami zone. As noted in the 2008 Final EIR, alternative sites for the World Renewal Ceremony do not exist. The characteristics of Tuluwat Village that make the site appropriate for the World Renewal Ceremony and associated activities cannot be duplicated or replicated at any other location. It is for this reason that the Wiyot Tribe has not held the ceremony on an annual basis since they were displaced from Tuluwat Island in 1860. Similarly, the proposed vault toilet needs to be located at the site to fulfill its purpose in accommodating public services during ceremonial and interpretive events. Although a portion of Tuluwat Island is located outside the mapped tsunami hazard zone ([Exhibit 6](#)) and can be readily accessed during a tsunami event (as close as approximately 50 feet from the primary ceremony zone), the site is culturally sensitive and inappropriate for developing as an alternative.

The risk to life and property associated with inundation of the project site by a tsunami event is limited or reduced by several factors. First, the site is used on an occasional

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<sup>8</sup> See

[https://www.conservation.ca.gov/cgs/Documents/SHP/Tsunami/HazardArea/Maps/Tsunami\\_Hazard\\_Area\\_Map\\_Humboldt\\_County\\_a11y.pdf](https://www.conservation.ca.gov/cgs/Documents/SHP/Tsunami/HazardArea/Maps/Tsunami_Hazard_Area_Map_Humboldt_County_a11y.pdf).

<sup>9</sup> A 975-year average return period tsunami model (with a 5% probability of exceedance in 50 years) was used as a basis for the maximum inundation extent for inundation mapping in conjunction with data from an earlier 2009 mapping effort. The 2009 maps were not probabilistic and instead used a suite of tsunami source events for modeling, representing realistic local and distant earthquakes and hypothetical extreme undersea, near-shore landslides.

basis for ceremonial and interpretive events and the proposed amended development does not include buildings intended for residential uses or other extended human habitation. The proposed new structures will be developed as a public vault toilet, dining pavilion, and two small ceremonial dress houses (48 square feet each). Conversion of the use of the buildings to one that involves extended human habitation would require a permit amendment. Thus, the degree of human exposure to an extreme tsunami event is relatively limited.

Furthermore, a tsunami warning system is in place nearby, including evacuation drills for residents and employees in nearby mainland areas such as the town of Samoa, and a warning system that includes emergency notifications and sirens in the event of a tsunami and alert people to seek higher ground.

As (1) there is no alternative location for siting the amended development along the bay that would avoid the tsunami zone, (2) the limited use of the site limits human exposure to tsunami events, (3) safe ground above the inundation area is located in close proximity, and (4) a tsunami warning system is in place, the Commission finds that the proposed development minimizes tsunami hazard risk.

## **Conclusion**

For all the reasons set forth above, the Commission finds that the proposed amended development, as conditioned, assures stability and structural integrity and minimizes risks of geologic and flood hazards consistent with the hazards policies of the Coastal Act.

## **G. Protection of Marine Resources and Water Quality**

Sections 30230 and 30231 of the Coastal Act state as follows:

**Section 30230.** Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

**Section 30231.** The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The original project involved several components that posed short-term risks to water quality, including: (1) placing a temporary causeway within the bay mudflats to transfer construction materials from barges to the island during lower tides; (2) repairing the existing bulkhead to protect the midden from erosion and provide a footing for the proposed soil and geotextile cover that will cap remaining contaminants on the site (until a final cleanup plan can be developed and implemented); (3) removing debris and demolishing various dilapidated structures on the island; (4) excavating approximately 17 cubic yards of PCP-contaminated midden soils; (5) installing a protective soil and geotextile cover across the majority of the upland portion of the 1.5-acre parcel; and (6) installing a shoreline revetment structure (as a footing to the proposed protective soil/geotextile cap) consisting of approximately 130 lineal feet of carbon reinforced fiberglass sheet piling and approximately 29 cubic yards of rock slope protection on the bayward side of the new revetment. Without the implementation of proper protocols and “best management practices” (BMPs), water quality impacts could have occurred.

To prevent potential impacts to water quality under the original permit, the Commission imposed Special Condition Nos. 1, 3, 4, 5, and 6. These conditions required that the applicant submit various final plans, prior to permit issuance for the review and approval of the Executive Director, including a final Interim Site Cleanup Plan, a final NPS/SWPPP, a final Spill Prevention, Control, and Countermeasure Plan, a debris disposal plan, and a final revegetation plan for the site, all of which have been satisfied. Additionally, Special Condition No. 2 required that the applicant carry out the project in accordance with various construction protocols to ensure the protection of coastal waters and wetlands.

The proposed amendment includes the installation of a vault toilet, which will be designed to collect solids and liquids with evaporation and digestion functioning as the main disposal mechanisms, with periodic pumping required for maintenance and health and safety standards. As contemplated and described in the 2008 Final EIR, the vault toilet will be designed to hold the effluent in a tank with the toilet set above the tank. The tank (“vault”) will be set above-grade and will have a standard minimum tank capacity of 500 gallons, which is anticipated to support up to 7,500 uses (based on an estimate of 1,500 uses per 100-gallon capacity). Although the capacity is anticipated to be significantly greater than the annual demand, the applicant plans to inspect and assess maintenance needs annually and at a minimum pump once the tank reaches 80% capacity. Pumping will be achieved by connecting a 250-foot-long hose between the vault toilet and a temporary mooring location.

Special Condition Nos. 1-6 remain in effect as approved under CDP 1-08-017 and can be viewed in their entirety in [Appendix B](#). Additionally, to avoid potential wastewater impacts to coastal resources, the 2008 Final EIR included Mitigation Measure 3.5.3b requiring the preparation and implementation of a Wastewater Management Plan that will include measures to protect water quality through proper management of wastewater management systems. To ensure that maintenance of the vault toilet is conducted in a manner most protective of water quality and as proposed by the applicant and the FEIR, the Commission includes [Special Condition No. 21](#) requiring submittal to the Executive Director for review and approval of a Wastewater

Management Plan that includes BMPs, a cleanup response plan, and annual inspections. Additionally, as noted in Finding III.D above, [Special Condition 20](#) requires removal of the approved development, including but not limited to the vault toilet and associated wastewater holding tank, if and when it is threatened by coastal hazards in such a way as would necessitate armoring to protect the development in the future.

Thus, the Commission finds that the project as conditioned is consistent with Sections 30230 and 30231 of the Coastal Act.

#### **H. Allowable Fill in Wetlands and Coastal Waters**

Section 30233 of the Coastal Act states, in applicable part:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
- 1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities;
  - 2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basin, vessel berthing and mooring areas, and boat launching ramps;
  - 3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities;
  - 4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines;
  - 5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas;
  - 6) Restoration purposes;
  - 7) Nature study, aquaculture, or similar resource dependent activities.
- (b) Dredging and spoils shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation...

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

Section 30108.2 defines “fill” as “earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.” As previously mentioned, there is no vehicular access onto the island or to the project site. For the Wiyot Tribe to access this culturally sacred site and continue its tradition of hosting the annual World Renewal Ceremony within the Tuluwat Village, boating access facilities are required. Thus, the project proposes the temporary staging of a floating dock on a recurring basis annually along the Tuluwat shoreline extending across intertidal waters and mudflats. The temporary floating dock will be sited in the same location as the temporary causeway that was previously approved under CDP 1-08-017.

The original permit authorized placing the temporary causeway for the purpose of transferring construction materials from barges to the island during lower tides. As previously approved, the temporary causeway was situated within approximately 1,930 square feet of intertidal wetlands using temporary piers and beams or rock placed over geotextile and “geoweb” (a cellular confinement product used to reduce lateral spreading of fill materials on non-cohesive soils). Although the temporary floating dock may be installed at different times, including to facilitate boat access for site construction, environmental and cultural restoration, and for the World Renewal Ceremony, the duration of placement would be less than the previously approved causeway and would be short term, not exceeding 30 days at any given time.

The proposed floating dock will be deployed when needed and secured using temporary metal pipe piles manually driven or hand augered at least 12 inches into the ground and/or weighted anchors and chains at regular intervals along the length of the dock. When not in use, the floating dock will be placed in the existing shed on the island or a nearby developed, non-sensitive site (e.g., in the dining pavilion when not in use). The proposed dock does not involve the placement of any permanent structural fill that would permanently displace mudflat or eelgrass habitat. However, the dock would float up and down with the tide, thereby resting on mudflat areas of Humboldt Bay during low tide.

As cited above, section 30233 of the Coastal Act limits the types of development that are allowed to fill such resource areas. The Commission may only authorize fill in open coastal waters, wetlands, or estuaries for new development that fits within one of seven use categories described in Coastal Act section 30233(a)(1)-(7), only if the placement of fill is the least environmentally damaging feasible alternative, and feasible mitigation measures must be provided to minimize adverse environmental effects.

a. Allowable Uses

Among the allowable uses which most closely match the project objectives are those enumerated in Section 30233(a)(3) and (7) involving fill relating to “new or expanded boating facilities,” “nature study,” or “similar resource dependent activities.” The

proposed floating dock is intended to facilitate boat access to the island to support construction and ecological restoration activities in addition to ceremonial events, including deployment for up to 30 consecutive days during World Renewal Ceremonies.

With respect to the project being recognized as either “nature study” or “similar resource dependent activities” as identified in Section 30233(a)(7), the Commission notes that as part of the proposed project, the applicant seeks to restore and develop the Tuluwat village site to conduct cultural dance ceremonies, provide access to interpretive events, and conduct cultural and ecological restoration that relies on access to the site via boat. The 2008 EIR for the project states in part the following:

The Tribe intends for the site to host not only tribal ceremonies and celebrations, but also educational, cultural, and research activities for tribal members and for the public. These would include educational field trips about local American Indian culture and natural history, interpretive or educational sites and displays; cultural activities, and cultural awareness programs...

Therefore, the Commission finds that the temporary placement of fill for the proposed temporary dock is consistent with the use limitations identified in section 30233(a).

b. Alternatives

The Commission must ensure that the placement of fill in coastal waters is the least environmentally damaging feasible alternative. Coastal Act section 30108 defines “feasible” as “...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” In this case, the Commission has considered the various alternatives and determines that there are no feasible less environmentally damaging alternatives to the project as conditioned. Identified alternatives include: (1) the “no project” alternative; and (2) construction of a permanent dock.

- i. No Project Alternative: The no-project alternative would result in discontinued access to and management of the site and prevent access to sacred ancestral lands and Tribal Cultural Resources. As noted in the 2008 EIR, alternative sites for the World Renewal Ceremony do not exist. The characteristics of Tuluwat Village that make the site appropriate for the World Renewal Ceremony and associated activities cannot be duplicated or replicated at any other location. It is for this reason that the Wiyot Tribe has not held the ceremony on an annual basis since they were displaced from Tuluwat Island in 1860. The proposed amendment would further the goals and features of the Tuluwat Restoration Project that has been underway for over a decade and cannot be met with the “no project” alternative.
- ii. Construction of a Permanent Dock: This alternative would involve constructing a permanent dock that would remain in the water year-round, which would result in permanent fill of the tidelands and associated permanent impacts of intertidal waters and mudflats. As discussed previously, the applicant is proposing to use the temporary floating dock to facilitate boat

access to the island to support construction and ecological restoration activities in addition to ceremonial events, including deployment for up to 30 consecutive days during World Renewal Ceremonies. When not in use, the dock would be removed and stored in a shed on the island. Construction of a permanent dock would require the installation of support piles that would result in permanent structural bay fill. Therefore, the Commission finds that this alternative is not a feasible less environmentally damaging alternative to the proposed amended project.

The Commission concludes that, as conditioned to include the feasible mitigation measures discussed below, the proposed amended development as conditioned is the least environmentally damaging feasible alternative and consistent with the alternatives test of section 30233(a).

c. Feasible Mitigation Measures

Section 30233 of the Coastal Act additionally requires that filling, diking, or dredging in coastal waters only be allowed when feasible mitigation measures have been provided to minimize significant adverse environmental impacts. In its approval of CDP 1-08-017, the Commission found that the adverse effects of the direct fill to be placed on wetland habitat for the construction causeway were insignificant because the fill would be temporary and completely removed upon project completion, which is also the case for the currently proposed use of the temporary floating dock. The applicant has designed the amended project with minimal impacts to coastal and marine resources and as described above, has proposed to limit the deployment of the dock to no greater than 30 consecutive days.

The Commission's findings for approving CDP 1-08-017 also evaluated potential impacts to eelgrass that could occur in association with placement of the temporary causeway and other activities approved under the original permit. The Commission found in part the following:

Eelgrass impacts also could occur as a result of the installation of the temporary causeway. If the causeway were to be placed on top of eelgrass, plants could be crushed and damaged, along with any other marine resources (such as sensitive fish species) using the beds as habitat. Additionally, the barges proposed for transport of construction equipment to the site could impact eelgrass if the boats were to rest against the mudflats, crushing and damaging plants and associated marine resources. The applicant is proposing to avoid eelgrass impacts by (1) placing the temporary causeway between identified beds (Exhibit Nos. 4 and 5), and (2) limiting the mooring of barges to at least 20 feet bayward of the MLLW line (Exhibit Nos. 4 and 5). To ensure that eelgrass is avoided as proposed, the Commission attaches Special Condition No. 11. This condition requires that the applicant submit, prior to permit issuance for the review and approval of the Executive Director, a final plan for the protection of eelgrass beds in the project vicinity, which demonstrates that eelgrass beds in the project area shall be delineated with floating buoys prior to commencement of construction, and equipment shall operate outside the delineated eelgrass beds at all times.

Grounding and direct contact of the barge with eelgrass beds shall be avoided at all times. No propellers, anchors, construction equipment, or piles shall be dragged over the mudflats or eelgrass beds.

On August 11, 2008, the Commission received a Final Eelgrass Protection Plan in compliance with Special Condition No. 11 of CDP 1-08-017.

To avoid siting the dock on eelgrass during the eelgrass growing season, the applicant proposes to follow the same eelgrass protection measures established for the temporary causeway under CDP 1-08-017, including avoiding direct placement of the temporary floating dock within eelgrass beds or patches of eelgrass. This will negate the need for conducting eel grass surveys after the floating dock is removed due to eelgrass avoidance and the short-term nature of the floating dock deployment.

The Commission has attached [Special Condition No. 19](#) requiring the permittee to adhere to all proposed mitigation measures, including limiting the use of the floating dock to no more than 30 consecutive days at a time and removing all temporary anchors when the dock is not in use. **Special Condition No. 19** also requires the permittee to adhere to the approved Final Eelgrass Protection Plan as modified to include an exception to surveying for eelgrass following removal of the temporary floating dock after each use. Additionally, Special Condition No. 2(F) of the original permit requires that a minimum 20-foot-wide buffer around the eelgrass beds offshore of the project site shall be marked by a qualified biologist and maintained during construction and remains in effect.

Therefore, the Commission finds that the proposed project as conditioned provides feasible mitigation measures to minimize adverse environmental effects consistent with section 30233(a).

d. Biological Productivity and Functionality

Another general limitation, as set by section 30233(c) of the Coastal Act, is that any proposed dredging or filling in coastal wetlands or estuaries must maintain or enhance the functional capacity of the wetland or estuary.

The mitigation measures incorporated into the project and required by the special conditions discussed above will ensure that the project will not have significant adverse impacts on coastal waters or wetlands in and around the project vicinity. Therefore, the Commission finds that the proposed project, as conditioned, will maintain and enhance the functional capacity of wetlands consistent with the requirements of section 30233 of the Coastal Act.

**Conclusion**

For all of the reasons set forth above, the Commission finds that the proposed amended development, as conditioned, is consistent with section 30233 of the Coastal Act.

## **I. Public Access & Coastal Recreational Opportunities**

Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. Section 30220 of the Coastal Act provides that coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

In its approval of CDP 1-08-017, the Commission acknowledged that although one can reach Tuluwat Island by boat, there is no vehicular access to the island and the island is not generally open to public recreational use.

As discussed in Finding Section III.A above, the proposed amended development entails the construction of ceremonial buildings and interpretive signage, clearing of vegetation for trails and a ceremonial circle, use of the temporary dock causeway, installation of a vault toilet, demolition of an existing shed and of the construction of a dining pavilion. The Wiyot Tribe intends for the site to host not only tribal ceremonies and celebrations, but also educational, cultural, and research activities for tribal members and for the public. All public access and events will be coordinated by the Wiyot Tribe.

The proposed amended development will not have any significant adverse impact on public access. Due to its location in the middle of Humboldt Bay rather than on the open coast, the island is not surrounded by a sandy beach. The mudflats around the island do not provide significant recreational opportunities such as a sandy beach would. Therefore, the Commission finds that the amended development, which does not include substantial new public access, is consistent with the public access policies of the Coastal Act.

## **J. Visual Resources**

Coastal Act section 30251 requires permitted development to be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

There are views of the site from State Route 255, from the easternmost portions of the paths within the City of Eureka's Waterfront Park, and from the waters of Humboldt Bay.

However, consistent with Section 30251, the amended development as designed and sited would not significantly obstruct any views to or along the ocean and the Humboldt Bay estuary. The proposed amended development would not rise appreciably above the existing grade in a manner that would block views. The vault toilet structure will be less than 120 square feet with a maximum roof height of ten (10) feet and vent stack height of 14 feet. The proposed dress houses and ceremony wall will be seven (7) feet in height, whereas the existing shed on the site is 16 feet tall. The proposed dining pavilion will replace the existing shed and will be constructed to resemble traditional Wiyot redwood plank houses, using natural materials to the extent feasible. The intention is for the new structure to have less of a visual impact than the existing shed.

The proposed project as sited and designed would also not result in any appreciable alteration of any natural landforms. With the exception of the temporary floating dock, all development will occur from within previously disturbed upland areas.

As mentioned in Finding III.D (Other Agency Approvals), although the applicant obtained Design Review approval from City for the dress houses phase of the proposed project, additional Design Review is required for development of the vault toilet and constructing the dining pavilion. Through this review process, the City will ensure that the project is designed to protect public views and be compatible with the character of the surrounding natural area. [Special Condition No. 22\(B\)](#) requires submittal of Design Review approval(s) prior to commencement of construction of the vault toilet and dining pavilion project components, and any changes to the project required by the City would not be incorporated into the project until the applicant obtains an amendment to this CDP.

Additionally, the Commission attaches [Special Condition No. 23](#), which requires that the applicant submit, prior to commencement of construction of the vault toilet and dining pavilion phases of construction, final design plans to ensure that the development of these project components are consistent with the physical scale of surrounding development and compatible with the character of the surrounding area.

Therefore, the Commission finds that the proposed amendment, as conditioned, will protect views to and along the ocean and scenic coastal areas, minimize the alteration of natural landforms, and be compatible with the character of the surrounding area consistent with section 30251 of the Coastal Act.

#### **K. Waiver of Application Fee**

The applicant has requested that the Commission waive the application fee for the permit request ([Exhibit 9](#)). The applicant states that the proposed project is entirely funded by donations and public grant funds, and at the time that the applicant applied for those funds, the anticipated cost for the permit application had been calculated based upon the cost of the current proposed development (with an assumed construction cost under \$100,000) rather than the cost of the originally permitted development.

Although the scope of the amended development is significantly less than the originally permitted development, pursuant to Section 13055(a) of the Commission's regulations, the permit application fee in this case is calculated as fifty percent (50%) of the permit fee that would currently apply to the originally permitted development. The original project fee for CDP 1-08-017 was based on the projected development cost of \$1,500,000. Based on the current fee schedule, this corresponds to a fee of \$14,710; 50% of this fee amounts to \$7,355.

Pursuant to Section 13055(h)(1) of the California Code of Regulations, the Executive Director shall waive the application fee when requested by resolution of the Coastal Commission. Commission staff recommends that the Commission approve the fee waiver for the proposed project. The Commission granted a fee reduction for the original permit, which involved a public benefit as a water quality improvement project. Although the Applicant does not meet the definition of "public entity" under the Government Code, the Wiyot Tribe has committed to the Tuluwat Restoration Project that involves site cleanup, remediation, and hosting ceremonial and interpretive events that will provide a public service for tribal members and other members of the community.

Therefore, the Commission finds that as when applying for the subject proposed amendment the applicant did not anticipate the significant application fees imposed by the Commission's application fee schedule, and the Tuluwat Restoration Project serves a significant role in rebuilding Native American ceremonial practices on ancestral lands, the Commission hereby directs that the permit application fee for CDP No. 1-08-017 be waived. If the Commission determines that a fee waiver is not appropriate, Special Condition No. 24 requires payment of the application fee prior to issuance of the CDP amendment.

#### **L. California Environmental Quality Act (CEQA)**

The City of Eureka acted as the lead agency for this project, and prepared and adopted an Environmental Impact Report for the Tuluwat Restoration Project (SCH # 2004122022). The Final EIR was published in August 2007 and adopted in April 2008. The City determined that, because the 2008 EIR anticipated and included in its project analysis the type of impacts that the proposed project could produce, pursuant to Section 15162 of the State CEQA guidelines, no subsequent or supplemental EIR was necessary for the proposed project.

Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. Those findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed 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 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, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.