CALIFORNIA COASTAL COMMISSION
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Th18a

Lead Agency Action:	09/06/24
180th Day:	03/05/25
Staff:	TG-A
Staff Report:	1/24/2025
Hearing Date:	2/6/2025

STAFF REPORT: REGULAR CALENDAR

Application No.:	**1-22-0260**
Applicant:	**Alexandre Dairy**
Agent:	Chris Howard
Location:	15 miles north of Crescent City, Del Norte County (APN 103-020-074)
Project Description:	Replace a water diversion intake system on the Smith River to support ongoing agricultural uses on ~355 acres in surrounding floodplain, including installing a new screened intake structure to withdraw up to ~2,500 gallons per minute, new pumps, air compressor, cleaning system, panels, meters, and ~4,500 lineal feet of 18-inch-diameter underground irrigation lines trenched to a depth of 4 feet.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project involves development in and adjacent to the Smith River, including the annual installation and removal of water diversion infrastructure to extract a water supply necessary to irrigate prime agricultural land. The project will limit the use of diverted water to the 355 acres recognized as APN 103-020-074, which was purchased in September 2024 by the applicant. The subject 355-acre property is one of the parcels that makes up the former “Reservation Ranch,” which encompassed over 1,600 acres and 3.5 miles of riverfront on the Smith River. Over the past century, the subject property has been used for grazing and farming activities.

Although agricultural uses in the Smith River Basin are documented as dating back to 1857, the area has been a significant ancestral homeland for Native American people since time immemorial. Commission staff outreached to cultural and environmental representatives from Tolowa Dee-ni' Nation, Elk Valley Rancheria, Trinidad Rancheria, Blue Lake Rancheria, and Big Lagoon Rancheria to inform them of the proposed project and solicit input. Based on feedback received over the past two years during consultations and the CEQA review process led by the Regional Water Board, Special Condition 6 is recommended to require submittal and implementation of a final Tribal and Cultural Resources Monitoring Plan that provides for the protection and preservation of cultural resources.

In 1969, the prior property owner established a riparian water right on the main stem of the Smith River by installing a pump on the river from its frontage adjacent to the subject property and commencing water pumping. However, because the prior landowner replaced portions of the water diversion system in 1973 without the requisite CDP authorization, this and other violations on the larger Reservation Ranch property were addressed and resolved by the Commission in an action taken in July of 2022 (Consent Cease and Desist Order CCC-22-CD-02, Consent Restoration Order CCC-22-RO-01, and Consent Administrative Penalty CCC-22-AP3-01 – referred to collectively herein as "Consent Agreement").

The previous water diversion system used a large 8,000 gal/min. centrifugal pump to move water from the Smith River over the top of the levee (constructed in the mid-1960's) through plumbing that transferred the volume of water into an agricultural ditch. The antiquated system fed a series of pumps that functioned from the water conveyed through the agricultural ditch. These series of pumps were in three locations along Tillas Slough on the property west of the subject property until removed in 2021 prior to finalization of the Consent Agreement. The only violation that was addressed by the Consent Agreement on the parcel at issue in this proposed CDP application was the unpermitted pump installed on the Smith River, in the same location as the new pump proposed in this application.

Following Reservation Ranch's ceasing of unpermitted pumping in 2021 and removal of the unpermitted pump from the location at issue on the river, Reservation Ranch submitted the subject CDP application for a new pump in early 2022. The Commission subsequently approved the Consent Agreement on July 14, 2022, and since then, Reservation Ranch and the subsequent owners of the ranch have continued to not use any unpermitted pumps on the Smith River or on Tillas Slough. After the Consent Agreement was approved, Reservation Ranch sold the entire property, most of which is not at issue in this CDP application, to Smith River Ranch, LLC, which subsequently sold the 355-acre parcel at issue in this CDP application to the applicant.

The primary purpose of the project is to provide a necessary water supply to support ongoing agricultural operations on the site that involves seasonally irrigating prime agricultural lands during the late spring and summer. The project also involves excavating a temporary trench approximately 24 inches wide by 48 inches deep by 4,500 feet long through farmed seasonal wetlands on the agricultural floodplain to install

conveyance piping connecting the water diversion infrastructure to a larger underground irrigation system on the 355-acre prime agricultural land. The disturbed areas within pastures will be restored to pasture grassland following installation.

The proposed diversion of water from the Smith River, placement of associated intake facility infrastructure in the area adjacent to the river, and connection of the diversion facility to the larger irrigation system on the property constitutes "substantial alteration" of the river that must be found consistent with the provisions of Coastal Act section 30236. This section sets forth limitations on the types of projects that may be allowed to cause substantial alteration of rivers and streams, and those projects that do qualify as allowed shall incorporate the best mitigation measures feasible.

The project will provide a necessary water supply that will seasonally irrigate approximately 355 acres of prime agricultural land on the property to maintain the maximum amount of prime agricultural lands in production, which will help protect the area's agricultural economy, consistent with the agricultural policies of the Coastal Act. During the period from May to September, the project proposes withdrawing water at rates ranging from a minimum of 1,950 gallons per minute to a maximum of 3,000 gallons per minute. According to the National Marine Fisheries Service, the proposed diversion represents less than 2% of the Smith River flow during the lowest flows of the year. The estimated irrigation amount is based on demand for pasture grass growth.

Coastal Act section 30412(b) identifies the State Water Resources Control Board as having primary responsibility for the administration of water rights pursuant to applicable law, and the Commission may "not frustrate" the State Board's determination with respect to water rights. Specifically, "the commission shall not … modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights." The State Water Board has affirmed the applicant's entitlement to extract water from this location (Riparian Right S019263). Given the State Board's determination of riparian water right at this location and the applicant's assertion that the proposed project will provide a necessary water supply to support ongoing agricultural operations on the site, the project qualifies as a necessary water supply project. To prevent potential impacts to aquatic species, maintain biological productivity, and protect water quality, staff recommends Special Conditions 5 (water system standards and limitations), 7 (construction responsibilities), 8 (revegetation enhancement, mitigation, and monitoring), 9 (protection of amphibians and aquatic wildlife), and 10 (protection of sensitive bird nesting habitat).

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 CDP application 1-22-0260 as conditioned.

The Motion to adopt the Staff Recommendation are found on Page 6.

TABLE OF CONTENTS

LIST OF APPENDICES

LIST OF EXHIBITS

Exhibit 8 – Mitigation Monitoring and Reporting Plan (MMRP) From 2024 MND
Exhibit 9 – Excerpts from Alternatives Analyses
Exhibit 10 – Correspondence from Native American Groups through January 23, 2025
Exhibit 11 – Public Correspondence Received through January 23, 2025

I. Motion and Resolution

A. Motion

I move that the Commission **approve** Coastal Development Permit No. 1-22-0260 pursuant to the staff recommendation.

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

B. Resolution

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

II. Standard Conditions

This permit is granted subject to the following standard conditions:

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

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

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

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

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

all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

This permit is granted subject to the following special conditions:

1. **Scope of Development.** This permit is only for the development limited to APN 103-020-74 as depicted in Exhibit 2 ("Affected Parcel Map") and as described in Special Condition 3 below.

2. **Future Development Restriction**. This permit is only for the development described in Coastal Development Permit Application 1-22-0260. Any future improvements or modifications to the water diversion facility and associated irrigation system serving APN 103-020-74 or other approved development will require a permit amendment to Coastal Development Permit 1-22-0260 from the Commission, unless the Executive Director determines that no amendment is legally required.

3. **Approved Development.** This permit authorizes the following development, as described in the Revised Project Description received January 14, 2025 and included as Exhibit 5:

    A. Use of a small boom truck to annually install and remove a retrofitted intake structure within the Smith River at Riparian Right ID S019263 from May 1 to September 30 of each year. Authorized retrofits to the intake structure include the following:

        i. Reinforce an existing raised wooden platform immediately upslope of the intake structure using 1/4-inch steel plate to support the intake infrastructure components further described in this condition;

        ii. Install up to two centrifugal pumps [rated at 3,000 gallons per minute (gpm)] on the existing raised wooden platform in the riparian area immediately upslope of the intake structure;

        iii. Refurbish an existing electrical panel on the wooden platform upslope of the intake structure;

        iv. Install a Hendricks stainless steel intake screen that meets NMFS guidelines and CDFW criteria, in conformance with requirements of the Regional Water Board (WDID No. 1A22047WNDN) and CDFW (LSAA No. EPIMS-DEL-20582-R1);

        v. Install a 16- to 18-inch-diameter metal conveyance pipe, an airburst screen cleaning system with a compressor and an eighty-gallon air tank, a control panel, a salinity meter, a flow meter, and a 1.5-inch-diameter air burst pipe; and

B. Withdraw water from the Smith River at Riparian Right ID S019263 as specified in subsection A above at a maximum flow rate not to exceed 2,600 gpm, except as otherwise provided in Special Condition 5;

C. One-time excavation of a 24-inch-wide, 48-inch-deep trench to install approximately 4,500 linear feet of underground irrigation pipeline (not to exceed 18 inches in diameter) between the intake and the existing water distribution mainline on APN 103-020-74 and backfill trench with excavated soil consistent with Special Conditions 7 through 10;

D. Plant an approximately 1,100-square-foot area of the levee with locally native overstory tree species common to the Smith River riparian habitat system such as Sitka spruce (*Picea sitchensis*) and Bigleaf maple (*Acer macrophyllum*) trees to enhance riparian habitat in the area, consistent with Special Condition 8.

4. Permit Responsibility. By accepting the benefits of CDP 1-22-0260, the Permittee agrees to and accepts the following:

A. All activities associated with performing the development authorized pursuant to CDP 1-22-0260 shall be undertaken in accordance with the terms and conditions imposed by the Commission in conditionally approving CDP 1-22-0260. It shall be the Permittee's responsibility to ensure such compliance by any party to whom the Permittee assigns the right to construct or undertake any part of the activities authorized herein; this requirement does not relieve other parties of responsibility for compliance with the permit or immunize such parties from enforcement action by the Coastal Commission's enforcement program.

B. The Permittee shall inform the Executive Director of any changes to the project required by the Army Corps of Engineers, NMFS, CDFW, the Regional Water Board, or any other approving authority overseeing development authorized by CDP 1-22-0260. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

5. Water System Standards and Limitations of Use. The water supply system authorized by this permit shall be subject to the following standards and limitations on use:

A. The intake system when in operation shall be properly screened with a mesh size of less than or equal to 0.069-inch and a through-screen water velocity of no more than 0.3-feet per second. The system shall be maintained to ensure that through-screen water velocities remain at or below 0.3-feet per second at all times during operation.

B. The diversion shall only be operational during the period from May 1 to September 30 each year, with a maximum diversion rate not to exceed 2,600 gallons per minute (gpm), unless the permittee submits

documentation to the Executive Director from CA Department of Fish and Wildlife and National Marine Fisheries Service indicating that water may be withdrawn at a rate of 3,000 gpm; however in no case shall water diversion exceed 3,000 gpm. The diversion shall only be used to irrigate up to 355 acres of pasture exclusively located on APN 103-020-074;

C. The diversion intake and pumps shall not be left in place beyond September 30 of any given year, and shall be removed from the river and river bank no later than September 30 each year.

D. The Permittee shall install a salinity meter at the project site and maintain the meter in good working order. The salinity meter shall be used to measure and record salinity levels consistent with subpart (E).

E. Water withdrawal from the Smith River shall only occur when the salt wedge is below the intake site. The Permittee shall monitor tide levels to ensure the pump is shut off during periods of high tide when salinity changes. The Permittee shall also discontinue water withdrawal when salinity levels reach above 1 part per thousand (ppt), as measured by the salinity meter installed at the point of diversion.

F. In conformance with requirements of the State Water Resources Control Board Division of Water Rights ("State Water Board"), and CDFW (LSAA No. EPIMS-DEL-20582-R1), the permittee shall collect and keep at minimum the following water system measurements:

   i. Hourly flow rate, and total volume of water diverted (including the percentage of flow diverted), water elevation, and water velocity; and

   ii. The amount of water used per week for irrigation purposes.

G. The permittee shall submit Water Diversion and Use reports to the State Water Board no later than February 1 of each year and to CDFW no later than March 31 of each year and shall make all diversion records available to the Executive Director upon request.

6. Area of Archaeological Significance

A. **Submittal of Final Tribal and Cultural Resource Monitoring Plan**. The permittee shall comply with all recommendations and mitigation measures contained in the Regional Water Board's approved Mitigated Negative Declaration and 401 certification (WDID No. 1A22047WNDN) and as recommended in part in the May 2023 Phase 1 Cultural Resource Inventory Report prepared by DZC Archaeology. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-22-0260**, the Permittee shall submit to the Executive Director a final Tribal and Cultural Resource Monitoring Plan prepared by a qualified archaeologist in consultation with representatives for the Tolowa Dee-ni' Tribe and approved by the Regional Water Board that details what actions will occur to protect and preserve cultural resources, including: (1) minimizing potentially significant impacts to tribal resources or buried human remains before excavation and trenching

activities are initiated, as required herein; (2) investigating excavated materials to verify that tribal resources or buried human remains have not been encountered; and (3) responding in the event that tribal resources or human remains are encountered during excavation activities. The plan shall include, at a minimum, the following:

i. The Plan shall implement protection and preservation measures outlined in Attachment E of the General Waste Discharge Requirements For Dairies Within the North Coast Region", Order No. R1-2019-0001, “Tribal Cultural Resources Mitigation Program".

ii. A historical human remains detection canine (HHRDC) survey shall be employed along the proposed trenching and excavation areas to identify potential human remains in advance of trenching activities. If the HHRDC survey identifies potential human remains within the area of the proposed trenching activities, the project shall follow protocols in subpart D and be redesigned to avoid the detection site unless alternative actions to protect or remove and relocate the remains are agreed upon by the appropriate representative(s) of the Tolowa Dee-ni’ Nation or Native American most likely descendent (MLD) when State Law mandates identification of an MLD.

iii. An unclassified historical human remains detection canine survey report shall be developed by the applicant’s archaeologist or the HHRDC contractor, in advance of any excavation and trenching activities and shall be provided to the Tolowa Dee-ni’ Nation, the Executive Director, and the Regional Water Board at least 30 days prior to commencing trenching activities, to inform project implementation to avoid potential impacts to human remains.

iv. At least 30 days prior to commencing trenching activities, the Permittee, or its authorized representatives, shall notify interested Tribes that trenching and excavation is planned and arrange to contract with Tribal Monitors to be on-site during these activities. The 30-day timeframe may be shorter if the Permittee, or its authorized representatives, and interested Tribes mutually agree to the revision in writing. Copies of written correspondence documenting advance notification to interested Tribes and any agreements to commence trenching activities sooner than the 30-day timeframe shall be made available to the Executive Director upon request.

v. Inadvertent discovery protocols shall be implemented consistent with the requirements of this condition.

B. **Development Conformance with Approval Final Plan**. The permittee shall undertake development in accordance with the approved final Tribal and Cultural Resource Monitoring Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to

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

C. **Inadvertent Discovery**. If an area of archeological and/or tribal cultural resources is discovered during the course of the project, project activities shall cease and shall not recommence except as provided in subsection (E) hereof, and the permittee shall immediately notify and retain a tribal cultural resource specialist and qualified archaeologist to analyze the significance of the find in consultation with Native American Tribes listed on the Native American Heritage Commission (NAHC) contact list. Significance testing may be carried out only if acceptable to the affected Native American Tribe(s), in accordance with a Significance Testing Plan. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area that includes a reasonable buffer zone recommended by the monitor(s) no less than a 25-foot radius around the discovery area. Project activities may continue outside of the exclusion zone.

D. **Human Remains** Should human remains be discovered on-site during the course of the project, immediately after such discovery, the onsite archaeologist and/or Native American monitor shall notify the County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. An "exclusion zone" may be established around the discovery area. If the county coroner determines that the human remains are those of a Native American, the coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The landowner/ permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to preserve the remains in place, move the remains elsewhere onsite, relinquish the remains to the descendants for treatment, or determine other culturally appropriate treatment. Within five (5) calendar days of such notification, the permittee/landowner shall notify the Coastal Commission's Executive Director of the discovery of human remains and identify any changes to the proposed development or mitigation measures that may be needed related to the inadvertent discovery. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site. The Executive Director shall determine whether the identified changes are de minimis in nature and scope.

E. **Recommencing Activities Following a Discovery**. A permittee seeking to recommence project activities within an exclusion zone following discovery of resources (excluding the discovery of human remains, which shall follow Section 5097.98 as noted in (D) above) shall submit a Supplementary Archaeological Plan (SAP) prepared by the project archaeologist in consultation with the Native American Tribes listed on the NAHC list. The

SAP shall be submitted for the review and written approval of the Executive Director. If the Executive Director approves the SAP and determines that the SAP's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director in writing. If the Executive Director approves the SAP but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

7. Construction Responsibilities. The permittee shall comply with the following construction-related Best Management Practices (BMPs):

A. Timing of Construction Activities

i. All construction activities authorized by this permit, including placement and removal of diversion intake infrastructure and trenching work for installation of water diversion conveyance lines, shall be limited to the dry season period of May 1 through September 30, except as further specified below.

ii. All construction activities shall occur during periods of dry weather only. No work shall occur within 72 hours of 50% or greater forecast of rain by the National Weather Service.

B. Project Site Layout and Flagging. Prior to ground disturbance, the Permittee shall clearly mark with flagging or survey marking paint sensitive areas, access routes, and any staging, storage, and stockpile areas.

C. Minimize Erosion and Sediment Discharge. During construction, the Permittee shall control erosion and the discharge of sediment off-site or to coastal waters through the use of appropriate BMPs, including:

i. Use erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, and/or temporary seeding) throughout all work phases as needed to prevent soil from being transported by water or wind.

ii. Install sediment control BMPs (such as silt fences, fiber rolls, sandbag barriers, or weed-free straw bale barriers) as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal wetlands and streams.

iii. In conformance with the requirements of Regional Water Board WDID No. 1A22047WNDN, BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other Project activities that could result in erosion or sediment discharges to surface water. BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.

iv. In conformance with the requirements of CDFW LSAA No. EPIMS-DEL-20582-R1, the Permittee shall monitor and maintain all erosion

and sediment barriers in good operating condition throughout the work period and the following rainy season of October 15 through April 30 and longer as needed depending on the onset and duration of wet weather conditions. Maintenance shall include but is not limited to, removing accumulated sediment and/or replacing damaged sediment fencing, coir logs, coir rolls, and/or straw bale barriers.

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

i. Soil compaction associated with trench work shall be minimized to retain the natural stormwater infiltration capacity of the soil.

ii. In conformance with the requirements of CDFW LSAA No. EPIMS-DEL-20582-R1, Regional Water Board certification WDID No. 1A22047WNDN, and as further specified herein, only wildlife-friendly, 100-percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) shall not incorporate synthetic netting (such as plastic, polypropylene, nylon, polyethylene, polyester, or other synthetic fibers), including photo- or biodegradable plastic netting, to prevent wildlife entanglement and plastic debris pollution. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves.

iii. No polluting materials (e.g., particle board, plastic sheeting, bentonite) shall be used to construct or screen, or cover the diversion intake structure.

E. Hazardous Materials Management

i. Fuels, lubricants, and solvents shall not be allowed to enter coastal waters.

ii. All equipment used during construction shall be free of oil and fuel leaks at all times.

iii. Staging, fueling and equipment maintenance shall occur at least 100 feet away from wetlands, streams, or waterways.

iv. Hazardous materials management equipment including absorbent pads shall be available and immediately on-hand at the project site. Any accidental spill shall be contained rapidly and cleaned up fully. In the event of a spill, the Permittee shall notify the appropriate regulatory agencies immediately.

8. **Final Revegetation Enhancement, Mitigation, and Monitoring Plan. PRIOR TO ISSUANCE OF CDP 1-22-0260**, the permittee shall submit, for the review and written approval of the Executive Director, a final revegetation and monitoring plan. The final revegetation and monitoring plan shall substantially conform with the riparian enhancement plan proposed as part of the project and with the recommendations for revegetating disturbed pasturelands included in the May 2023 Wetland Delineation prepared by Kyle Wear, Botanical Consultant.

    A. The plan shall be prepared by a qualified biologist and shall include, at a minimum, provisions for all of the following:

        i. The original topsoil excavated during trenching operations shall be reserved and replaced as the top fill material in the restored trench sections;

        ii. Disturbed soils within pasturelands shall be planted with a seed mixture composed of regional native forage seed and/or non-native seed that is known not to persist or spread (e.g., barley (*Hordeum vulgare*) or wheat (*Triticum aestivum*). No known invasive grass seed such as annual or perennial ryegrass (*Lolium multiflorum* or *L. perenne,* also referred to as *Festuca perennis*), shall be used.

        iii. All disturbed areas on the project site shall be planted and maintained for erosion control purposes within (60) days after construction is completed.

        iv. A plan showing the species, size, and location of all riparian plants to be used within the riparian enhancement area. The riparian enhancement planting area shall span a minimum area of 1,100 square feet within the riparian corridor of the Smith River adjacent to and around the water diversion site and shall include the planting of at least 25 trees.

        v. All riparian enhancement plantings shall consist of regionally appropriate native plant species. All plants utilized shall consist only of locally grown or collected native plant seeds or cuttings.

        vi. All removed invasive and noxious plant materials (including but not limited to Himalayan berry and reed canary grass) shall be disposed of at an authorized waste facility.

        vii. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government shall be used or maintained within the property.

        viii. Provisions for monitoring and maintenance of the riparian enhancement area for at least five years that include, at a minimum: (1) plans to remove all invasive species rated “High” by Cal-IPC over the entire riparian enhancement area, and (2) specification of

maintenance and monitoring procedures and success criteria, including performance standards that include a minimum of 60% percent cover of native riparian overstory plants by year 5.

ix. Provisions for submitting reports to the Executive Director that include both of the following:

1. For areas where trenching occurs: The plan shall include provisions for submitting a trench area revegetation monitoring report within 12 months of completion of trench work. The monitoring report shall be prepared by a qualified biologist or botanist and shall evaluate whether the objective of reestablishing vegetation in the agricultural wetland areas impacted by project construction to a level of coverage and density equivalent to vegetation coverage and density of the surrounding undisturbed areas has been achieved.

2. For riparian enhancement areas: The plan shall include provisions for submitting annual reports by January 31 of each year of monitoring for the duration of the required five-year monitoring period, beginning the first year after planting of riparian enhancement vegetation. Each report shall document the condition of the revegetation with photographs taken from the same fixed points in the same directions. Each report shall also include a "performance evaluation" section where information and results from the monitoring plan are used to evaluate the status of the revegetation efforts in relation to the performance standards and final success criteria specified above. The final monitoring report must evaluate whether the revegetated areas conform to the goals, objectives, and performance standards set forth in the approved final plan. The final report must address all of the monitoring data collected over the five-year period;

B. If the final monitoring reports for trenching areas and/or the riparian enhancement area indicate that the revegetation has been unsuccessful, in part, or in whole, based on the approved performance standards, the permittee shall submit a revised or supplemental revegetation plan to compensate for those portions of the original plan that did not meet the approved performance standards. The revised revegetation plan shall be processed as an amendment to CDP No. 1-22-0260, unless the Executive Director determines that no amendment is legally required.

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

9. **Protection of Amphibians and Other Aquatic Wildlife.** The Permittee shall undertake development in compliance with the following avoidance and minimization measures in conformance with the requirements of CDFW LSAA No. EPIMS-DEL-20582-R1 and Regional Water Board certification WDID No. 1A22047WNDN, and as further specified herein to ensure protection of amphibians and other aquatic wildlife:

   A. To avoid potential injury or mortality to northern red-legged frogs and other sensitive species using vegetated areas for cover along dairy pastures, trenching will only occur during the spring and summer months consistent with Special Condition 7A when vegetation is dry, and during daylight hours when frogs are significantly less active.

   B. Prior to onset of any work within the project area, a qualified biologist shall train project personnel on how to recognize northern red-legged frogs and any other special-status animals that may occur in the project area.

   C. If northern red-legged frogs or other sensitive species are encountered in the project area during construction and will be harmed by construction activities, work will stop in the area and the dairy's biologist will relocate the species to an adjacent riparian area.

10. **Protection of Sensitive Bird Nesting Habitat**

   A. NOT MORE THAN 72 HOURS PRIOR TO COMMENCEMENT OF DEVELOPMENT that involves vegetation removal activities, including ground disturbance for trenching work, during the bird nesting season (March 1 to August 15), a qualified biologist shall survey for active bird nests in and adjacent to the construction area according to current CDFW recommended survey protocol(s). The minimum survey area shall include the trees and other vegetation within the development footprint and a minimum 500-foot buffer area around the development footprint. Surveys shall be repeated any time development activities have ceased for more than 72 hours unless the work is occurring outside of the nesting season.

   B. If any active bird nests for raptors or special status bird species are detected, development (including major vegetation removal) in the buffer zone shall be delayed until after the young have fledged, as determined by additional surveys conducted by a qualified biologist. Buffers shall be 500 feet for nesting raptors and 300 feet for other nesting bird species.

   C. The Permittee shall submit to the Executive Director the results of the surveys required in subpart A above prior to commencement of development, including a narrative that describes the survey details (e.g., dates, methods, personnel and their qualifications), results, measures proposed to avoid disturbance of nesting birds, and a map that depicts the location(s) of any active nests identified and the associated buffer zones.

11. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the Permittee acknowledges and agrees (A) that the site may be subject to

hazards, including but not limited to ground shaking, liquefaction, storm surges, flooding, inundation, and erosion, many of which will worsen with future sea level rise; (B) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (C) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (D) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

12. **Liability for Costs and Attorney's Fees.** By acceptance of CDP 1-22-0260, the Permittee agrees to reimburse the California Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including (A) those charged by the Office of the Attorney General, and (B) any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description

The project site is located in Del Norte County, just west of the town of Smith River, four miles south of the Oregon border and approximately 13 miles north of Crescent City. The project site is situated approximately 1.5 miles south of Highway 101, off Sarina Road. The water intake for the project is positioned on the north bank of the Smith River, near river mile 3.8, at latitude 41.913856°N, longitude 124.171403°W. The site is accessed from an unimproved access route that extends from the end of Sarina Road.

The subject property is part of a larger, 1,600-acre ranch formerly referred to as Reservation Ranch and now referred to as Smith River Ranch under the new management of Applicant Alexandre Dairy, an organic, Regeneratively Certified pasture based dairy producer. The proposed project aims to rely on a riparian water right to irrigate approximately 355 acres of predominantly prime agricultural land on Assessor's Parcel Number (APN) 103-020-074 ("subject property") during traditionally dry times of the year. The project will limit the use of diverted water to the 355 acres recognized as APN 103-020-074, which was purchased in September 2024 by Alexandre Fernbridge LLC. The primary purpose of the project is to provide a necessary water supply to support ongoing agricultural operations on the site that involve seasonally irrigating

prime agricultural lands during the late spring and summer. This will facilitate the growth and subsequent harvest of winter feeds such as silage and grass hay, as well as grazing pastures.

The project has two main components: (1) installing new fish-friendly water diversion infrastructure to replace prior unpermitted infrastructure removed in 2021 (discussed below); and (2) installing underground conveyance piping that will connect to an existing water irrigation system landward of levees. Specifically:

- The proposed intake (water diversion) system includes a Hendricks stainless steel intake screen, a 16 - to 18 - inch-diameter metal conveyance pipe, up to two centrifugal pumps (rated at 3,000 gallons per minute), an airburst screen cleaning system with a compressor and an eighty-gallon air tank, a three-phase electrical panel, a control panel, a salinity meter (utilizing electrical conductivity), a diversion flow meter, a 1.5-inch-diameter air burst pipe, and an estimated 4,500 feet of 18-inch-diameter PVC discharge pipe for conveyance to the existing underground irrigation line (described below). Mechanical systems, including the pump, motor, controls, and airburst system, along with the electrical panel, will be located on an existing wooden platform at the diversion site. To support the installation of mechanical and electrical equipment, the existing wooden platform adjacent to the diversion site will be reinforced with 1/4-inch-thick steel plate. There will be no year-round permanent structures placed in the Smith River, as the screens and intake pipes will be removed annually along with the pumps and air compressor after completion of the irrigation season. Setting the intake pipe and diversion screen will require the use of a small boom truck. The site is accessible via access at the end of Sarina Road.

- The conveyance piping extending from the diversion site to the larger existing underground irrigation system will be installed using a backhoe to temporarily excavate a trench approximately 24 inches wide, 48 inches deep, and 4,500 feet long, connecting with two of the farm's existing irrigation water mainlines that supply water to the subject property. The pipeline will be trenched from the pumping infrastructure over an existing levee and across the farmed pastures and the trench will be backfilled. Installing the pipeline to the irrigation system will result in temporary disturbance to pasture grasses and invasive blackberry currently occupying the proposed ditch alignment. The disturbed areas within pastures will be recolonized by pasture grass. The ongoing irrigation operations will rely on using a combination of “K-Line Pods” (anticipated 25 K-Line Pod system with 12 pods per line), wheel lines, and hand-lines that connect between the underground mainline and water distribution valves above ground.

Extraction of water from this location began in 1969 when the prior property owner established its riparian water right on the main stem of the Smith River (Riparian Right S019263) by installing a pump on the Smith River from its frontage adjacent to the subject property and commencing water pumping. However, in 1973, the prior landowner replaced portions of the water diversion system without the requisite CDP authorization. These violations were addressed and resolved by the Commission in an

action taken in July 2022, as discussed further in Finding IV-N ("Prior Enforcement Actions and Alleged Violations").[1]

Under the previous water diversion system, water diverted from the Smith River was pumped through a centrifugal pump into an agricultural ditch on an adjacent parcel that conveyed water to Tillas Slough, where three (3) pumping stations transferred diverted flows to multiple locations and APNs on the 1,600-acre Ranch. This previous diversion system was removed in 2021, and the subject CDP application to install a new fish-friendly diversion was submitted in 2022 prior to finalization of the Consent Agreement. The proposed fish-friendly design allows compressed air to clean the screen, thereby preventing restricted flow that could cause fish impingement. The design also replaces the agriculture water conveyance ditch by connecting approximately 4,500 feet of underground mainline to convey water into an existing irrigation system that irrigates the subject property, as described above.

Riparian vegetation will not be impacted at the intake location or at the existing wooden platform where the pumping system will be situated when installing or removing the seasonal infrastructure. Additionally, the applicant is also proposing to enhance the riparian area by planting an approximately 1,100-square-foot area of the levee with native riparian overstory trees, including Sitka spruce (*Picea sitchensis*) and Bigleaf maple (*Acer macrophyllum*) trees to enhance riparian habitat in the area.

B. Environmental Setting

The project site is located on low-lying agricultural lands approximately 1.5 miles south of Highway 101, off Sarina Road, and 3.8 river miles upstream from the Pacific Ocean. The project site is situated within the Smith River Valley, a rural area within the floodplain with a long history of agricultural land uses that include grazing, flower bulb production, and hay production. North of Highway 101, low lying agricultural lands within the floodplain of the Smith River ("Smith River Plain") are surrounded by a backdrop of forested hills dominated by coast Redwood and Sitka Spruce. The Smith River flows from east to west south of the project area and Rowdy Creek enters the Smith River approximately ¼ mile east and upriver of the project site. The riverbanks along the project area are bounded by levees that predate the Coastal Initiative and were constructed along the banks at the project site in the mid-1960's.

Tillas Slough is located approximately 3,000 feet to the northwest and is part of a network of tidal sloughs throughout the Smith River Plain. The Smith River system is undammed for its entire length, making it the only major river system in California without dams. The dominant land uses in the vicinity are agriculture and recreation.

[1] Consent Cease and Desist Order CCC-22-CD-02, Consent Restoration Order CCC-22-RO-01, and Consent Administrative Penalty CCC-22-AP3-01 approved July 14, 2022. Reports are available from the Commission's website: https://www.coastal.ca.gov/meetings/agenda/#/2022/7.

C. Site History and Prior Commission Actions

Although agricultural uses in the Smith River Basin are documented as dating back to 1857 (gold miners arrived in the area around 1853),[2] the area has been a significant ancestral homeland for Native American people since time immemorial. As discussed further in Finding IV-G ("Archaeological and Cultural Resources"), the genocide of California's Native Americans reached this area as well and in 1862, the Secretary of the Interior reserved much of the Smith River Plain, including the subject property, for the Smith River Indian Reservation, where many Tolowa Dee-ni' Nation members settled. However, in 1868, Congress discontinued the reservation.

Over the past century, the subject property has been used for grazing and farming activities, as part of 1,600 acres of lands that were collectively acquired by the Westbrook Family in 1908 as "the dairy farm known as Reservation Ranch." As mentioned, the subject 355-acre property is one of the parcels that makes up the former Reservation Ranch, which encompassed over 1,600 acres and 3.5 miles of riverfront on the Smith River and was the subject of a Commission Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Penalty ("the Consent Agreement") that was approved on July 14, 2022. The only violation that was addressed by the Consent Agreement on the parcel at issue in this proposed CDP application was an unpermitted pump installed on the Smith River, in the same location as the new pump proposed in this application. Following Reservation Ranch's ceasing of unpermitted pumping in 2021 and removal of the unpermitted pump from the location at issue on the river, Reservation Ranch submitted this CDP application for a new pump in early 2022. The Commission subsequently approved the Consent Agreement on July 14, 2022, and since then, Reservation Ranch and the subsequent owners of the ranch have continued to not use any unpermitted pumps on the Smith River or on Tillas Slough. After the Consent Agreement was approved, Reservation Ranch sold the entire property, most of which is not at issue in this CDP application, to Smith River Ranch, LLC, which subsequently sold the 355-acre parcel at issue in this CDP application to Alexandre Fernbridge, LLC (Alexandre Dairy).

For additional background on the Commission's past action related to the Consent Agreement, and the relationship of that action to this permit, see Finding IV-N.

D. Jurisdiction and Standard of Review

The proposed project area is located within both Del Norte County's coastal permit jurisdiction and the Coastal Commission's retained CDP jurisdiction area. Pursuant to Coastal Act Section 30601.3, the applicant, the County, and the Commission (through its Executive Director) have all agreed to process the required CDP as a consolidated CDP application before the Commission. Thus, the policies of Chapter 3 of the Coastal

[2] CA Department of Water Resources. 1962. Bulletin No. 94-4 (Appendix A).

Act provide standard of review for this proposed project. Del Norte County's LCP may be used as non-binding guidance.

E. Other Agency Approvals

The proposed project requires review by a number of other agencies. The applicant has obtained approvals from several state and federal agencies as follows below:

U.S. Army Corps of Engineers (USACE)
The USACE has regulatory jurisdiction over the project pursuant to section 404 of the Clean Water Act. The applicant has applied to the USACE for a section 404 certification to authorize its proposed water diversion and trenching to connect diversion infrastructure to the existing underground water pipeline system that provides irrigation to a section of the ranch. On October 23, 2024, USACE issued its verification that the project complies with the requirements of Nationwide Permit (NWP) 40 for Agricultural Activities and NWP 58 for Utility Line Activities for Water and Other Substances.[3]

National Marine Fisheries Service (NMFS).
NMFS has been working with the Alexandre Dairy for a number of years, including numerous site visits and meetings, review of draft screen designs and the biological assessment, and other pre-consultation technical and policy review. The project required informal consultation from NMFS. On July 20, 2022, USACE submitted a request to NMFS for informal consultation and a written concurrence that USACE's proposed issuance of a section 404 permit was not likely to adversely affect species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). Additionally, NMFS coordinated with the Tolowa Dee-ni' Nation at the same time pre-consultation technical assistance was occurring between USACE, the applicant, and NMFS. In a letter dated September 29, 2022, NMFS concurred with USACE, based on NMFS' analysis, that the proposed action is not likely to adversely affect coho salmon or their designated critical habitat (NMFS No. WCRO-2022-0182).

North Coast Regional Water Quality Control Board (Regional Water Board)
The Regional Board has regulatory jurisdiction over the project pursuant to section 401 of the Clean Water Act. The applicant applied to the Regional Water Board for a section 401 certification to authorize its proposed water diversion. The Regional Water Board staff consulted with representatives of Tolowa Dee-ni' Nation at their request following initial outreach in September 2023 and, acting as Lead Agency for CEQA purposes, determined following public comment that the project did not qualify for a CEQA exemption determination, as discussed further in Finding IV-N ("CEQA"). On September 6, 2024, the Regional Water Board issued its 401 certification (WDID No.

[3] Refer to USACE File Number SPN-2022-00155; NWP 40 & 58 (86 Fed. Reg. 73522, December 11, 2021), pursuant to Section 404 of the CWA of 1972, as amended (33 U.S.C. § 1344 et seq.) and Section 10 of the Rivers and Harbors Act (RHA) of 1899, as amended (33 U.S.C. § 403 et seq.).

1A22047WNDN) and approved and adopted a Mitigated Negative Declaration determination pursuant to CEQA (SCH No. 2024060672).

California Department of Fish and Wildlife (CDFW)

The applicant entered a Lake and Streambed Alteration Agreement with CDFW pursuant to section 1602 of the Fish and Game Code on April 7, 2022. The agreement authorizes an encroachment for water diversion from the Smith River. The Streambed Alteration Agreement Number is No. EPIMS-DEL-20582-R1 (Exhibit 7).

California State Lands Commission (CSLC)

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways, and lands waterward of the Ordinary High Water Mark. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. In a letter dated September 25, 2024, CSLC determined that although approximately 145 square feet of the project falls on state sovereign land in the Smith River and therefore under the jurisdiction of CSLC, the project falls within the provisions of PRC section 6327 and thus no lease from CSLC would be required.[4]

F. Permit Authority for Repair and Maintenance

Section 30610 of the Coastal Act provides, in relevant part (emphasis added):

> Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: …
>
> (d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Section 13252 of the Commission administrative regulations (14 CCR 13000 *et seq*.) provides, in relevant part (emphasis added):

> (a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal

[4] Section 6327 of the Public Resources Code provides that the "Commission may, upon written application, grant a permit for the use and occupancy of state lands under the jurisdiction of the Commission for the installation of facilities for procurement of fresh-water from and construction of drainage facilities into navigable rivers, streams, lakes and bays, except that if such applicant obtain the required permit for such use from the local reclamation district, the Reclamation Board, the Department of Water Resources, the California Debris Commission or USACE, then such application shall not be required by the State Lands Commission."

development permit because they involve a risk of substantial adverse environmental impact:

(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

…

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams…

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

The proposed project qualifies in part as repair and maintenance activities under Section 30610, because the project (a) does not involve an addition to or enlargement or expansion of the existing irrigation system, and (b) the new irrigation lines to be installed (~4,500 feet), which are one component of a larger existing irrigation system on the property, represent less than 50% of the irrigation system (estimated at ~11,250 feet; see Exhibit 4).

Although certain types of repair or maintenance projects are exempt from coastal development permit (CDP) requirements, section 13252 of the Commission's regulations requires a CDP for extraordinary methods of repair and maintenance enumerated in the regulation. In this case, the proposed water diversion and conveyance work involves work in or adjacent to wetlands and coastal waters. Therefore, the proposed work requires a CDP under section 30610 of the Coastal Act and section 13252 of the Commission regulations.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed method of repair

or maintenance is consistent with the Chapter 3 policies of the Coastal Act. In other words, the Coastal Commission's authority over repair and maintenance activities applies only to the methods by which a repair and maintenance activity is carried out, not the repair and maintenance activity itself. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the existing development.

If not properly undertaken with appropriate mitigation, the necessary water diversion retrofits could have adverse impacts on coastal resources, including impacts on archaeological resources and the biological productivity and quality of surrounding wetlands. The findings in this report relating to the repair and maintenance of a structure within 20 feet of coastal waters and wetlands discuss mitigation measures required as conditions of this CDP to ensure protection of coastal resources. Therefore, as conditioned in these findings, the Commission finds that the proposed method of repair and maintenance is consistent with all applicable Chapter 3 policies of the Coastal Act.

G. 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.

Cultural Setting and Euro-American Settlement of Del Norte County

The Smith River Basin has been a significant ancestral homeland for Native American people. Native American groups identified as the Tolowa, Yurok and Karuk inhabited the Smith River Basin and regions to the east and north. California Native American tribes, including the Tolowa Dee-ni' Nation and Elk Valley Rancheria, have long relied on the area's abundant natural resources.

The project is situated within the aboriginal territory of the Tolowa people. These Tolowa ancestral lands (known as "Taa-laa-waa-dvn") remain inhabited by citizens of the polity (known as "Dee-ni") that is the federally recognized Tolowa Dee-ni' Nation (formerly referred to as the Smith River Rancheria). The Taa-laa-waa-dvn extend along the Pacific Coast in California between the watersheds of Wilson Creek to the southwest and Smith River to the southeast, and continuing into Oregon along the Winchuck, Chetco, Pistol, Rogue, Elk and Sixes Rivers, and inland up the Rogue River throughout the Applegate Valley in Oregon.[5] According to the Tolowa Dee-ni' Nation website, their Taa-laa-waa-dvn roughly covers what are today Curry, Josephine, and Del Norte Counties. Their website additionally describes in part: "The name Taa-laa-welh (Taa-laa-wa) was applied to the Tolowa Dee-ni' from the Yurok (Klamath-River-People). Taa-laa-welh is the Yurok name for, the most important village, Yan'-daa-k'vt." Yan'-daa-k'vt

[5] Accessed January 15, 2025 from Tolowa Dee-Ni Nation website at: https://www.tolowa-nsn.gov/35/About-Us

(Yontocket) is located at the mouth of the Smith River and is the Dee-ni' place of Genesis. The nearby federally recognized Elk Valley Rancheria is also situated on Tolowa ancestral territory and includes Tolowa citizens among its membership.

During the period 1850-1864, European-American settlers started occupying the area now referred to as Crescent City and further extended into the area of Smith River for prospects of mining, timber, agriculture, fishing, and shipping. Early networks of trails for commerce and travel included a wagon road with a portion of its alignment roughly following modern day Sarina Road North within a portion of the project area.[6] It was during this same period that genocide of California's Native Americans reached the area. As described in the May 2023 Cultural Resources report prepared by DZC Archaeology (Appendix A) for the subject project, documents housed in the California State Library,[7] American Civil Liberties Union (ACLU),[8] and others include accounts of organized militias and murders of indigenous people reaching the Smith River area specifically. A more detailed accounting of the life and experiences endured during this time by the Tolowa people can be found on their website at https://www.tolowa-nsn.gov/35/About-Us.

In 1862, the Secretary of the Interior reserved much of the Smith River Plain, including the subject property, for the Smith River Indian Reservation, where many Tolowa Dee-Ni' Nation members settled. However, in 1868, Congress discontinued the reservation. The Smith River Plain includes a network of approximately 3 miles of tidal sloughs, known as Tillas Slough, named after one of the Tolowa leaders from that era. It holds immense cultural importance for several tribes, especially the Tolowa Dee-ni' Nation and Elk Valley Rancheria and continues to house valuable cultural resources.

Today, the Tolowa people are represented by various tribal entities, including the federally recognized Tolowa Dee-ni' Nation, Elk Valley Rancheria, Blue Lake Rancheria, and Big Lagoon Rancheria in California, as well as the Confederated Tribes of Siletz in Oregon. Additionally, they are members of the non-federally recognized Tolowa Nation, located in California. The enrolled membership of these tribal entities is approximately 1,900 individuals. The Tolowa community continues to engage in traditional gathering practices, with activities like smelt fishing camps gaining legal recognition due to their ongoing significance in contemporary Tolowa identity and resource access.

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[6] 1855 General Land Office (GLO 1855) original survey plat dated 11/6/1855 for Township 18 North, Range 1 West, T17N, R1W and T16N, R1W CA-Humboldt Meridian as cited in D. Zalarvis-Chase 2023 (Appendix A) and accessible online at: Bureau of Land Management General Land Office Records. https://glorecords.blm.gov/details/survey/default.aspx?dm_id=279895&sid=jizcoohf.vts

[7] WPA (Works Progress Administration) 1940 California and the Indian Wars: The California Militia and "Expeditions Against the Indians", 1850 - 1859. California Military Department, California State Military History and Museums Program. as cited in D. Zalarvis-Chase 2023 (Appendix A) and accessible online at: https://www.militarymuseum.org/MilitiaandIndians.html.

[8] 2019 White Supremacist in Chief. Gold Chains: the Hidden History of California. as cited in D. Zalarvis-Chase 2023 (Appendix A) and accessible online at: https://www.aclunc.org/sites/goldchains/explore/peter-burnett.html

Outreach and Correspondence Between CA Native American Representatives

Consistent with the Commission's Tribal Consultation Policy, on July 8, 2022, Commission staff outreached to cultural and environmental representatives from Tolowa Dee-ni' Nation, Elk Valley Rancheria, Trinidad Rancheria, Blue Lake Rancheria, and Big Lagoon Rancheria to inform them of the proposed project and solicit input. On August 5, 2022, Commission staff received via electronic mail ("email") a letter dated August 4, 2022 from the Tribal Council of the Tolowa Dee-ni' Nation ("the Nation") responding and expressing concerns relating to the subject proposed project (Exhibit 10). The letter included, among other things, comments requesting clarification on: (a) discrepancies in the application relating to inconsistent references to the APN, acreage, and location (latitude/longitude), (b) total diversion volume and pumping protocols, (c) measures to limit the use of the water diversion to the subject property, rather than the 1,600-acre Reservation Ranch; and (d) determination of established riparian water rights.

On February 6, 2023, the Nation's Tribal Heritage Preservation Officer (THPO) transmitted a copy of a February 3, 2023 letter addressed to the Regional Water Board restating and expanding on comments previously raised in the August 4, 2022 letter (Exhibit 10). Comments specific to the Commission's review of the subject CDP include concerns against approving the proposed water diversion prior to review and approval of restoration plans related to the Commission's Consent Agreement and similar enforcement actions brought about by the Regional Water Board.[9] Additionally, the February 2023 letter includes a recommendation that cultural monitors and all associated costs should be included as part of the project design. Over the course of the past two years, the applicant has been coordinating with staff of the Regional Water Board and Commission to address the various issues raised in correspondence from Tolowa Dee-ni' Nation. Discrepancies in the project location have been clarified through the most recent application transmittal (Exhibit 5). The limitations on water use authorized by the subject project and the associated riparian water right are addressed in Finding IV-H ("Coastal Act Review of Water Supply Projects") below.

Commission staff have continued coordination efforts with representatives of Tolowa Dee-ni' Nation, including among others, meeting virtually with the Nation representatives on March 17, 2023 via Zoom; meeting on site on March 29, 2023 with the Nation THPO, the applicant's agent, and CDFW and ACOE representatives; and transmitting via email periodic updates to Nation representatives on the status of the proposed project.

Measures to Ensure Protection of Archaeological Resources

Coastal Act section 30244 requires that reasonable mitigation measures be employed where development could adversely impact archaeological or paleontological resources.

[9] North Coast Regional Water Quality Control Board Final Cleanup and Abatement Order for Reservation Ranch (r1-2021-0023).

The applicant's consulting archaeologist, DZC Archaeology & Cultural Resource Consulting, LLC ("DZC Archaeology"), conducted archaeological surveys of the project's Area of Potential Effect on July 23, 2020 and November 7, 2022, and including a supplemental survey on May 3, 2023 to survey alternative trenchline areas. The surveys consisted of transect surveys of areas 20 meters or less and often 5 to 10 meters or less. However, visibility was poor due to the presence of lush vegetation and briars. As part of their cultural resources investigation, DZC Archaeology outreached to THPOs of Tolowa Dee-ni' Nation and Elk Valley Rancheria, who both requested a tribal monitor be present during any ground disturbing activity, due in part to their traditional fishing practices along the immediate shoreline and presence of significant settlements nearby.

The Regional Water Board as the lead agency for CEQA review determined that, "based on the historic use of this area by the Tolowa Dee-ni' Tribe, as well as the challenges to accurately determine whether tribal cultural resources or human remains may be encountered during subsurface exploration or trenching activities, the project impacts to tribal cultural resources has been designated as "potentially significant impact unless mitigation incorporated." In its approval of the MND and section 401 Water Quality certification ("401 permit") for the project, the Regional Water Board stipulated several mitigation measures as part of "Mitigation Measure 4" of its Mitigation Monitoring and Reporting Plan (MMRP) to reduce the project's impacts to a less than significant level. These include (see Exhibit 8), among others:

> (1) Developing a Tribal and Cultural Resource Monitoring Plan, to be prepared by the applicant's archaeologist in consultation with the tribes, for protection and preservation of cultural resources as outlined in Attachment E of the "General Waste Discharge Requirements for Dairies Within the North Coast Region", Order No. R1-2019-0001, "Tribal Cultural Resources Mitigation Program;"
>
> (2) Conducting a historical human remains detection canine (HHRDC, aka cadaver dog) survey along the proposed trenching and excavation areas to identify and avoid potential impacts human remains in advance of trenching activities;
>
> (3) Preparing an unclassified HHRDC survey report, to be provided to TDN and the Regional Water Board at least 30 days prior to commencing trenching activities;
>
> (4) Notifying interested Tribes of planned excavation work at least 30 days prior to commencing trenching activities, and arranging for Tribal Monitors to be on site during ground disturbing work; and
>
> (5) Implementing inadvertent discovery protocols.

To ensure that reasonable mitigation measures have been provided to minimize impacts to archaeological resources consistent with Coastal Act Section 30244, the Commission attaches Special Condition No. 6. This condition requires that the permittee

undertake development in accordance with the protocols and measures of the MMRP (Exhibit No. 8), as summarized above.

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.

H. Coastal Act Review of Water Supply Projects

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

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

Section 30231 of the Coastal Act states the following:

> 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.

Section 30412 of the Coastal Act states in part the following:

> …
>
> (b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate this section. The commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.
>
> Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out this division.

…

The proposed diversion of water from the Smith River, placement of associated intake facility infrastructure in the area adjacent to the river, and connection of the diversion facility to the larger irrigation system on the property constitutes “substantial alteration” of the river and must be found consistent with the provisions of section 30236. Section 30236 sets forth limitations on the types of projects that may be allowed to cause substantial alteration of rivers and streams, and those projects that do qualify as allowed shall incorporate the best mitigation measures feasible. Section 30231 of the Coastal Act additionally requires in part the protection of the biological productivity and quality of coastal waters and streams through measures such as controlling runoff, preventing depletion of groundwater supplies, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing the alteration of natural streams.

The Smith River is the largest undammed river and northernmost river in California. Its watershed covers an area of 719 square miles, extending north into Oregon and passing through federally and state-protected lands, such as the Smith River National Recreation Area, Six Rivers National Forest, and the Redwood National and State Parks. These safeguards have preserved the river's clarity and cool water. The lower 7 miles of the Smith River form the Smith River coastal plain. Unlike the upper reaches of the river, this area is predominantly in private ownership, with agricultural activities being the dominant land use. The coastal plain includes around 5,000 acres dedicated to agricultural production and features approximately 40 miles of streams that serve as vital habitats for anadromous populations of Pacific Salmon and steelhead including Chinook salmon (*Oncorhynchus tshawytscha*), Coho Salmon (*Oncorhynchus kisutch*), steelhead trout (*Oncorhynchus mykiss irideus*), Coastal Cutthroat Trout (*Oncorhynchus clarkii clarkii*) and critical rearing and staging habitat for non-natal salmonids migrating through the estuary (Walkley and Garwood 2017).[10] The Smith River Coho Salmon population is identified as a core, independent population of the Southern Oregon Northern California Coast (SONCC) Ecologically Significant Unit (ESU). The SONCC Coho Salmon ESU is federally and state listed as threatened and its habitat within the Smith River is federally designated as critical habitat. Additionally, steelhead, coastal cutthroat trout, and the northern Distinct Population Segment (DPS) of Green Sturgeon (*Acipenser medirostris*) are state listed as Species of Special Concern (SSC). Pacific Lamprey (*Entosphenus tridentatus*) is also a federally listed Species of Concern and state listed SSC. Tidal slough channels within the coastal plain also support habitat for federally listed Tidewater goby.

The Regional Water Board’s adopted MND identifies beneficial uses as including all of the following: Existing Beneficial Uses of the Smith River include Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Freshwater Replenishment (FRSH); Navigation (NAV); Water Contact Recreation (REC

[10] Parish Hanson, M. 2018. Smith River Plain Stream Restoration Plan, Del Norte County, California. Final Report to the California Coastal Conservancy, Contract: No. 16-027. Smith River Alliance, Crescent City, CA. 70 p.

1); Non-Contact Water Recreation (REC 2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Marine Habitat (MAR); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Estuarine Habitat (EST); and Native American Culture (CUL). Potential Beneficial Uses include Industrial Process Supply (PRO) and Aquaculture (AQUA). The Smith River is not listed as an impaired water body under Section 303(d) of the Clean Water Act (North Coast Regional Water Quality Control Board)

The project site is located approximately 3.8 river-miles upstream from the mouth of the Smith River where it discharges to the Pacific Ocean. Within the project area, towards the end of summer when there are lower water flows in the watershed, the lower Smith River may have warmer water temperatures and higher salinity. However, conditions in the spring and early summer do support coho salmon juvenile rearing, and smolts are expected to be in the area in May and June.[11] As discussed further below, Although the project proposes to divert water at a maximum rate of 3,000 gallons per minute, which equates to 4,320,000 gallons per day, it is unlikely that the maximum gallons per day will be reached due to tidal salinity constraints.

The project will provide a necessary water supply to support ongoing agricultural operations on the site with irrigation from the landowner's riparian water right by replacing the old water diversion infrastructure with a new diversion facility with a fish-friendly design.

During the period from May to September, the project proposes withdrawing water at rates ranging from a minimum of 1,950 gallons per minute to a maximum of 3,000 gallons per minute. If the pumps were operated continuously at these proposed rates, it would result in a daily diversion ranging from a minimum of 2,500,000 gallons to a maximum of 4,320,000 gallons (Table 1).[12] The lowest monthly flows in the Smith River occur in August and September, as per data from the USGS[13] Jed Smith stream gauge located approximately 26 km upstream from the river mouth near Hiouchi. Historical records from 1931 to 2023 indicate mean monthly flows of 333 cubic feet per second for August and 329 cubic feet per second for September. The applicant's maximum pumping rate of 3,000 gallons per minute translates to approximately 6.68 cubic feet per second, representing approximately 2 percent (2%) of the lowest average monthly flow.

[11] NMFS. September 29, 2022. Letter of Concurrence on Smith River Diversion section 404 approval. File reference NMFS No. WCRO-2022-0182

[12] If the maximum monthly withdrawal were to occur every month during the seasonal diversion period of May through September, the total annual water withdrawal would amount to 21,600,000 gpd which equates to 24,195 afy.

[13] https://waterdata.usgs.gov/nwis/inventory/?site_no=11532500&agency_cd=USGS

Table 1. Proposed Minimum & Maximum Water Withdrawals from Smith River by Month

	Raw Water Withdrawal			
	Gallons per Day		Gallons per Minute	
Month	Minimum	Maximum	Minimum	Maximum
Jan	0	0	0	0
Feb	0	0	0	0
Mar	0	0	0	0
Apr	0	0	0	0
May	2,500,000	4,320,000	1,950	3,000
Jun	2,500,000	4,320,000	1,950	3,000
Jul	2,500,000	4,320,000	1,950	3,000
Aug	2,500,000	4,320,000	1,950	3,000
Sep	2,500,000	4,320,000	1,950	3,000
Oct	0	0	0	0
Nov	0	0	0	0
Dec	0	0	0	0

Seasonal pumping infrastructure will be placed along the riverbanks and within the river's waters. Additionally, a permanent buried pipeline will convey water to the farm's fields on the subject property referred to as APN 103-020-74. This trenched pipeline will traverse over an existing levee along the riverbank for approximately 132 feet and continue across 4,500 feet of actively farmed pasture on the leveed floodplain.

Necessary Water Supply Project

As cited above, section 30236 sets forth limitations on the types of projects that may be allowed to cause substantial alteration of rivers and streams, and those projects that do qualify as allowed shall incorporate the best mitigation measures feasible. For analysis purposes, proposed development involving substantial alteration of a river or stream (diversion of water and placement of associated intake facility infrastructure in the riparian area adjacent to the river) must demonstrate that the development: (1) is for one of the three uses specified in Section 30236; and (2) incorporates “the best mitigation measures feasible.”

The primary purpose of the project is to obtain necessary water supply pursuant to an affirmed riparian water right to support existing agricultural operations involving irrigation of prime agricultural lands during the dry season (late spring and summer months). The proposed project will seasonally irrigate approximately 355 acres of prime agricultural land on the property, including lands with soil types classified by Natural Resources Conservation Service (NRCS) as “Prime Farmland if Irrigated.” The prior landowner established its riparian water right on the main stem of the Smith River in 1969 (Riparian

Right S019263) by installing a pump on the Smith River from its frontage adjacent to the subject property and commencing water pumping. The State Water Resources Control Board Division of Water Rights ("State Board") prepared a memo dated January 20, 2023 (Appendix A) that documents preliminary research on the status of various diversions under both appropriative and riparian water rights associated with the larger "Reservation Ranch" (aka Smith River Ranch) and including the subject property. The Water Board's memo describes in part:

> "Riparian water rights were adopted in the California State Constitution under the adoption of English Common Law. Property owners are entitled to beneficially use water that naturally flows on or through their property. Key factors in demonstrating a riparian right include a water course that must be contiguous to the property, property/place of use is in the same watershed, the flow is natural, and the riparian right extends to the original property at the time of patent."

According to the State Board's website,[14] a riparian right entitles the landowner to use a correlative share of the water flowing past their property. The State Board does not require permits or licenses to grant the use of the riparian water right, but the riparian right applies only to the water which would naturally flow in the stream: "Riparian rights do not entitle a water use to divert water to storage in a reservoir for use in the dry season or to use water on land outside of the watershed. Riparian rights remain with the property when it changes hands, although parcels severed from the adjacent water source generally lose their right to the water." Although the State Board does not require permits for riparian water rights, diverters are required to annually file a Statement of Water Diversions and Use and install and maintain a measuring device for diversions greater than 10 acre-feet of water per year (afy). The applicant states a need to irrigate at a rate of seven gallons per minute per acre. This rate equates to 2,576 gallons per minute (on average) for irrigation of the 355-acre parcel. The estimated irrigation amount is based on demand for pasture grasses, and the need for 0.15 inches of irrigation water per day at peak use (factoring in a moderate to high evapotranspiration rate during the irrigation season). As mentioned above, withdrawal of water from the Smith River had been occurring under the landowner's riparian water right for APN 103-020-74 since 1969.[15] The previous unpermitted diversion system used a large, 8,000 gal/min. centrifugal pump to move water from the Smith River over the top of the levee (constructed in the mid-1960's) through plumbing which transferred the volume of water into an agricultural ditch. The antiquated system fed a series of pumps which functioned from the water conveyed through the agricultural ditch. These series of pumps were in three locations along Tillas Slough on the property west of the subject property until removed in 2021 prior to finalization of the Consent Agreement (see Finding IV-N). The

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[14] https://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.html

[15] As mentioned in Finding IV-A, extraction of water from this location began in 1969 when the prior property owner exercised their riparian water right to extract water. However, in 1973, the prior landowner replaced portions of the water diversion system without the requisite CDP authorization. These violations were addressed in 2022 as discussed further in Finding IV-N.

volume of water to be diverted represents less than 2% of the Smith River flow during the lowest flows of the year, as concluded by NMFS in its 2022 Letter of Concurrence for the project (discussed below).

As cited above, Coastal Act section 30412(b) identifies the State Board as having primary responsibility for the administration of water rights pursuant to applicable law, and the Commission may "not frustrate" the State Board's determination with respect to water rights. Specifically, "the commission shall not … modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights." Given the State Board's determination of riparian water right at this location and the applicant's assertion that the proposed project will provide a necessary water supply to support ongoing agricultural operations on the site, the project thus qualifies as a necessary water supply project and will maintain the maximum amount of prime agricultural lands in production on the subject property to support the area's agricultural economy, as discussed further in Finding IV-K below.

Maintaining Biological Productivity

In addition to the allowable use provisions of section 30236, development proposals approved pursuant to this policy must also be shown to have incorporated the best mitigation measures feasible to reduce potentially significant adverse impacts on coastal resources to less than significant levels. Section 30231 of the Coastal Act additionally requires that the biological productivity and quality of coastal streams be maintained and, where feasible, restored.

The proposed water supply intake will be developed in and adjacent to riverine and riparian habitat and could have potentially significant adverse effects on the water quality and aquatic and streamside habitat of the Smith River. For example, if overdrafting were to occur, the surface and subsurface flows within the river could be diminished to a point where habitat impacts could result (e.g., unavailability of water to aquatic organisms, desiccation of hydrophytic vegetation in and along the riparian corridor). In addition, construction activities could impact water quality if protective measures are not implemented.

To prevent potential impacts to aquatic species and to maintain biological productivity, the permittee proposes to install a retrofitted water diversion system that meets the current standards and regulations set by the National Marine Fisheries Service (NMFS) for fish protection. The proposed retrofit of the existing intake screen has been reviewed and approved by both state and federal agencies as an improvement over the prior diversion system that used a large, 8,000 gal/min. centrifugal pump to move water from the Smith River and that will be replaced with screening and limitations on water withdrawals that will be protective of fish. The proposed diversion will include several components, such as a Hendricks stainless steel intake screen that will extend into the waters of the Smith River. An airburst screen cleaning system with a compressor and 80-gallon air tank will also be used to keep the fish screen clear of debris so that the intake does not produce velocities of flow that could cause juvenile salmonids to

become entrained. Approach velocity shall be less than or equal to 0.3 foot per second (ft/sec). The screen's area is approximately eight square feet, ensuring that the speed of water approaching it is below the NMFS fish screening criteria. The anticipated low water level of the Smith River has been reported as five (5) feet, while the USGS reported a mean of seven point six (7.6) feet. Based on these values, the top of the screen will be positioned at an elevation of approximately seven (7) feet. The proposed screen will have a maximum screen angle of 45 degrees and will have openings less than or equal to 0.069 inch. The screen will be made of corrosion resistant stainless steel to ensure that approach velocities do not increase as a result of corrosion. A three-phase electrical panel is previously existing at the diversion site and will provide power to the pump and airburst cleaning system as well as a control panel. A flow meter will also be employed to measure and record diversion flow rates. Special Condition 5 incorporates these requirements for the water diversion system.

By incorporating the mitigation measures presented by the applicant and as further required by NMFS, CDFW, and the Regional Board and as further conditioned herein, the proposed project as conditioned will with protect fish and maintain the functional capacity of the river as a migration corridor for salmonids. In its review of the project, the Army Corps of Engineers (ACOE), through its consultation with NMFS regarding project effects on federally listed species, determined the project may affect, but is not likely to adversely affect, SONCC coho salmon or critical habitat for listed species. The Corps also determined that the Project would not adversely affect Pacific Salmon essential fish habitat (EFH) because of the limited scope of the project and the proposed activities which minimize the effects of the action on EFH. As part of its September 29, 2022 Letter of Concurrence with ACOE's section 404 certification that the subject project is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA), NMFS found in part that:

> The effects of the action include the diversion of less than 2% of the Smith River flow during the lowest flows of the year. Additionally, the air burst system would result in a brief blast of air to clean the screen every fifteen minutes, which may briefly startle coho salmon juveniles close to the screen. The small decrease in freshwater flows (2% or less) during operation of the screen is not expected to result in a measurable decrease in salinity, water quality, water velocity, or water depth below the diversion point. Additionally, since the diversion is in an area influenced by tidal changes, any changes to the above factors will be further reduced by the large changes in water volume at, above, or below the diversion point. The brief behavioral response of coho salmon juveniles to the air burst every fifteen minutes is not expected to result in reduced feeding, increased stress response, or predation risk by exposed individuals and any fish that may choose to use the screen location for rearing are likely to acclimate to the air bursts over time such that the behavioral response will be muted.
>
> Any effects to critical habitat from the Project are expected to be insignificant because the project-related disturbance to rearing habitats, as

> well as migration corridors, is temporary and spatially small (e.g., approximately less than 200 sq ft in the Smith River). NMFS expects there will be an insignificant effect to salmonid food from the diversion of zooplankton (e.g., copepods) that are smaller than the screen mesh size. Additionally, an insignificant amount (less than 1 square foot) of bottom substrate will be disturbed by the screen feet.

The NMFS letter additionally states: "NMFS has been working with the Alexandre Dairy for a number of years, including numerous site visits and meetings, review of draft screen designs and the biological assessment, and other pre-consultation technical and policy review. The final Project screen design to meet NMFS screen criteria and a reduction in the water diversion rate of approximately 70% are consistent with NMFS recommendations during the pre-consultation technical assistance phase for this consultation."

In addition to consultations with NMFS and ACOE, the applicant has obtained the necessary authorizations from CDFW, who has regulatory jurisdiction over the project pursuant to the California Fish and Game Code and the California Endangered Species Act (CESA). As discussed in Finding IV-E ("Other Agency Approvals"), the applicant entered a Lake and Streambed Alteration Agreement with CDFW pursuant to section 1602 of the Fish and Game Code on April 7, 2022 authorizing the encroachment for water diversion from the Smith River. Among other things, CDFW's agreement limits water withdrawals to no greater than 2,600 gallons per minute (gpm) at any time. The Regional Water Board's 401 certification and approved MND authorize a withdrawal rate of 3,000 gpm, which CDFW has indicated could be supportable but would require modifying their LSAA. To ensure compliance with other agency approvals, Special Condition 5B limits water withdrawal rates to a maximum of 2,600 gpm, unless the permittee submits documentation to the Executive Director demonstrating that CDFW and NMFS authorize water withdrawals at a rate of up to 3,000 gpm.

Due to the location of the intake in the Smith River (3.8 river miles upriver from the mouth) and the low elevation of the intake,[16] salinity at the site can be tidally influenced during the summer months if there are lower flows in the river. Studies conducted by Parish and Garwood in 2016[17] show that salt water can extend past the point of diversion during summer low flows. The applicant proposes to monitor salinity and to stop pumping when salinity levels reach one part per thousand or greater. The applicant will use a salinity meter (using electrical conductivity) to detect salinity levels. Special

[16] The elevation that the intake screen is set is determined by the lowest water level of the Smith River.

[17] Parish, M. and J. Garwood. 2016. Winter Distributions, Movements, and Habitat use by Juvenile Salmonids throughout the Lower Smith River Basin and Estuary, Del Norte County, California. Final Report to the California Department of Fish and Wildlife, Fisheries Grants Restoration Program, Contract: P1410545. Smith River Alliance, Crescent City, CA. 51p.

Condition 5D incorporates the salinity monitoring and threshold requirements as proposed by the applicant.

Although the project proposes to divert water at a maximum rate of 3,000 gallons per minute, which equates to 4,320,000 gallons per day, it is unlikely that the maximum gallons per day will be reached if there are summer low flows in the river that produce salinity constraints. Additionally, the applicant has proposed (and both CDFW and the Regional Water Board require) the installation and maintenance of a diversion measuring device and frequent logging of water use, to be reported annually to CDFW and the Water Board). Accordingly, Special Condition 5F requires the applicant to record and report water usage from the diversion.

Best Mitigation Measures Feasible

As mentioned, section 30236 requires that any allowed development involving substantial alteration of a river or stream must incorporate "the best mitigation measures feasible."

While the annual placement of the water diversion is not anticipated to result in significant impacts to riverbank vegetation or a net loss of wetlands or riparian habitat, the proposed trenching will temporarily disturb areas along the levee occupied by Himalayan blackberry and grasses. The applicant proposes planting a small portion of the levee area, lacking trees and entangled with Himalayan blackberry and grasses. The planting is proposed to increase the presence of riparian overstory in the project area. The applicant states that before levee construction (in the mid-1960's), the site's banks featured a mix of riparian vegetation, including various hardwood and conifer species. The proposed enhancement site is located immediately adjacent to the project on the western edge and currently lacks conifer and hardwood trees.

As discussed further in Finding IV-I ("Protection of Water Quality"), the approved MND determined in part that turbidity generated during annual installation and removal of the fish screen as part of the diversion would be temporary and most likely non-existent, due in part to the substrate at the site consisting primarily of gravel and sand. Nevertheless, the applicant proposes best management practices including installing erosion control measures and conducting trenching and backfill operations (that will connect the water conveyance to the mainline) during the dry season. Special Condition 7 incorporates the BMPs that have been proposed by the applicant and also those specified in the applicant's other agency approvals (CDFW and Regional Water Board requirements).

Conclusion

Therefore, as the proposed development is for an enumerated allowable use, and as the project would incorporate or has been conditioned to include the best mitigation measures feasible, the Commission finds the proposed riparian water diversion is consistent with Section 30236 of the Coastal Act. The Commission further finds that the development, as conditioned to install fish-friendly screens and to limit the timing, volume, and velocity of water extraction, is consistent with the requirement of

Coastal Act section 30231 that the biological productivity and the quality of coastal streams appropriate to maintain optimum populations of marine organisms and for the protection of human health be maintained.

I. Protection of Water Quality

Sections 30230 and 30232 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 30232**. Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containments and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Coastal Act sections 30230 and 30232 require protection and, where feasible, restoration of marine resources, as well as the maintenance of the biological productivity and quality of coastal waters and wetlands. As discussed in Finding IV-H ("Coastal Act Review of Water Supply Projects"), Section 30231 of the Coastal Act additionally requires in part the protection of the biological productivity and quality of coastal waters and streams through measures such as controlling runoff, preventing depletion of groundwater supplies, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing the alteration of natural streams.

The project involves development in and adjacent to Smith River, including the annual installation and removal of water diversion infrastructure and use of a backhoe to excavate a trench approximately 24 inches wide by 48 inches deep by and 4,500 feet long to install conveyance piping connecting the diversion site to an underground irrigation system on the adjacent 355 acres of pastureland in the floodplain. The primary potential water quality impacts from proposed project activities fall under three general categories: (1) short-term risk of sediment delivery to coastal waters when conducting one-time trenching and backfilling when installing the pipeline that will connect the water conveyance to the mainline; (2) short-term risk of increased turbidity in coastal waters when annually installing and removing the stream diversion; and (3) the potential for accidental spills or releases of pollutants and debris, such as equipment fluids, contaminated sediments, and other construction debris into river waters.

Trenching will occur predominantly on pastureland that is flat and/or low gradient. The conveyance piping will be installed using a backhoe. The trench will begin at the levee where diversion infrastructure will be supported by an existing platform situated approximately 11 feet above bank full height. The trench will extend approximately 132

feet across the levee where pipeline will be installed in an existing utility trench. Erosion and loss of topsoil is not anticipated, as trenching will only be conducted during periods of no precipitation, on an area of the levee which has little to no slope. Additionally, as indicated in Finding IV-H above, the approved MND determined in part that turbidity generated during annual installation and removal of the fish screen as part of the diversion would be temporary and most likely non-existent, due in part to the substrate at the site consisting primarily of gravel and sand. Therefore, impacts to water quality will be avoided.

The applicant proposes best management practices be implemented during construction, including installing erosion control measures and conducting trenching and backfill operations during the dry season. The Regional Water Board and CDFW permits also include conditions specifying BMPs that include allowing only the use of 100% biodegradable wildlife-friendly erosion and sediment control products and prohibiting the use of synthetic (e.g., plastic or nylon) monofilament netting, including photo-biodegradable plastic netting. Other requirements of these agencies include: (a) specifications on the use of erosion control measures throughout all work phases; (b) stabilizing exposed soil areas with mulch and seed, including limiting seed to regionally native seed or non-native seed that is known to not persist or spread (e.g., barley (*Hordeum vulgare*) or wheat (*Triticum aestivum*)), and prohibiting the use of invasive grass seed; and (c) monitor and maintain all erosion and sediment barriers in good operating condition throughout the work period and the following rainy season (specified as October 31 through June 1). Special Condition 7 incorporates the BMPs that have been proposed by the applicant and also those specified in the applicant's other agency approvals (CDFW and Regional Water Board requirements). Therefore, the stream diversion and temporary trenching, as conditioned, will not adversely impact water quality.

A small boom truck will be required to set the intake pipe and diversion screen, and a small backhoe will be used to excavate trenches as described above. The operation of heavy equipment such as the boom truck and backhoe near the Smith River could result in accidental spills and leakage of fuel, lubricants, hydraulic fluids, and coolants. Other sources of contaminants include discharges from vehicles. The approved MND indicates that no staging areas are needed for the project, thus eliminating the risk of spillage of any materials that might otherwise be stored in such areas. The Regional Water Board's approval includes prohibitions against using leaking equipment or vehicles within State waters or riparian areas and requirements for checking vehicles and equipment for leaks at the beginning of each workday, among others. Special Condition 7E incorporates the Regional Water Board's spill prevention requirements. Therefore, the Commission finds that as conditioned, the proposed development will provide protection against the spilling of gas, petroleum products, and hazardous substances and provide effective containment and cleanup for accidental spills consistent with section 30232 of the Coastal Act

Thus, the Commission finds that the project as conditioned is consistent with sections 30230, 30231, and 30232 of the Coastal Act.

J. Wetlands

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…

As previously discussed, the proposed project includes digging a temporary trench approximately 48 inches deep and 4,500 feet long, to install an irrigation line connecting the pump at the diversion site to the farm's existing underground irrigation system. The trenching/pipeline installation will take approximately one day to complete, after which approximately 1,133 cubic yards of cut soils will be replaced and pastureland restored to pre-project conditions. This open cut trenching method of pipeline installation through

farmed wetlands has been used for other utility line projects in the region,[18] and though it involves ground disturbance, if conducted during the dry season, when the upper soil layers of the are dry, farmed wetlands have been demonstrated to restore to pre-project conditions (disturbed agricultural pastureland) within a relatively short timeframe (less than a year).

The Mitigated Negative Declaration adopted by the Regional Water Board for the project describes wetland impacts as follows:

> The Project will result in temporary impacts to approximately 0.21 acres (4364 Linear Feet) of wetlands, 0.0002 acres (4 Linear Feet) of stream channel and 0.005 acres (132 Linear Feet) of riparian areas. There are no permanent impacts. Temporary impacts will be offset by a combination of active and passive restoration. The applicant has provided a wetland delineation report dated May 2023 that determined that with exception to upland roads and levees, all the low-lying terrace between the river and existing irrigation lines on the parcel is wetland, including riparian areas along the banks of the Smith River and herbaceous emergent seasonally flooded/saturated wetlands throughout the agricultural fields that are managed for livestock grazing and feed production.

The wetland delineation report indicates that vegetation in the field is dominated by weedy grasses and herbaceous plants, many of which were likely included in agriculture seed mixes. Identified species include nonnative ryegrass (*Festuca perennis*-FAC), marsh foxtail (*Alopecurus geniculatus*-OBL), nonnative clovers (*Trifolium spp*.), nonnative buttercup (*Ranunculus repens*-FAC), and nonnative curly dock (*Rumex crispus*-FAC). The project area includes occasional stands of rushes (*Juncus spp*.) and drainage ditches with stands of the invasive reed canary grass (*Phalaris arundinacea*-FACW). Portions of the levee along the Smith River include riparian vegetation with native riparian species including red alder (*Alnus rubra*-FAC), thimbleberry (*Rubus parviflorus*-FAC), and red elderberry (*Sambucus racemosa*-FAC). The wetland delineation report also identified “secondary wetland indicators” within some areas, and in others, “primary wetland indicators that included a predominance of hydrophytic vegetation, a prevalence of hydric soils, and in the lower portions of the fields and in drainage ditches, shallow surface water and saturated soils. Thus, the agricultural fields crossed by the existing buried irrigation pipeline predominantly qualify as seasonally flooded/ saturated wetlands.

In this case, as discussed above, the irrigation retrofit activities qualify as repair and maintenance. In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission’s evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing

[18] E.g., see CDPs 1-17-0200 (Loleta Community Services District); 1-05-038 (Caltrans); 1-04-010 (PG&E); 1-02-007 (City of Eureka); and 1-01-017 (Humboldt Community Services District).

development, in this case, the water diversion and associated irrigation lines. The Commission does consider alternatives with respect to repair and maintenance activities and mitigation measures, which are discussed below.

The repairs and maintenance to the existing irrigation system will result in temporary construction impacts to approximately 9,000 square feet (0.21 acres) of grazed seasonal wetlands while the two-foot-wide trenches are excavated to connect water conveyance pipeline to the main distribution system. The approximately 1,133 cubic yards of soil excavated from the trenches will be backfilled and the ground recontoured and vegetated to existing conditions upon completion. The trenching and utility (irrigation) line is intended to be installed in the path of least disturbance and distance within the subject property and it is not anticipated that any native riparian vegetation, including trees and shrubs, will be cut or removed along the levee trenching area. Additionally, the applicant indicates that there is no proposed disturbance of any riparian vegetation at the intake location or at the existing wooden platform where the pumping system will be located. All willows, alders, and maple trees occupying the area around the site will be protected.

As such, the applicable provisions of Section 30233 of the Coastal Act cited above require that the method of proposed repair and maintenance: (1) use the least environmentally damaging feasible alternative; (2) provide feasible mitigation measures to minimize adverse environmental effects; and (3) protect the biological productivity and the quality of coastal wetlands and waters. The project's proposed irrigation maintenance and repair activities and the consistency of that work with these Coastal Act provisions is discussed below.

Alternatives Analysis

For projects involving dredging and filling of wetlands, the Commission must ensure that the approved project has no feasible less environmentally damaging alternative, consistent with section 30233 of the Coastal Act. 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." The applicants have evaluated alternatives to installing the water diversion conveyance line via open-cut trenching. In this case, alternatives include: (1) the "no project" alternative, (2) alternative trenching locations, (3) use of groundwater diversions, (4) above ground placement of irrigation lines, and (5) directionally boring water line in lieu of trenching.

(1) The "No Project" Alternative

The "no project" alternative would leave the site as is and without the use of the prior irrigation system but prevent the designated prime agricultural land under the county's certified LCP from being irrigated under the landowner's riparian water right. The effect would be a significant reduction in pasture production during prime growing seasons within the Smith River Basin, significantly impacting the effective crop yield and feed for livestock annually. While the "no project" alternative would avoid the anticipated impacts described above, it would not enable the landowner to rely on water supplied by their

riparian right to maintain the maximum amount of prime agricultural lands in production on the subject property.

Therefore, the "no project" alternative is not a feasible less environmentally damaging alternative to the proposed project, as conditioned.

(2) Alternative Trenching Locations

The applicant originally proposed trenching a shorter distance to connect to the existing irrigation main lines. As part of the applicant's original proposal, a 1,500-foot-long trench would be dug across a portion of the neighboring parcel to the west to connect water conveyance pipeline to the main distribution line (Exhibit 9). During a site visit conducted on March 29, 2023 with Commission staff, the THPO of Tolowa Dee-ni' Nation, the applicant's agent, and CDFW and ACOE representatives, concerns were raised about potentially connecting to a location which was outside APN 103-020-074, in part due to ongoing efforts to resolve violations associated with the Consent Agreement executed between Reservation Ranch and the Coastal Commission, and to limit water use to the subject parcel. On March 31, 2023 the applicant transmitted a proposal for "Option 2" which would keep all waterline infrastructure connected within the subject property (Exhibit 9) but necessitates a longer trench to reach the existing mainlines from within the subject property. Although the original proposal resulted in a shorter length of trenching, meetings with representatives of Tolowa Dee-ni' Nation and the resource agencies agreed that restricting infrastructure to the subject property was a less environmentally damaging feasible alternative.

(3) Groundwater Diversion Alternatives

Ground water wells have not been developed on the subject property. The applicant has indicated that although the property is part of the Smith River Plain and close to the river, groundwater resources in the area have proven to be unreliable, with nearby wells on neighboring properties becoming overdrawn throughout the dry season. Furthermore, since essentially all of the property is designated wetlands as described above, installing a new groundwater supply would not result in a less environmentally damaging alternative.

(4) Above Ground Water Conveyance Alternatives

As previously described, prior to 2021 the applicant diverted water from the Smith River that was then pumped through a centrifugal pump into an agricultural ditch on an adjacent parcel that conveyed water to Tillas Slough. In addition to loss of water through evapotranspiration, and energy costs associated with using three pumps to convey water, the agricultural conveyance ditch was not environmentally preferable and was disbanded as part of the Consent Agreement (see Finding IV-N). The applicant has indicated in part that:

> The farm has proposed subsurface means of delivering the water versus a system that delivers irrigation water by surface means, such as furrows, borders, and contour levees, or above ground piping. In working with the Natural Resources Conservation Service, subsurface mainline is recommended for

conservation purposes associated with water to efficiently convey and distribute irrigation water to the soil surface points of application without causing excessive water loss, erosion, or water quality impairment. In addition, to efficiently convey and distribute irrigation water to the subsurface point of application without causing excessive water loss or water quality impairment and most important reduce energy use.

With an above ground conveyance system, the life expectancy of the pipeline is reduced dramatically. It often calls for use of metal, such as aluminum piping which is prone to leaks and increased maintenance. PVC deteriorates at a rapid rate above ground and is easily damaged.

Trenching was determined to be the preferred, less environmentally damaging alternative, because the impacts to already disturbed farmed wetlands will be short-term, and infrastructure will be buried, while an above ground pipeline would have lasting surface impacts to pasture wetlands and agricultural production by displacing surface area where vegetation would otherwise grow and be grazed similar to the current condition.

(5) Directional boring of water line

Horizontal directional drilling is an alternative method that can be used to replace existing segments of pipe or install new pipe without trenching. The applicant explored the feasibility of using directional boring to install water lines subsurface without disturbing surface conditions. The applicant determined that it would be cost prohibitive to use directional boring for the scale of the proposed development. As a result, the use of alternative construction locations and methods is not a feasible less environmentally damaging alternative to the proposed development as conditioned.

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

Feasible Mitigation Measures

Section 30233 further requires that feasible mitigation measures be provided to minimize adverse environmental effects of dredging and filling wetlands. Depending on the manner in which the proposed project is completed, the proposed method of dredging and filling within coastal wetland habitat could have significant adverse environmental effects on the quality and functional capacity of this habitat and the wildlife within these areas.

Wetlands in the project area include riparian areas and grazed pasturelands. As detailed in the Regional Water Board's approved MND prepared for the subject project, special-status animal species that may use the project area include but are not limited to northern red-legged frog (*Rana aurora aurora*), western pond turtle (*Actinemys marmorata*), and coho salmon (*Oncorhynchus kisutch*). All of these species are

California Species of Special Concern or listed as threatened under the Endangered Species Act. The Smith River adjacent to the project site provides excellent aquatic habitat to support rearing and cover for these species. The Smith River and associated wetland habitats also support several wildlife uses and species, including, migration corridors for anadromous and other fish, small animals, larger wildlife, foraging and breeding habitat for songbirds, and stopover habitat for migratory birds.

Depending on the manner in which the proposed project is undertaken, as discussed above, the project could have significant adverse impacts on a variety of coastal resources of the Smith River, including but not limited to: (1) wetland habitats, (2) wildlife, and (3) water quality. The applicant has incorporated a number of project features and minimization and mitigation measures to protect water quality, restore wetland habitats, and minimize impacts to wetlands and related coastal resources (Exhibit 8). The potential impacts and their mitigation are discussed in the following sections.

(1) Measures to Avoid Significant Degradation of Farmed Wetlands

As described above, construction activities may directly impact approximately 9,000 square feet (0.21 acres) of grazed pasture wetlands while the two-foot-wide trenches are excavated to connect water conveyance pipeline to the main distribution system. The trenches will be backfilled and the ground recontoured and vegetated to existing conditions upon completion. The trenching and utility (irrigation) line is intended to be installed in the path of least disturbance and distance within the subject property and it is not anticipated that any native riparian vegetation, including trees and shrubs, will be cut or removed along the levee trenching area. Additionally, the applicant indicates that there is no proposed disturbance of any riparian vegetation at the intake location or at the existing wooden platform where the pumping system will be located. All willows, alders, and maple trees occupying the area around the site will be protected.

As discussed above, this open cut trenching method of pipeline installation through farmed wetlands has been used in other projects in the region, and if conducted during the dry season, when the upper soil layers are dry, the farmed wetlands are expected to restore to pre-project conditions (disturbed agricultural pastureland) within a relatively short timeframe (less than a year). Special Condition 7-A(i) limits the timing of pipeline installation to May 1st through September 30th only. Special Condition 7 also requires the use of best management practices for erosion and sediment control to prevent sedimentation of surrounding wetlands and streams. The condition includes several other construction BMPs to be implemented related to spill prevention, minimizing soil compaction, and other measures.

The applicant has proposed to follow recommendations of the consulting botanist who prepared the wetland delineation to ensure the least impact to farmed wetland pastures. These recommendations include reserving the top approximately six inches of soil and replacing on the surface after the trench is back filled. The top few inches contain thousands of seeds and other propagules such as rhizomes of plants that occur in the wetlands. The report also suggests applying a pasture seed mix typically used in the fields. To ensure this measure is implemented, Special Condition 8 requires restoring

the original topsoil as the top fill material in the restored trench sections, and replanting the affected areas with a seed mixture composed of the same forage species that are currently present in the pastureland. To ensure that the revegetation does not result in the propagation of invasive plant species, Special Condition 8 also requires that only a seed mix of regionally appropriate native grasses and/or noninvasive agricultural species be planted, and no problematic or invasive plant species or noxious weeds shall be utilized.

To ensure that the trenched area through the grazed wetlands is revegetated to pre-project conditions as proposed, Special Condition 8 requires that the applicant submit a monitoring report to the Executive Director within 12 months following completion of irrigation pipeline work occurring in agricultural fields. The monitoring report must be prepared by a qualified biologist or botanist and must evaluate whether the objective of reestablishing vegetation in areas of project construction to a level of coverage and density equivalent to vegetation coverage and density of surrounding undisturbed areas has been achieved. If the report indicates that the revegetation of the disturbed areas following reseeding has not been successful, in part, or in whole, the applicant is required to submit for the review and approval of the Executive Director a revised reseeding program to achieve the objective.

Additionally, the applicant proposes to enhance the riparian area around and adjacent to the project site (pages 8-9 of Exhibit 8 and page 2 of Exhibit 9). The riparian enhancement area is proposed within a 1,100-square-foot portion of the levee currently devoid of conifer and hardwood trees and which currently is dominated by invasive reed canary grass, Himalayan blackberry, and other invasives. As proposed by the applicant, the area will be temporarily fenced to protect it from grazing animals (including cattle, Roosevelt elk, and deer) and will be planted with a mix of at least 25 trees including redwood, Sitka spruce, red alder and big leaf maple. To ensure that the applicant implements riparian enhancement as proposed, Special Condition 8 requires the applicant to submit a final revised Enhancement Plan that substantially conforms with the proposed Enhancement Plan but which adds provisions for (1) including plans to remove all invasive species rated “High” by Cal-IPC over the entire enhancement area, and (2) including maintenance and monitoring procedures and success criteria, including performance standards that include a minimum of 60% percent cover of native plants by year 5.

As conditioned, the Commission finds that the method of implementing the proposed project provides feasible mitigation measures to minimize the project’s potential adverse effects on grazed seasonal wetlands consistent with Section 30233 of the Coastal Act.

(2) Measures to Avoid Significant Impacts to Wildlife

Due to its low elevation within the floodplain, the project area is subject to seasonal ponding from rain and runoff and also has a seasonally high groundwater table. The wetland vegetation on the site is not particularly abundant or diverse because of its current and historic use as pasture for cattle grazing. Nonetheless, the area does provide some foraging habitat for a diversity of water-associated wildlife, including waterfowl, wading birds, and shorebirds. Many raptors are observed in the area as well,

including Northern harriers, red-tailed hawks, and red-shouldered hawks, among others that likely forage the fields for small rodents. Bald eagles also forage within the Smith River and nearby lowlands. The area is also within the Pacific Flyway and supports bird nesting, roosting and migration through the area.

Depending on the manner in which the proposed project is undertaken, as discussed above, the development within the wetland habitats at the project site could have significant adverse impacts on wildlife uses, such as food and cover for small animals, migration corridors for larger wildlife, foraging and breeding habitat for songbirds, and stopover habitat for migratory birds. Roosevelt elk (*Cervus canadensis roosevelti*), coyote (*Canis latrans*), grey fox (*Urocyon cinereoargenteus*), otter (*Lutra canadensis*), black bear (*Ursus americanus*), beaver (*Castor canadensis*), muskrat (*Ondatra zibethicus*), raccoon (*Procyon lotor*), and smaller carnivores and rodents are all known to occur in the project vicinity and likely use the project area. Northern red-legged frogs (*Rana aurora aurora*) and western pond turtle (*Clemmys marmorata*) may also use the area.

The applicant proposes implementing mitigation measures included in Exhibit 8 as part of the project. These include measures to protect the northern red-legged frog, such as by engaging the services of a qualified biologist to train construction personnel on recognition of northern red-legged frogs or any other special status animals prior to the onset of work, limiting trenching operations to the spring and summer months and only during daylight hours when frogs are less active, and if frogs are encountered within the work area, halting work until the farm's biologist relocates the frog to an adjacent riparian area. These frog protection measures are required to be followed with Special Condition 9.

The project does not propose the removal of riparian vegetation. The only vegetation removal proposed is the pasture vegetation within the footprint proposed for trenching. Such vegetation may support bird nests, and removal of vegetation during the nesting bird season (generally March 1 to August 15) could result in direct mortality of adults or young birds and the destruction or abandonment of active nests. Indirect impacts such as increased noise and visual human activity associated with construction activities could result in the disturbance of normal nesting behaviors, reduction in prey availability, and degradation of overall nesting habitat. These disturbances could cause nest abandonment and death of young or loss of reproductive potential at active nests located in or near the project area.

However, these potential adverse impacts to nesting birds as a result of the project can be avoided if (1) surveys for active nests are conducted if vegetation removal occurs during the bird nesting season, and (2) appropriate buffers around any identified active nests are established to protect sensitive bird nest habitat areas from disturbance. Special Condition 8 includes these nesting bird protection requirements.

The Commission finds that the methods to undertake the project, as proposed and conditioned as described above, provide feasible mitigation measures to minimize the

project's impacts to wildlife using the wetland habitat consistent with section 30233 of the Coastal Act.

(3) Measures to Avoid Significant Adverse Impacts on Water Quality

Depending on the manner in which the proposed project is undertaken, as discussed above, the project could have significant impacts on water quality. The potential impacts to water quality and the mitigation measures proposed by applicant and required as special conditions of this permit are discussed in Finding IV-I ("Protection of Water Quality") above. As proposed and conditioned, impacts to water quality would be appropriately avoided, minimized or mitigated to ensure the quality and productivity of coastal wetlands and waters are protected.

Biological Productivity and Functional Capacity.

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

The mitigation measures incorporated into the project and required by the special conditions discussed above will ensure that the project will not have significant adverse impacts on coastal wetlands in and around the project vicinity.

Therefore, the Commission finds that the project, as conditioned, will maintain and enhance the biological productivity, quality, and functional capacity of coastal waters and 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 methods of undertaking the proposed development, as conditioned, will maintain and enhance the biological productivity, quality, and functional capacity of coastal wetlands, that there is no feasible less environmentally damaging alternative, that feasible mitigation will be provided to minimize all significant adverse impacts associated with the dredging and filling of coastal wetlands, that wetland habitat values will be maintained or enhanced, and that coastal water quality will be protected. Therefore, the Commission finds that the method of repairs and maintenance associated with the proposed development, as conditioned, is consistent with section 30233 of the Coastal Act.

K. Coastal Agricultural Lands

Section 30241 of the Coastal Act states:

> The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:
>
> (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

> (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.
>
> (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.
>
> (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.
>
> (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.
>
> (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30242 of the Coastal Act states:

> All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Summary of Coastal Act Policies Protecting Agricultural Lands

The Coastal Act protects coastal agriculture first and foremost by requiring that "new development be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it…" [§30250(a)]. This requirement to concentrate urban development in existing urban areas establishes the fundamental framework for assuring that new urban development, including urban services, is not located in rural coastal areas where the protection of agricultural, scenic, biological, and other coastal resources is paramount. Coupled with this framework for limiting urban development to existing developed areas, the Coastal Act requires the establishment of stable urban-rural boundaries to assure that urban sprawl from existing urban areas does not overtake rural agricultural areas. The Coastal Act also requires that the maximum amount of prime agricultural land be maintained in agricultural production, and that the conversion of agricultural land along the urban periphery be limited to instances where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where conversion of agricultural lands would complete a logical neighborhood and contribute to the establishment of a stable limit to urban development or would concentrate development in urban areas. Essentially, under Coastal Act section 30241, conversion of agricultural lands along the urban periphery is permissible only if agricultural use no longer viable, or unless conversion would

complete a logical urban area and/or help to establish a stable urban-rural boundary that better protects agricultural land.

The Coastal Act also contemplates that both the identification and protection of agricultural land, and its possible conversion to non-agricultural uses, will be specifically addressed through LCP planning. In particular, the Coastal Act contemplates that in conjunction with the identification of urban-rural boundaries, agricultural lands will be designated and restricted to agricultural land uses, unless a future LCP amendment is approved that allows the conversion of the land to non-agricultural uses. Coastal Act section 30241.5 identifies a viability test for conversion of agricultural lands around the urban periphery when conversion is an issue in any LCP or LCP amendment.

In comparison to section 30241 and its focus on conversions of agricultural lands around the urban fringe and creating a stable urban-rural boundary, Coastal Act section 30242 addresses conversions of land suitable for agriculture in all other locations, i.e., rural locations without conflicts "between agricultural and urban land uses." Section 30242 states rules to be applied for conversion of "all other lands suitable for agricultural use," i.e., all conversions not addressed by the general section 30241 policy against prime land conversions ("the maximum amount of prime agricultural land shall be maintained in agricultural production…") or the specific conversion standards of section 30241 relating to conflicts "between agricultural and urban land uses." Section 30242 includes no direct requirement for considering the resulting stability of the urban limit and in general provides a different standard of review than does section 30241(b). Notably, section 30242 does not deal with "agricultural land," but rather with "all other lands suitable for agriculture." One of the tests for conversion of such land is that agricultural use cannot feasibly be continued or renewed. This wording indicates that the policy was intended to be broadly applied, even to rural land that is not currently in agricultural use.

Summary of LCP Policies Applicable to the Site

As discussed in Finding IV-D, as this is a consolidated CDP application, the standard of review that the Commission must apply to the proposed new development is the Chapter 3 policies of the Coastal Act, and the County's certified LCP may be used as guidance.

The Land Resources chapter of the certified LUP (certified in 1983) describes the principal agricultural lands in the County as located on the Smith River floodplain and adjacent terrace areas. The LUP describes the primary agriculture operations within this region as dairy operations and ornamental flower farms. The chapter discusses the importance of commercial agriculture to the County's economy and specifically identifies those lands used for nursery crop, livestock, and dairy production as the most valuable agricultural lands. The subject property (and surrounding agricultural lands between Morehead Road/Fort Dick area and the Oregon border) is identified as being among the most productive and valuable agricultural lands. The LUP includes numerous policies intended to protect prime and non-prime agricultural lands for long-term productive agricultural use, including policies similar to sections 30241 and 30242 of the Coastal Act.

The LCP designates and zones the property Agriculture Exclusive (AE), which is described in part as "aiding in the maintenance of agricultural productivity in the County." The certified zoning code lists the uses allowed on AE lands – all of which are uses that are expressly agricultural uses or uses ancillary to or supportive of agricultural production and therefore clearly consistent with the above-cited LCP and Coastal Act policies that require the maximum amount of agricultural lands to remain in agricultural production.

Historic and Proposed Agricultural Uses

As discussed in previous findings, the property has been in agricultural use since prior to enactment of the Coastal Act and prior to 1973. The property has historically been used primarily for dairy livestock grazing and currently is managed by the applicant as a regeneratively certified pasture-based dairy. As discussed, the primary purpose of the project is to obtain necessary water supply pursuant to an affirmed riparian water right to support existing agricultural operations involving irrigation of prime agricultural lands during the dry season (late spring and summer months).

Prime Agricultural Land

As cited above, Coastal Act section 30241 requires the protection of prime agricultural lands and sets limits on the conversion of all agricultural lands to non-agricultural uses. The four different prongs of the definition of "prime agricultural land" relate to the value and utility of the land in terms of range of agricultural uses and productivity.[19] The land use capability classification rates the utility of the land based on various physical factors (e.g., rock type, soil type, slope, erosion potential, etc.). The lower the rating the more utility the land is considered to have for various agricultural uses. The Storie Index Rating is based on soil characteristics that govern the land's potential utilization and productive capacity (e.g., characteristics of the soil profile, surface texture, slope, drainage, nutrient level, acidity, alkalinity, etc.) independent of other physical or economic factors that might determine the desirability of growing certain plants in a given location. The third paragraph of the definition speaks to the number of "animal units" the land can sustain. An "animal unit" (AU) is a standardized measure of animals used for various agricultural purposes. A 1,000-pound beef cow is the standard measure of an animal unit. The dry matter forage requirement of one animal unit is 26 pounds per day. Animal unit equivalents (AUE) are calculated for various other animals. A 700-pound steer is 0.80 animal units. A 1,300-pound horse is 1.20 animal units. A

[19] Coastal Act §30113 defines prime agricultural land as those lands defined as prime in sections (1), (2), (3), and (4) of Williamson Act §51201(c). This includes: (1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications. 2) Land which qualifies for rating 80 through 100 in the Storie Index Rating. (3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture. (4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars ($200) per acre.

120-pound sheep is 0.20 animal units. The amount of forage used by one animal unit in a month is an "animal unit month" (AUM). Finally, the fourth prong of the definition of prime agricultural land relates to the agricultural value of the land in terms of its capacity to generate a minimum commercial revenue of $200 per acre. Land that meets any one of the four criteria in the definition is considered "prime" under the Coastal Act.

The project area contains farmland that is designated by the Natural Resources Conservation Service (NRCS) as Prime, Statewide, or Locally Important Farmland (California Department of Conservation 2014) and is supported by the Smith River for its agricultural water source. This classification is based on the NRCS's soil mapping of "Prime If Irrigated" soils for the property that includes, among other soil types, the Carlotta, Tillas, and Ferndale Series, which are described in part as consisting of loam, gravelly loam, and silt loam soils, respectively, and with alluvium parent material situated on alluvial plains and flood-plain steps. The classification as prime also is based on the fact that the subject land has been classified with a Land Capability Classification of class II and in some cases, class I; and a Storie Index Rating of these and other soil types in the project site as 85% or greater. Because the "prime agricultural lands" definition cited above requires only one of the four prongs to be satisfied to meet this designation, and in this case at least three of the prongs are met, the property qualifies as prime agricultural land under the Coastal Act.

Maintaining the Maximum Amount of Agricultural Land in Agricultural Production

As previously discussed, the proposed project is located in the Smith River Plain, an important area of cultivated agricultural lands in the County's coastal zone for more than a century. The soils of the Smith River Plain are a significant coastal resource enhanced by the deposits left by repeated major and minor flooding events. The project will provide a necessary water supply to support ongoing agricultural operations on the site with irrigation from the landowner's riparian water right by replacing the old water diversion infrastructure with a new diversion facility with a fish-friendly design. The State Water Board considers a riparian right an entitlement for the landowner to use a correlative share of the water flowing past their property, and Coastal Act section 30412(b) prohibits the Commission from taking an action in conflict the State Board's determination with respect to the administration of water rights. The project qualifies as a necessary water supply project that will maintain the maximum amount of prime agricultural lands in production on the subject property, which will help protect the area's agricultural economy, consistent with the agricultural policies of the Coastal Act.

Therefore, as the proposed project is designed to support ongoing agricultural operations and maintain the maximum amount of prime agricultural land in production, the Commission finds the proposed project is consistent with agricultural protection policies of the Coastal Act.

L. 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.

The primary natural hazards issues affecting the project site include the potential for coastal flooding from storm events and tsunami inundation.

Flooding and Sea Level Rise

The project site is located approximately 3.8 river miles upstream from the Pacific Ocean and situated on low-lying agricultural lands. The site is within the mapped 100-year floodplain of the Smith River and within the tsunami inundation zone and thus subject to flood hazard risks. The Smith River reacts rapidly to rainfall events, reaching peak flows within six to eight hours of the most intense rainfall of a storm. Average annual precipitation in the area is 103 inches.

According to the application materials, “the summer head of tide for the project area lies just below the confluence of the Morrison Creek tributary at about river mile 8 (upstream of the project site) (Parish and Garwood 2016).” Although rising sea levels will increase tidal action to this portion of the Smith River in the future, as discussed below the rate and effects of sea level rise would be insignificant relative to the location of existing and proposed structures.

The California Ocean Protection Council’s State of California Sea-Level Rise Guidance 2024 Update[20], and the Commission’s Sea Level Rise Policy Guidance November 2024 Adopted Update[21], 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

[20] 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

[21] The California Coastal Commission’s Sea Level Rise Guidance November 2024 Adopted Update is accessible online at: https://www.coastal.ca.gov/climate/slrguidance.html

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 Crescent City (measured at NOAA's North Crescent City Station, ID # 9419750), which has the lowest relative rate of sea level rise in the State due to higher rates of tectonic uplift in that area. This uplift is evidenced by a tide gauge located within Crescent Harbor, which has recorded an annual drop in sea level of -0.78 millimeters per year[22].

Table 2. Median Values of Sea Level Scenarios* for Crescent City.[23]

	Intermediate	Intermediate-High	High
2030	0.2	0.2	0.2
2050	0.4	0.6	0.8
2070	0.8	1.6	2.3
2100	2.3	3.9	5.6

*Values are displayed in feet

Per the Commission's adopted 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. The existing platform that will be used to support mechanical and electrical equipment for the diversion is located at an elevation approximately 11 feet above bank full height of the Smith River. The proposed mobile diversion would be installed seasonally between the months of May through September. Furthermore, underground conveyance piping will connect to an existing irrigation mainline landward of levees adjacent to the Smith River that further minimize flood hazard risk.

As this proposed development does not include critical infrastructure, residential living space, or provide another critical need, but rather involves the seasonal placement of water intake infrastructure 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. Therefore, the potential for damage to the site and the risk to life and property from flooding has been minimized, consistent with section 30253.

Nonetheless, given that the applicant is proposing development in a hazardous area, the Commission requires the applicant to assume the liability from potential flood or other risks and, therefore, imposes Special Condition 11. This condition requires the

[22] According to NOAA relative sea level trend data for Station 9419750 (accessible at https://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?id=9419750), the relative sea level trend is -0.78 millimeters/year with a 95% confidence interval of +/- 0.26 mm/yr based on monthly mean sea level data from 1933 to 2023 which is equivalent to a change of -0.26 feet in 100 years.

[23] 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

landowner to assume the risks of undertaking development on an inherently hazardous site and to waive any claim of liability on the part of the Commission.

Conclusion

For all the reasons set forth above, the Commission finds that the proposed 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.

M. 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.

Although the project is located between the first public road (Highway 101) and the Smith River, an arm of the sea, it will not adversely affect public access. The project area includes privately owned agricultural fields and a portion of the bank of the Smith River accessed from an approximately 200-foot-long, graveled access road at the terminus of Sarina Road. Sarina Road is a county-maintained public road and Appendix I of the Del Norte County certified Land Use Plan identifies private recreational facilities and access points that include shoreline access at Sarina Road as part of a private RV campground. The proposed project does not involve any changes or additional restrictions to existing public access that would interfere with or reduce public access or recreational opportunities. Project construction does not require any public road closures or any other interference with public rights-of-way. Furthermore, the proposed project would not create any new demand for public access or otherwise create any additional burdens on public access.

Therefore, the project will have no significant adverse effect on public access, and the Commission finds that the project, as proposed without new public access, is consistent with the public access policies of the Coastal Act.

N. Prior Enforcement Actions and Alleged Violations

The subject 355-acre property is one of the parcels that makes up the former Reservation Ranch, which encompassed over 1,600 acres and 3.5 miles of riverfront on the Smith River and was the subject of a Coastal Commission Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Penalty ("the Consent Agreement") that was approved on July 14, 2022. The Commission found that unpermitted development had occurred on Reservation Ranch, including:

> 1) grading, including grading to construct roads; 2) placement of fill, including manure, soil, straw, construction waste, trash, cow carcasses, and other debris in and/or adjacent to wetlands, tidal sloughs, streams, and the Smith River; 3) placement of a road crossing directly within and on the banks of a tidal slough; 4) seasonal damming of a tidal slough for use as a freshwater irrigation pond and/or irrigation, including by placement and operation of a system of at least six pumps within or adjacent to tidal sloughs, streams, and the Smith River; 5) removal of major vegetation including wetlands and riparian vegetation; 6) removal of downed trees on river banks; and 7) construction of levee crossings prior to the 1972 Coastal Initiative that was the predecessor to the Coastal Act but potentially partly or wholly on public trust lands.

The Commission also found that the Consent Agreement would resolve the violations amicably and provide great benefits to the public. Page 3 of the Commission's adopted findings for the Consent Agreement state, in part:

> "This case now presents the Commission with an opportunity to resolve this matter amicably, and dramatically restore and enhance both the Smith River estuary ecosystem and public access, as well as provide for land dedications. The alleged violator and owner, Reservation Ranch, (hereinafter, referred to as "the Farm") has agreed to the proposed Consent Agreement and its requirements. Under the proposed agreement, the Farm would remove and restore areas of unpermitted fill, open 3 miles of sloughs to natural tidal flows and public access by removing three large levee crossings, and reforest the banks along 3 miles of sloughs. They would also provide three fish passages in key areas of the pre-Coastal Initiative levees. In addition to agreeing to the largest estuary restoration in Smith River history, the Farm would provide a 10+ acre public access easement on the banks of the river, and dedicate 14 acres of riverfront forest and 2 acres of oceanfront blufftop to public entities, among other benefits."

The only violation that was addressed by the Consent Agreement on the parcel at issue in this proposed CDP application was an unpermitted pump installed on the Smith River, in the same location as the new pump proposed in this application. Page 17 of the Commission's adopted findings for the Consent Agreement, state, in part:

> "In 1969, the Farm installed a pump on the Smith River and began pumping water as part of a riparian water right. On February 1, 1973, Proposition 20 ("the

> Coastal Initiative") took effect and created a Coastal Development Permit requirement on the areas of the Property at issue. In the summer of 1973, the Farm installed a new pump on the river and a new system of pumps to transport water from the Smith River into the east fork of Tillas Slough. Although some pumping was apparently done prior to the Coastal Initiative, the new pumps installed in 1973 required a CDP and none was obtained. Every summer, the Farm dammed one of the culverted levee crossings with a steel plate, and pumped freshwater into the east fork of Tillas Slough. Because the natural summer condition of the sloughs is saltwater given the low flows of the river and creeks at that time, this freshwater disrupted the estuarine ecosystem. This effectively replaced nearly one and a half miles of tidal slough habitat with a freshwater irrigation pond every summer. This seasonal storage of freshwater blocked all fish passage and resulted in poor water quality, the spread of invasive reed canary grass, and oxygen depletion resulting in fish kills.
>
> ….In June of 2021, both Commission staff and the National Marine Fisheries Service instructed the Farm not to seasonally place the unpermitted pump into the Smith River, as its fish screen was inadequate. The Farm obliged and no unpermitted seasonal pumping or damming has taken place since.

Following Reservation Ranch's ceasing of unpermitted pumping in 2021 and removal of the unpermitted pump from the location at issue on the river, Reservation Ranch submitted this CDP application for a new pump in early 2022. Following their submittal of this CDP application, Reservation Ranch signed the Consent Agreement, which listed the pumps as unpermitted development and required that Reservation Ranch cease and desist from using the unpermitted pumps. Nothing in the Consent Agreement specifically discussed this CDP application for a new, different pump on the Smith River, which as mentioned, had already been submitted at the time of signing of the Consent Agreement. The Commission subsequently approved the Consent Agreement on July 14, 2022, and since then, Reservation Ranch and the subsequent owners of the ranch have continued to not use any unpermitted pumps on the Smith River or on Tillas Slough.

The current CDP application proposes to install a new pump in the same location where one of the unpermitted pumps used to be. However, the CDP application does not propose to dam Tillas Slough, as was done before. The proposed new pump would use some new irrigation infrastructure that is proposed in this CDP application, such as a new buried water conveyance pipeline that will connect to an existing underground irrigation system within the pasture area. The proposed pump would also use some existing irrigation infrastructure, such as irrigation furrows, a pump house, and a wooden platform built for the pump to rest on. With regards to the irrigation furrows and pump house, Commission Enforcement staff investigated this infrastructure prior to the approval of the Consent Agreement and determined that this development likely pre-dated the Coastal Act, and so did not include it in the list of unpermitted development listed above. With regards to the wooden platform on the riverbank, Commission Enforcement staff did not separately investigate this particular structure and instead considered it to be part of the unpermitted pump on the river. If this permit application is

denied, Reservation Ranch would be required to remove the wooden foundation when the Restoration Plan (and Removal Plan) is approved. An update on the status of the required Restoration Plan and other Consent Agreement requirements is provided below.

After the Consent Agreement was approved, Reservation Ranch sold the entire property, most of which is not at issue in this CDP application, to Smith River Ranch, LLC, which subsequently sold the 355-acre parcel at issue in this CDP application to Alexandre Fernbridge, LLC (Alexandre Dairy). Since 2022, Commission Enforcement staff has worked amicably with Reservation Ranch (the signatory to the Consent Agreement), and Smith River Ranch, LLC and Alexandre Dairy (the new owners of land subject to the Consent Agreement) to implement the approved Consent Agreement.

Reservation Ranch submitted a draft Restoration Plan in 2024, and the Commission recently provided comments on the draft Restoration Plan. It is Commission Enforcement staff's understanding that the Tolowa Dee-ni' Nation plans to send comments to Commission staff and Reservation Ranch regarding the draft Restoration Plan shortly after this staff report is scheduled to be published. Commission Enforcement staff and Reservation Ranch will then work to incorporate the Tolowa Dee-ni' Nation's comments into the Restoration Plan before it is approved by the Commission's Executive Director. Reservation Ranch has also begun the process of obtaining authorizations from the many other regulatory agencies needed to carry out the Consent Agreement requirements, including CDFW, NMFS, the Water Board, and SLC, among others.

O. Reimbursement of Costs and Fees

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. See also 14 C.C.R. § 13055(g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with section 30620(c), the Commission imposes Special Condition 12 (Liability for Costs and Attorneys' Fees) requiring reimbursement of specified costs and attorneys' fees the Commission incurs in connection with the defense of any action brought by a party other than the applicant/Permittee challenging the approval or issuance of this permit.

P. California Environmental Quality Act (CEQA)

Section 13906 of the Commission's administrative regulations 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 any 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 Coastal Commission's review and

analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA.

On June 14, 2024, the North Coast Regional Water Quality Control Board (aka Regional Water Board), as lead California Environmental Quality Act (CEQA) agency, submitted a Notice of Intent to Adopt a Mitigated Negative Declaration (SCH No. 2024060672) pursuant to CEQA. The Regional Water Board initially provided 21-day public notice on the project on January 17, 2023 and in response to a comment letter received by the Regional Water Board on February 3, 2023, determined that the project would not be eligible for a categorical exemption due to the potentially significant impacts to cultural resources. The Draft MND was published in June 2024 and identifies specific mitigation measures for cultural resources, tribal cultural resources, threatened and endangered species, and riparian habitat to reduce potential impacts to less than significant levels. The Regional Water Board approved and adopted the MND September 6, 2024.

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 Chapter 3 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.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

California Coastal Act

CA Department of Water Resources. December 3, 1962. “Land and Water Use in Smith River Hydrographic Unit.” Bulletin 94-4.

Coastal Development Permit (CDP) Application File No. 1-22-0260

Consent Administrative Penalty No. CCC-22-AP3-01 (Reservation Ranch, Del Norte County)

Consent Cease and Desist Order No. CCC-22-CD-02 (Reservation Ranch, Del Norte County)

Consent Restoration Order No. CCC-22-RO-01 (Reservation Ranch, Del Norte County)

Parish Hanson, M. 2018. Smith River Plain Stream Restoration Plan, Del Norte County, California. Final Report to the California Coastal Conservancy, Contract: No. 16-027. Smith River Alliance, Crescent City, CA. 70 p.

Violation File V-1-16-0164

State Water Boards. January 20, 2023. “Reservation Ranch Water Right Research- Smith River Watershed- Del Norte County” Memorandum to Joshua Curtis, Assistant Executive Officer, North Coast Water Board, prepared by Lang Khang, Senior Water Resources Control Engineer, Division of Water Rights, Enforcement Section.

Walkley, J., and J. D. Deibner-Hanson. 2017. 2016 Mill Creek LCM Station – Juvenile Coho Salmon Out-migrant Trapping Project, Smith River, California. Annual Progress Report to the California Department of Fish and Wildlife. Fisheries Restoration Grants Program, Grantee agreement: P1410547.

Zalarvis-Chase, Dimitra and A. Barrios-Gonzalez. May 2023. “Phase I Cultural Resource Inventory Report for the Alexandre Family Farm Project, Del Norte County, California.” CONFIDENTIAL report prepared for Alexandre Family Farm, Crescent City, CA by DZC Archaeology & Cultural Resource Management, Arcata CA.