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STAFF REPORT: REGULAR CALENDAR

Application No.: 1-22-0251

Applicant: Sorrel Leaf Healing Center Inc.

Agent: North Point Consulting Group, Inc.

Location: 124 Indianola Road, Eureka

Project Description: Develop mental health crisis facility for children in an existing 4,872-sq.ft., 3-story single-family home, including 1.) renovate the residence and replace attached carport with 2,428-sq.ft addition, 2.) construct a 462-sq.ft. yoga pavilion, 600-sq.ft. greenhouse, and 1,176-sq.ft. barn for small livestock therapy animals, 3.) install a new onsite septic system, 4) reconfigure and expand parking area to include 27 off-street parking spaces, and 5.) install fencing, signage, landscaping, and stormwater drainage features.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to redevelop a 13.56-acre lot in the City of Eureka to create a mental health crisis treatment facility for youth. The existing development on the site, consisting of a single-family residence with an attached carport, a detached accessory building, and storage shed, will be renovated to serve the proposed treatment facility use. The existing single-family residence (constructed in the 1930s) will be remodeled and expanded to accommodate 12 patient beds, six bathrooms, various therapy rooms, administration and operation spaces, a kitchen, and dining facilities. The accessory building and storage shed will be converted to a Music and Art room and yoga pavilion,

and a new greenhouse and barn are proposed to allow for gardening and animal keeping and grazing on the site. A permeable parking lot is proposed to allow for 27 off-street parking spaces, two of which will be ADA van-accessible spaces, and two hammerhead turnarounds for emergency vehicles. Ancillary development includes installation of a new septic system, additional lighting, fencing, signs, and stormwater swales.

The site is located east of Highway 101 along the Arcata-Eureka highway corridor near Indianola Cutoff, amongst forested areas, agricultural wetlands, and rural residential lands. There are approximately 3.34 acres of wetlands on the site and an active bald eagle nest. The proposed development will largely remain in the existing footprint, with the closest distance occurring between the western parking lot and forested wetlands (~25 feet). The buffers between ESHA and new development as proposed are adequate to protect adjacent ESHA for several reasons, including, but not limited to, restricting proposed development to previously disturbed areas (for the most part) and using permeable materials for new parking areas to allow rainwater to infiltrate and avoid runoff into downslope forested wetlands. In addition, vegetation screening is proposed to buffer the parking lot and adjacent forested wetland areas, and two stormwater drainage swales and basins are proposed to improve the site, which currently lacks adequate stormwater capture and treatment amenities. To prevent physical intrusion into wetlands, 3-foot-tall split-rail fencing is proposed throughout the property as a symbolic barrier separating areas of human use and environmentally sensitive areas. Special Conditions 6 through 9 impose various BMPs and other mitigation strategies to protect ESHA, including removal of invasive species, limitations of ground-disturbing activity during the bald eagle breeding and nesting season, and lighting and landscaping restrictions. Furthermore, as discussed in the below findings, the project has been conditioned to limit exposure to hazards, protect archeological resources, visual resources, environmentally sensitive habitat areas, and water quality.

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

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[Exhibit 4 – Biological Assessment Report Excerpt \(NRM 2022\)](#)

[Exhibit 5 – Botanical Assessment Report Excerpt \(NRM 2022\)](#)

[Exhibit 6 – Delineation of Waters and ESHA Excerpt \(NRM 2022\)](#)

[Exhibit 7 –Memorandum Summarizing Proposed Resource Protection Measures](#)

I. Motion and Resolution

A. Motion

I move that the Commission **approve** Coastal Development Permit Application No. 1-22-0251 pursuant to the staff recommendation.

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

B. Resolution

The Commission hereby **approves** Coastal Development Permit Application No. 1-22-0251 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. **Future Development Restriction.** This permit is only for the development described in Coastal Development Permit Application No. (CDP) 1-22-0251, including, but not limited to, (1) renovation and expansion of the existing 4,872-square-foot three-story single-family residence and attached 814-square-foot carport; (2) construction of a 462-square-foot yoga pavilion, 600-square-foot greenhouse, and a 1,176-square-foot barn; (3) installation of a new septic system; (4) reconfiguration and expansion of the parking area; and (5) installation of signage, fencing, vegetation screening, and stormwater drainage swales. The following future development restrictions apply:
 - A. Pursuant to Title 14 California Code of Regulations (CCR) section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) section 30610(b) shall not apply to the development governed by the CDP 1-22-0251. Accordingly, any future improvements to the structures authorized by this permit shall require an amendment to CDP 1-22-0251 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.
 - B. In addition, an amendment to CDP 1-22-0251 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC section 30610(d) and Title 14 CCR §13252(a)-(b).
2. **Deed Restriction.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval documentation demonstrating that the permittee has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (a) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (b) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the

development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

3. Assumption of Risk, Waiver of Liability, and Indemnity Agreement. By acceptance of this permit, the permittee acknowledges and agrees (a) that the site may be subject to hazards from waves, ground shaking, tsunamis, and other geologic and flood hazards; (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.

4. No Future Shoreline Protective Device and Removal of Development.

A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 1-22-0251 including, but not limited to, the mental health crisis facility in the renovated residence, addition, barn, and other accessory structures, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or any other applicable law.

B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that it is required to remove all or a portion of the development authorized by the permit, and restore the site, if:

(1) the County or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices;

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

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

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

C. In addition, CDP No. 1-22-0251 does not permit any development to be located on lands impressed with a public trust interest, and any development that comes to be located on such lands due to the movement of the mean high tide line must be removed unless the Coastal Commission determines, pursuant to a permit amendment, that the development may remain pursuant to the Coastal Act. If the development comes to be located on lands impressed with a public trust interest due to the movement of the mean high tide line, the applicant would also be subject to the State Lands Commission's (or other designated trustee agency's) discretionary leasing approval.

5. Protection of Archaeological Resources. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE DEVELOPMENT AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-22-0251, a tribal monitor or tribal-appointed qualified cultural resource specialist approved by the Wiyot Tribe in coordination with the Blue Lake Rancheria and Bear River Band of Rohnerville Rancheria shall be contracted to monitor all construction activities involving ground disturbing work.

A. If cultural resources are discovered during the course of the project, all construction shall immediately cease and shall not recommence except as provided in subsection (B) hereof, and the permittee shall retain a qualified cultural resources specialist to analyze the significance of the find in compliance with state and federal laws. A minimum 50-foot exclusion zone where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area.

B. A permittee seeking to recommence construction within the exclusion zone following the inadvertent discovery shall notify the Executive Director of any changes to the project required to ensure protection of cultural resources in the project area. If the Executive Director determines that the recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence. If the Executive Director 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.

6. Construction Responsibilities. The permittee shall adhere to various construction-related best management practices (BMPs) to protect water quality and surrounding environmentally sensitive habitat areas, including, but not limited to, the following:

A. The applicant shall implement all recommended measures to protect biological and botanical resources, wetlands, waters, and other ESHA as identified in the Biological Assessment Report (dated August 17, 2022),

- Botanical Assessment Report (dated August 22, 2022), and report of Delineation of Waters and ESHA (dated March 2022) by Natural Resources Management Corporation (NRM) all of which have been proposed to be incorporated into the project under this CDP application (and which are compiled in Exhibits 4-6), including, but not limited to: (1) removal of Scotch Broom (*Cytisus scoparius*), English Ivy (*Hedera helix*), eucalyptus (*Eucalyptus sp.*), and black locust (*Robinia pseudoacacia*) located on the parcel, consistent with Special Condition 7, (2) hand planting of native shrubs such as Silk tassel (*Garrya elliptica*), wax myrtle (*Morella californica*), Blue blossom (*Ceanothus thyrsiflorus*), and coyote brush (*Baccharis pilularis*) to provide natural vegetative buffers between wetlands and proposed parking facilities and monitoring their success for 5 years and reporting annually in a Monitoring, Maintenance, and Reporting Plan, consistent with Special Condition 7, (3) employing appropriate BMPs during construction, including the installation of protective fencing along wetland boundaries to ensure no equipment enters the wetlands, requiring the use of weed-free straw for erosion control, and seed mixes with only native species, (4) prohibiting ongoing mowing of onsite wetlands, (5) installation of permanent fencing to restrict access to the pond, wetlands, and their associated buffers, (6) use of downcast and shielded lights to prevent excess light intrusion into sensitive habitats, (7) limiting ground-disturbing development during the bald eagle breeding and nesting season (February 1- August 31st), (8) and requiring a nesting bird survey be conducted prior to any project ground-disturbing activity during the nesting season consistent with Special Condition 9;
- B. No construction materials, debris, or waste shall be placed or stored where it may enter wetland or open waters;
 - C. Any and all debris resulting from construction activities shall be removed from the project site and disposed of properly at a licensed disposal facility capable of receiving disposal materials;
 - D. During the course of the project work, all trash shall be properly contained, removed from the work site on a regular basis and properly disposed of to avoid contamination of habitat during demolition and construction activities;
 - E. All on-site stockpiles of construction debris and soil or other earthen materials shall be covered and contained whenever there is a potential for rain, to prevent polluted water runoff from the site; and
 - F. BMPs shall be used to prevent the entry of polluted stormwater runoff into coastal waters during construction and post-construction, including the use of appropriate BMPs for erosion and runoff control and post-construction BMPs for roof runoff controls, vegetated buffer strips, and bioretention as detailed in the current California Storm Water Quality Best Management Handbooks (<http://www.cabmphandbooks.com>).

7. Landscaping Requirements and Restrictions.

- A. Only native and/or non-invasive plant species shall be planted as landscaping on the property. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the governments of the State of California or the United States shall be utilized within the bounds of the property.
 - B. As proposed in the Delineation of Waters and ESHA report prepared by NRM dated August 23, 2022, the applicant shall plant vegetative screens to protect adjacent forest wetland ESHA adjacent to parking areas, including, at a minimum, the planting of a total of approximately 30 fast-growing native shrubs (on approximate 5-foot centers) within two areas: 114 feet long by 5-foot wide and 50 feet long by 7 feet (as generally depicted in Exhibit 2). Planting shall occur during the first wet season following completion of construction of parking areas. Plantings shall be monitored for survival and growth for a minimum of five years. By year 5, the plantings shall have formed a hedge with few gaps and shall be at least, on average, 3.5 feet tall with an absolute cover that exceeds 60% in the revegetation areas. Annual monitoring reports shall be submitted to the Executive Director by December 31st of each monitoring year and shall report on planting survival and growth as well as invasive species removal efforts. If the final monitoring report indicates that the proposed planting and invasive species removal efforts have been unsuccessful, in part or in whole, the applicant shall submit a revised or supplemental plan to compensate for those portions of the original plan that did not meet the approved goals, objectives, and performance standards. The revised or supplemental plan shall be processed as an amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 8. Lighting Limitations.** All exterior lighting, including any lights installed as part of the development approved under CDP 1-22-0251, or in the future, shall be low-wattage, shielded, and downcast such that no light will shine beyond the bounds of the property or into adjacent sensitive habitats.
- 9. Protection of Sensitive Bird Nesting Habitat.** The applicant shall undertake development in compliance with the following bird nesting habitat protection measures:
- A. Clearing of vegetation that may provide nesting habitat for sensitive avian species shall be avoided during the nesting season (February 1 to August 31) to the maximum extent feasible;
 - B. If it is not feasible to remove vegetation that may provide potential nesting habitat outside of the avian nesting season, a survey for sensitive species of nesting birds in and adjacent to the project construction area shall be conducted by a qualified biologist according to current California Department

of Fish and Wildlife (CDFW) protocols no more than seven days prior to the commencement of construction activities. If any active nest is identified during preconstruction surveys, the biologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone to be established around the nest, and construction in the buffer zone shall be delayed until after the young have fledged, as determined by additional surveys conducted by a qualified biologist. The construction-free buffer zone shall be a minimum of 300 feet for nesting raptors and a minimum of 100 feet for other sensitive bird species; and

- C. Prior to the commencement of construction authorized during the avian nesting season, the permittee shall submit, for the review and approval of the Executive Director, the survey required in Part B above, including a map that locates any nesting habitat identified by the survey and delineates the required construction-free buffer zone, and a narrative that describes proposed sensitive habitat avoidance measures.

IV. Findings and Declarations

A. Project Description

The applicant, Sorrel Leaf Healing Center Inc., proposes to redevelop a 13.56-acre developed residential lot near the northeastern boundary of Eureka for a children's mental health crisis treatment facility that would provide temporary stays (up to 24 hours), residential stays (up to 30 days), and outpatient therapy. In addition to the proposed change in use from a residential use to a conditionally permitted private institutional use, the proposed development also would involve: (1) renovation and expansion of the existing 4,872-square-foot three-story single-family residence and attached 814-square-foot carport to accommodate 12 patient beds, six bathrooms, therapy rooms, various administration and operation spaces, a kitchen, and dining area facilities; (2) construction of a 462-square-foot yoga pavilion, 600-square-foot greenhouse, and a 1,176-square-foot barn; (3) installation of a new septic system; (4) reconfiguration and expansion of the parking area to include 27 off-street parking spaces, two ADA van-accessible spaces, and two hammerhead turnarounds for emergency vehicles; and (5) installation of signage, fencing, vegetation screening, and stormwater drainage swales and sediment basins [See Exhibit 2, Site Plan sheets C0-2, and SW1-2].

As stated above, existing development on the site consists of a 4,872-square-foot residence originally constructed in the 1930s, an attached 814-square-foot carport, a 1,042-square-foot accessory building, a 493-square-foot storage shed, driveway and paved asphalt area, a gazebo, and a constructed approximately 1-acre pond feature. A summary of proposed development by major feature is detailed in the following section.

Single-family Residence

The existing 32-foot tall, 3-story, single-family residence and attached carport on the subject site were constructed in 1938 in Colonial Revival architectural style. As such, all proposed renovations have been stylized to complement the original building's design [see Exhibit 2, Site Plan sheet A7]. The existing residence would undergo major renovations to accommodate the proposed use. It would be renovated to contain seven bedrooms, six bathrooms, two therapy rooms, a therapeutic space doubling as a seating area for night staff; administration and staff operation space, and kitchen and dining facilities.

The attached 13-foot tall, 814-square-foot carport would be removed and dumped off site and a new 23-foot tall, 2,428-square foot building addition will be attached to the residence in its place. The proposed addition would include five bedrooms, four bathrooms, and four therapy rooms. The addition has been designed to include an ADA-accessible entrance as the existing residential structure is not ADA-accessible. Total building coverage would increase by 1,614 square feet, and the maximum building height would remain at 32 feet.

Accessory structures

The existing 1,042 square-foot accessory building, which is currently used as a guest house, would be converted to a music and art building. The existing 493-square-foot storage shed would be removed, and a new 462-square-foot yoga pavilion would be constructed in its place, on top of the existing concrete pad. The gazebo would also be removed from the site. New proposed accessory structures include a 600-square-foot greenhouse and a 1,176-square-foot barn. The greenhouse and barn would be constructed south of the existing development footprint, over 50 feet away from ESHA.

Septic

The existing onsite wastewater treatment system (septic system) would be removed, and a new septic system would be installed to serve the proposed use. Both the primary and reserve leach fields would be located in an undeveloped upland field near the southern portion of the property. Once installed, the leach field area would be revegetated to allow for re-naturalization of the area with grassy vegetation. Following development, as proposed the area would only be used as occasional pasture for grazing of barn animals.

Parking Lot

No changes are proposed to the existing driveway, but most of the existing paved asphalt, which wraps around the residence and between existing accessory structures, would be removed. The previously paved areas would be replaced with pervious pavement for parking and native landscaping, thereby decreasing impervious surfaces on the site by about 18%. Remaining impervious asphalt areas would be used for ADA accessible paths and two ADA parking stalls. Two hammerhead turn arounds would be constructed: one north of the residence near the driveway, and one south of the

residence, near the proposed greenhouse. A gabion retaining wall would be constructed along approximately 400-foot of the eastern property line to accommodate parking facilities.

Fast-growing native shrubs are proposed as vegetation screening landscaping between the proposed parking areas and forested wetlands to the east, to reduce light and noise intrusion. The planted vegetation is proposed to be monitored for plant success and survival for a period of 5 years and reported annually in a Mitigation and Monitoring Plan (Condition 7B). Additionally, stormwater swales and rock-lined basins would be constructed near each parking area to accept and treat stormwater flows and to minimize impacts to adjacent habitat.

Fence, Signs, Lighting

A 6-foot-high mesh security fence with lockable gates would be installed to connect and enclose the main buildings of the facility (remodeled residence with addition, Art and Music building, yoga pavilion, and greenhouse). The purpose of the security fence is to safely confine primary human activity to the existing northern development footprint. Additionally, 3-foot-tall split rail fencing would be installed around the pond, along northern adjacent wetland areas, and in the southern portion of the parcel. The 3-foot-tall fence is intended to separate delineated sensitive habitat areas from the developed portions of the site and to limit human intrusion into those areas (see Finding IV-F below). As proposed, no uses would be allowed within the fenced in pond area. Signs would be installed along the fence stating, "Natural Area, Please Keep Out."

As proposed, all new lighting would be directed downward to minimize light [see Exhibit 2, sheet L1].

Grading, Vegetation Removal

The project includes approximately 997 cubic yards of cut from the project site and approximately 1,390 cubic yards of fill (760 cubic yards of structural fill and 630 cubic yards of imported aggregate fill, which accounts for gravel and topsoil for proposed landscaped areas). Two trees located in the immediate vicinity of the project will be removed to facilitate development, one ornamental tree and one nonnative eucalyptus tree. A removal and monitoring plan also would be implemented for the removal of invasive Scotch Broom (*Cytisus scoparius*), English Ivy (*Hedera helix*), eucalyptus (*Eucalyptus sp.*), and black locust (*Robinia pseudoacacia*) on the property.

B. Project Location and Environmental Setting

The project site is located at 124 Indianola Road (APN 402-161-005) at the northeastern end of Eureka, east of Highway 101 along the Eureka-Arcata Highway 101 corridor near the Indianola Cutoff. The property was originally developed with the existing residence in the 1930s, and as such, it is planned and zoned low-density residential (Residential Estate, RE), 12,000-square-foot minimum lot size (RS-12,000)

under the City of Eureka's certified LCP. Surrounding land uses include Service Commercial (CS) to the north (currently developed with a commercial storage facility), the CDFW-managed Fay Slough Wildlife Area to the west, and primarily unincorporated rural residential lands to the east and south (planned and zoned Rural Residential under the Humboldt County certified LCP).

Elevations on the property range from low-lying (~8 feet NAVD88) at the bottom of the driveway near Indianola Cutoff Road to over 40 feet near the south end of the property. The existing house and other existing structures on the property are located at elevations ranging from approximately 25-30 feet [See Exhibit 2, Site Plan sheet C2].

The western, southwestern, and eastern sides of the property are dominated by forest vegetation, and as a result, the developed portions of the property, including the existing residence and other structures, are not visible from public vantage points along the highway corridor or Indianola Cutoff Road. Forested and herbaceous wetlands are located around the edges of the parcel, including a constructed freshwater pond located near the center of the subject parcel.

C. Standard of Review

The project site is located near the margin of Humboldt Bay, partially within the Commission's retained permit jurisdiction. The City of Eureka has a certified Local Coastal Program (LCP), but because the site lies within both the Commission's retained jurisdiction and the City's jurisdiction, the applicant and the City requested processing of a consolidated permit on June 9, 2022, to which the Commission agreed on July 14, 2022. Therefore, as required by Public Resources Code section 30519(b) and 14 CCR section 13166(c), the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act. The City's LCP may be used as guidance.

D. Other Agency Approvals

No other discretionary state or federal approvals are required for the proposed project. The proposed project requires a Conditional Use Permit and a Design Permit from the City of Eureka. These permits were approved November 14, 2022.

E. Locating and Planning New Development

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

As described above, the 13.56-acre subject property is located at the northeastern extent of Eureka adjacent to open space areas and unincorporated rural residential lands. The property is planned Residential Estate and zoned RS-12,000 square-foot

minimum lot size. The property abuts higher-density rural residential uses to the east and south (existing average lot sizes range from about a quarter acre to five acres), a 400+ acre wildlife area to the west (inland of and along the Highway 101 corridor), and a cluster of commercial lands to the north. Directly east of the property is a developed 11.5-acre parcel planned and zoned for rural residential uses under the Humboldt County certified LCP. The existing residence on that adjacent parcel to the east is over 700 feet from the existing residence/proposed private institution facility on the subject site.

The existing developed subject property is served by City water and an onsite individual wastewater treatment system (WWTS). The proposed development will require an upgraded water meter and service connection and a new backflow prevention device to serve the proposed use. All improvements to the water system will require inspection and approval by City of Eureka prior to issuance of the final certificate of occupancy. The proposed use also will require an upgraded WWTS. The existing septic system will be removed, and a new septic system will be installed near the southern portion of the property. Humboldt County's Division of Environmental Health (DEH) evaluated the Custom Soil Resource Report provided for the site and conducted a site visit to determine the feasibility of the proposed septic system at the proposed location. DEH determined the proposed septic system can adequately serve the proposed use. The new system requires a permit and inspection from DEH prior to occupancy. Therefore, as proposed, water and septic systems will have adequate capacity to serve the proposed development consistent with Section 30250(a).

Access to the site is provided via an existing driveway off of Indianola Road. Indianola Road is accessed from Indianola Cutoff, a major arterial connecting inland Myrtle Avenue with the Eureka-Arcata Highway 101 corridor. No new or modified access is required to accommodate the increased vehicular traffic resulting from the proposed project. The lowest portion of the driveway ranges from an elevation of 8-10 feet above sea level and is at risk of periodic flooding within the 75-year life span of the project. However, as discussed in Finding IV-G below, the driveway may be adaptively raised as needed, along with Indianola Road and Indianola Cutoff, to allow for continued access. Future road improvements will be coordinated between the applicant, the County, and the Commission as needed.

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

F. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states:

- a. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

- b. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The 13.56-acre site is comprised of forested wetlands, a constructed pond, grassy upland prairie, and the existing residential structure and associated development. Several biological surveys and reports were completed for the proposed development project, including a biological assessment and survey, botanical survey, and wetland and ESHA delineation. The surveys and reports were conducted by qualified biologists according to agency recommended survey protocols. Collectively, the reports identified the following sensitive species and habitats on site:

- 1.9 acres of palustrine forested wetlands along the northern and western sides of the parcel dominated by Sitka spruce (*Picea sitchensis*) and red alder (*Alnus rubra*) trees with an understory of cascara (*Frangula purshiana*), pacific may lily (*Maianthemum dilatatum*), skunk cabbage (*Lysichiton americanus*), and slough sedge (*Carex obnupta*);
- 0.18 acres of seasonal palustrine emergent wetlands within upland grasslands, mostly at the southern end of the property, dominated by slough sedge and rush (*Juncus* spp.);
- 1.3 acres of perennial palustrine wetlands (freshwater pond) located near the center of the lot and surrounded by red alders and upland grasslands, with the aquatic habitat dominated by cattails (*Typha latifolia*) and western pond lily (*Nuphar polysepala*);
- an active bald eagle (*Haliaeetus leucocephalus*) nest located in a stand of Douglas Fir trees at the southwestern edge of the parcel, approximately 880 feet from the existing residence;
- potential nesting habitat for sensitive bird species, including black-capped chickadee (*Poecile atricapillus*) and Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*); and
- potential breeding and foraging habitat for northern red-legged frog (*Rana aurora*).

The project as proposed will not encroach directly into any identified ESHA or wetland. As discussed, the proposed project includes, primarily, redevelopment of an existing developed site, and the existing development footprint is concentrated in the northernmost portion of the parcel and represents only about 3.13% of total land cover of the site. As the development footprint will largely remain within existing disturbed areas, established buffers between development and nearby forested and pond wetlands will largely remain unchanged. However, in some cases buffers between identified ESHA and proposed new development will be less than 100 feet. Below is a summary of proposed development and proposed ESHA buffers, which are shown on the proposed plot plan (Exhibit 2, Site Plan):

| Type of ESHA | Closest Distance to Proposed Development |
|---|--|
| Forested wetlands | 27-32 feet between wetland ESHA and nearest development (proposed parking areas and adjacent split rail fencing) |
| Seasonal wetlands | 52-72 feet between wetland ESHA and nearest development (new leach field areas) |
| Pond | 36 feet between pond ESHA and nearest development (proposed pervious fire truck hammerhead area and adjacent split rail fencing); 92 feet from edge of pond to proposed structure. |
| Bald eagle nest | 660 feet between nest ESHA and nearest development (proposed barn and garden area) |
| Northern red-legged frog breeding habitat | Same as pond ESHA above |

The buffers between ESHA and new development as proposed are adequate to protect adjacent ESHA for several reasons (as discussed in the Wetland Report, Exhibit 6). First, the forested wetland habitat is fairly contiguous along the eastern and western parcel boundaries, and proposed project infrastructure will not impact the contiguous habitat. The current residence, driveway, and lawn sit in the middle of the parcel, and the proposed infrastructure will be sited within these areas. The reduced buffers will not impact the movements of wildlife (including birds and amphibians) from moving within the wetland areas between the parcels. Second, all proposed project construction will occur in only gently sloped areas, and thus the potential for erosion and delivery of runoff from parking areas into adjacent wetlands is low. Also, the site drainage around the proposed buildings and parking has been designed to flow parallel to the forested wetlands and then infiltrate within the vegetated buffers. Moreover, the parking areas will be constructed using permeable materials which will allow rainwater to infiltrate. The proposed project will decrease impervious surfaces at the site by 18.56% and improve drainage by directing stormwater to constructed basins, away from forested wetland areas. These measures will prevent any runoff or sediment from entering the forested wetlands. Third, all proposed development associated with the buildings, driveway, and parking is being located within or immediately adjacent to the current paved or previously disturbed portions of the property. The only exception is the barn and leach field areas, which are sited in the upland pasture outside of any of the wetland areas and with at least a 50-foot buffer from the nearest (isolated seasonal palustrine emergent) wetlands. Finally, several mitigation measures are proposed to ensure that development in areas adjacent to ESHA will be compatible with the continuance of the habitat areas, as described below.

Proposed Measures to Prevent Impacts to Adjacent ESHA

Mitigation measures to support the project have been identified in provided environmental studies [see Exhibits 4-6]. To protect and improve the adjacent pond and other wetland areas, (1) Scotch Broom (*Cytisus scoparius*), English Ivy (*Hedera helix*), eucalyptus (*Eucalyptus* sp.), and black locust (*Robinia pseudoacacia*) located on the parcel will be removed, (2) native shrubs (Silk tassel (*Garrya elliptica*), wax myrtle (*Morella californica*), Blue blossom (*Ceanothus thyrsiflorus*), and coyote brush (*Baccharis pilularis*)) will be hand planted between parking areas and sensitive habitat to provide natural vegetative screening for wetland habitat and will be monitored for 5 years for success and reported annually in a Monitoring, Maintenance, and Reporting Plan, (3) during construction appropriate BMPs will be employed, including the installation of protective fencing along wetland boundaries to ensure no equipment enters the wetlands, requiring the use of weed-free straw for erosion control, and seed mixes with only native species, (4) prohibiting ongoing mowing of onsite wetlands, (5) installation of permanent fencing to restrict access to the pond, wetlands, and buffers, (6) all new lighting will be directed downward to minimize light pollution, (7) ground-disturbing development during the bald eagle breeding and nesting season (February 1-August 31st) will be avoided, and (8) a nesting bird survey for sensitive species of nesting birds will be completed prior to any project ground-disturbing activity during the nesting season, which includes both the footprint of the disturbance as well as a 300-foot buffer around the disturbance footprint. The survey shall take place no more the seven (7) days prior to the commencement of the construction.

Special Condition 6, therefore, requires adherence to the recommended mitigation strategies as suggested by NRM to protect bordering wetlands, the onsite pond, and the bald eagle's nest. Special Condition 6 also requires the proper disposal of construction-related debris, the covering of stockpiles whenever there is a potential for rain to prevent polluted water runoff from the site, and the use of appropriate BMPs for erosion and runoff control as detailed in the current California Storm Water Quality Best Management Handbooks.

Furthermore, **Special Condition 9** details requirements for compliance with the proposed sensitive bird nesting habitat protection measures as follows: (a) clearing of vegetation that may provide nesting habitat for sensitive avian species shall be avoided during the nesting season (mid-March to mid-August) to the maximum extent feasible; (b) if it is not feasible to remove vegetation that may provide potential nesting habitat outside the avian nesting season, a qualified biologist must conduct pre-construction surveys for nesting birds no more than seven days prior to the commencement of any such clearing activity; and (c) if any active nest is identified, the biologist, in consultation with CDFW, must determine the extent of a construction-free buffer zone to be established around the nest, and construction must be delayed until after the young have fledged, as determined by additional surveys conducted by a qualified biologist. Based on the recommendation of CDFW, the construction-free buffer zone shall be a minimum of 300 feet for nesting raptors and a minimum of 100 feet for other sensitive bird species.

In addition, **Special Condition 7-B** details requirements for compliance with the proposed planting of native shrubs and removal of invasive species (proposed in the Delineation of Waters and ESHA report prepared by NRM dated August 23, 2022) to enhance buffers between wetlands and proposed parking facilities and to monitor and report on the success of this ESHA buffer enhancement effort for 5 years.

To prevent the cumulative impacts of light pollution on the biological resources of the area, the Commission attaches **Special Condition 8**, which requires that all exterior lighting associated with the proposed development be low-wattage and downcast shielded such that no glare is directed into the surrounding forest habitat.

The sensitive habitats on and near the project site could be adversely affected if nonnative, invasive plant species were introduced in landscaping at the subject site. If any of the proposed landscaping were to include introduced invasive exotic plant species, the weedy landscaping plants could colonize (e.g., via wind or wildlife dispersal) the nearby ESHA over time and displace native vegetation, thereby disrupting the functions and values of the ESHA. The Commission therefore attaches **Special Condition 7-A** to ensure that only native and/or non-invasive plant species are planted on the subject property. As conditioned, the proposed project will ensure that the ESHA near the site is not significantly degraded by any future landscaping that would contain invasive exotic species.

Pursuant to section 30610(b) of the Coastal Act and Title 14 of the California Code of Regulations (CCR), section 13253(b)(6), the Commission requires a permit for improvements to existing structures other than single-family residences or public works facilities that could involve a risk of adverse environmental effect. Improvements that increase the footprint of the authorized structures could impact the adjacent ESHA in a manner inconsistent with the requirements of section 30240 of the Coastal Act. Therefore, pursuant to section 13253(b)(6) of Title 14 of the CCR, the Commission attaches **Special Condition 1** which requires that future improvements that might otherwise be exempt from CDP requirements shall require an amendment or new CDP. This condition will allow future development to be reviewed by the Commission to ensure that future improvements to the development will not impact adjacent ESHA. As previously discussed, **Special Condition 2** also requires that the applicants record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit amendment as covenants, conditions, and restrictions on the use and enjoyment of the property.

With the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent ESHA, the project as conditioned will not significantly degrade adjacent ESHA and will provide for the continuance of habitat areas. Therefore, the Commission finds that the project as conditioned is consistent with the requirements of section 30240.

G. Coastal Hazards

Section 30253 states in applicable 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...

...

Section 30270 states:

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

The majority of the subject site is approximately 25 to 30-feet above sea level and not vulnerable to flooding, including flooding projected to be exacerbated by sea level rise, during the economic life of the proposed development. However, the lower end of the existing driveway and the pond area lie at lower elevations (8-10 feet NAVD 88) and are within the 100-year flood zone, the Humboldt County 1-meter sea level rise (SLR) inundation area, and the tsunami inundation area.

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

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

tripling since 1971.¹ There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research. While planning coastal development under this uncertainty presents challenges, it is widely documented that underestimating SLR could result in costly damages and adverse outcomes to coastal resources. Planning and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that SLR will change coastal landscapes and hazard conditions. Not only will siting and design decisions regarding proposed coastal development influence the future safety of the development and overall resiliency of the California coast, but such decisions will also affect the way that coastal resources protected under the Coastal Act respond to changing sea levels over time.

Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018)² and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018).³ These documents present probabilistic SLR projections as well as an extreme “H++” scenario for twelve locations (tide gauges) along the California coast, and provide recommendations for which projections to use in various planning contexts based on level of risk aversion and project type. The medium-high risk aversion scenario, which has an estimated 0.5% chance of being exceeded, should be analyzed for projects with greater consequences and/or a lower capacity to adapt, like residential and commercial development.

With sea level rise, shoreline development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, and shoreline and bluff erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach width. For example, for a shoreline with a slope of 40:1, a simple geometric model indicates that every foot of SLR will result in a 40-foot landward movement of the ocean/beach interface, resulting in significant loss of beach habitat and recreational space as well as representing a change in the location of public tidelands subject to the public trust doctrine. This change could also expose previously protected backshore development to increased tidal/wave action and flooding, and

¹ IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press. In Press.

² Ocean Protection Council (OPC). 2018. State of California Sea-Level Rise Guidance: 2018 Update. https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf.

³ Coastal Commission (CCC). 2018. California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits.

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

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

The State SLR Guidance provides SLR projections for 12 tide gauges in the state and recommends using the projections for the gauge closest to the project site. In this case, the North Spit tide gauge at Humboldt Bay is the applicable gauge. The amount of SLR projected at the North Spit tide gauge for the year 2100 (i.e., through the projected “expected lifespan” of the proposed development) ranges from 4.1 feet (under the “low-risk aversion” scenario) to 7.6 feet (under the “medium-high risk aversion” scenario) to 10.9 feet (under the “extreme risk aversion” scenario).⁴

The current mean higher high water (elevation at the North Spit tide gauge, which is the daily high tide, is approximately 6.5 feet NAVD 88, and the mean annual maximum water (MAMW) elevation at the North Spit tide gauge is approximately 8.8 feet NAVD 88.⁵ Future water levels in the year 2100 under the medium-high risk scenario cited above (adding 7.6 feet of SLR) are projected to range from 14.1 feet on a daily basis (MHHW) to 16.4 feet during the highest tides of the year. Consideration of the medium-high risk scenario (+7.6 ft.) is appropriate in this case, because the private institutional facility as designed has a relatively low capacity to adapt to risks associated with tidal

⁴ The OPC projections are based on different scenarios related to future emissions and concentrations of greenhouse gases, aerosols, and other climate drivers. As recommended by the OPC guidance, for the year 2100, the “low risk aversion” scenario is derived from taking the upper range of the 66% probability range for “RCP-8.5,” which is the “Representative Concentration Pathway” that assumes there will be no significant efforts to reduce emissions globally. The “medium-high risk aversion” projection is derived from the upper range of the 0.5% probability range for RCP-8.5. The “extreme risk aversion” projection is based on presumed ice sheet loss in Greenland and the Antarctic.

⁵ Northern Hydrology and Engineering 2015. MHHW and MAMW are two tidal base elevations that have been used in various regional SLR planning documents to assess community vulnerability and to depict projected daily and annual high tides resulting in the Humboldt Bay region.

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

As previously discussed, the property ranges from an elevation of around 8 feet at its lowest point near the bottom of the driveway and pond area to over 40 feet at the highest points near the south end of the property. The existing and proposed new structures and proposed new septic system will be located at elevations ranging from approximately 25 to 35 feet, well above the medium-high risk aversion projected sea levels for the year 2100. To adapt to projected increased flood levels in the coming decades, the pond can likely withstand anticipated flooding with no detrimental effects, but the driveway may need to be raised over time to ensure safe continued access to the site. According to the wetland delineation report (Exhibit 6), there are existing upland areas adjacent to the driveway where fill material could incrementally be placed over time if and when needed to accommodate elevated driveway access. Plans to raise the driveway would be coordinated with any plans developed by the County and Caltrans to raise Indianola Cutoff Road and Indianola Road and may require a new or amended CDP.

Special Condition 3 requires the applicant to assume the risks of undertaking development in part in an inherently hazardous area and to waive any claim of liability on the part of the Commission. To ensure that all future owners of the property are aware of the flood hazard present at the site, the Commission's immunity from liability, and the indemnity afforded the Commission, **Special Condition 2** requires recordation of a deed restriction that imposes the special conditions of the permit as covenants, conditions, and restrictions on the use of the property.

The project does not include a proposed shoreline protective device and, as redevelopment and new development, the project is not entitled to shoreline protection now or in the future.⁶ If the project were to be in need of a shoreline protective device in the future to be safe from hazards, the project could not be found consistent with several Coastal Act policies (including, but not limited to, Section 30253(b) cited above) due to the many adverse impacts shoreline protective devices have on coastal resources. Coastal Act limitations on armoring are necessary because shoreline armoring can and often does have a variety of significant negative impacts on coastal resources, including, but not limited to, adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline and beach dynamics on and off-

⁶ Section 30235 of the Coastal Act requires approval of shoreline protective devices only when necessary to protect an "existing" structure or coastal-dependent use in danger of erosion, neither of which applies to this residential project.

site, ultimately resulting in the loss of beaches and adverse impacts to coastal vistas and areas for recreation, which are all fundamental coastal resources. Therefore, the Commission rarely approves construction of shoreline protective devices for new development projects due to the articulated impacts.

The applicant has not proposed to construct a shoreline protection device, and no shoreline protection will be authorized by this permit. However, the applicant or a successor-in-interest could request a shoreline protection device at some point in the future. Although the project site is not a bayfront site, and it appears the project will be safe from coastal hazards in the short-term, due to the flooding risks associated with siting development in this area of Humboldt Bay over the long-term and projections that the area between the project site and bay waters will narrow with sea level rise, it must be clear that as new development, the entire development approved by this permit is not entitled to a shoreline protection device now or in the future. The applicant bears the risk of developing in this hazardous area with the knowledge that a shoreline protective device is not consistent with the Coastal Act and would not likely be approved if requested at some point in the future. Accordingly, in addition to Special Condition 3, the Commission imposes **Special Condition 4**, which prohibits future shoreline protective devices for the approved development and requires the applicant to waive any rights to shoreline protection that may exist under applicable law.

It is also important to ensure that any risks that lead to the site or development becoming unsafe and/or that lead to access to it (including roads or utilities) not being available are also internalized by the Applicant and that such circumstances be codified as requiring removal and/or relocation. Therefore, **Special Condition 4** requires the landowner to remove the development if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, essential services to the site can no longer feasibly be maintained due to coastal hazards, or if the development requires new or augmented shoreline protection inconsistent with the Coastal Act.

Coastal hazards and shoreline protective devices also raise public trust concerns. The common law public trust doctrine protects the public's right to access tidelands, submerged lands, and navigable waters, which the State holds in trust for the public's use and enjoyment. This doctrine is enshrined in California's Constitution, which provides in Article 10, section 4, that no individual may "exclude the right of way" to any "frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State." Cal. Const. Art. 10, Sec. 4. The Constitution further directs the Legislature to enact laws that give the most "liberal construction" to Article 10, section 4, so that access to navigable waters of the State "shall be always attainable for the people." The Commission has a responsibility to implement the Coastal Act in a manner that protects public trust resources and public trust uses both now and in the future.

As discussed above, future sea level rise will cause the landward migration of the intersection of tidal areas with the shore and, thus, the tidelands and submerged lands that are public trust resources. If development is protected by shoreline protection or other fixed development that prevents the landward migration of the shoreline that

would have otherwise occurred, sea level rise will in many cases cause the narrowing and eventual loss of beaches, dunes and other shoreline habitats, as well as the loss of offshore recreational areas. This narrowing, often referred to as “coastal squeeze,” can lead to the loss of trust resources in this manner. To the extent that shoreline armoring contributes to erosion and blockage of the natural inland migration of the tidelands and shoreline, and thus results in the loss of public access to tidelands and submerged lands, their construction is inconsistent with the State’s obligation to protect the public’s right to access these areas. In addition, the Commission must consider impacts to the public trust that are caused by upland or upstream development outside the trust boundary, including as a result of sea level rise.⁷

Moreover, private residential and institutional uses are not public trust uses. The public trust boundary is an ambulatory line in most locations, and as erosion occurs or sea levels rise, the public trust boundary will move inland as the mean high tide line moves inland. As the shoreline migrates inland, structures may become located on public trust lands, occupying land that would otherwise be available for public access, ecosystem services and other coastal resource benefits held in trust for the public. This permit does not authorize development on public trust lands; if the public trust boundary migrates landward to encompass the development approved under this CDP, the development may need to be removed pursuant to **Special Condition 4**, unless the Commission determines that the encroachment is legally permissible.

For all of the reasons discussed above, the proposed project, as conditioned, minimizes risks to life and property and assures stability and structural integrity. The Commission finds that the proposed project, as conditioned, is consistent with Coastal Act section 30253.

H. Protection of Coastal Waters

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

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

⁷ The California Court of Appeals describes this distinction as follows: “As a consequence, the dispositive issue is not the source of the activity, or whether the water that is diverted or extracted is itself subject to the public trust, but whether the challenged activity allegedly harms a navigable waterway.” *Env’tl. Law Found. et al. v. State Water Res. Control Bd.*, 26 Cal.App.5th 844 (2018).

water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

As previously mentioned, three distinct types of wetlands are located on the subject property, including a pond, forested riparian wetlands, and herbaceous wetlands. However, most of the proposed development will remain within existing disturbed areas and avoid sensitive habitat areas. Where aspects of development encroach within ESHA buffers, vegetation buffers are proposed to protect adjacent wetlands. In addition, impermeable areas on the site will be reduced from about 18,506 square feet to 15,072 square feet, an 18.56% decrease in impervious surfaces. Stormwater treatment basins will be constructed to improve onsite retention and treatment of stormwater and to reduce the quantity of pollutants entering adjacent wetlands. Lastly, protective fencing will be installed to prevent physical encroachment into wetland areas.

To ensure that the applicant adheres to appropriate construction-related best management practices (BMPs) for dust control and other water quality protection measures, the Commission attaches **Special Condition 6**. This condition requires, in part, the proper disposal of construction-related debris, the covering of stockpiles whenever there is a potential for rain to prevent polluted water runoff from the site, and the use of appropriate BMPs for erosion and runoff control as detailed in the current California Storm Water Quality Best Management Handbooks.

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

I. Visual Resources

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

The applicants propose, amongst other things, improvements to an existing 4,872-square-foot three-story, single-family residence. The residence was constructed in 1938 in a Colonial Revival architectural style, and although it is not currently listed on the Local Register of Historic Places (LRHP) or the California Register of Historic Resources (CRHR), it would likely qualify for listing. Therefore, all modifications to the building will undergo architectural historian review and follow the Secretary of the Interior's Standards for the Treatment of Historic Properties [see Exhibit 2, Site Plan sheet A7]. The City has completed Design Review for the proposed changes to the structure, and the project has been found to be compatible with the neighborhood.

The project site is not located within a designated scenic area but is slightly west of a Humboldt County designated Coastal Scenic Area applied to the Walker Point Road and Indianola areas. Forested areas and agricultural and open space/natural resource uses surround the area and provide visual screening to the site, preventing views of existing or proposed structures by travelers on Highway 101 to the west or Indianola Cutoff Road to the east.

Although the development pattern is largely hidden from public view due to dense vegetative growth surrounding the site, there is potential for the nighttime character of the area to be impacted by outside illumination, given that this is an area with relatively minimal exterior lighting. Accordingly, to prevent the cumulative impacts of light pollution on the visual resources of the area, the Commission attaches **Special Condition 8**, which requires that all exterior lighting associated with the proposed development be low-wattage and downcast shielded such that no glare is directed beyond the bounds of the property or into adjoining coastal waters or environmentally sensitive areas.

Finally, the project includes approximately 997 cubic yards of cut from the project site and approximately 1,390 cubic yards of fill. However, because fill will essentially restore the site to its preconstruction elevation, because only 2 (nonnative and ornamental) trees will be removed, and because no other form of land-altering development will occur, the project as proposed minimizes the alteration of natural landforms, consistent with 30251.

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

J. Protection of Archaeological Resources

Coastal Act section 30244 states as follows:

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

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

After consulting with the Native American Heritage Commission (NAHC) to obtain the current tribal consultation list for the proposed development site, Commission staff referred the project to the NAHC-recommended tribal contacts and other tribal

representatives with known interest in the project area region.⁸ It was requested by the Tribal Historic Preservation Officers of the Bear River Band of Rohnerville Rancheria and the Blue Lake Rancheria that a condition related to inadvertent discovery be included on the CDP. The Blue Lake Rancheria THPO stated that the Rancheria would be supportive of a Tribal Monitor from the Wiyot Tribe being present on site, if the Wiyot Tribe were to recommend that a Tribal Monitor be present for ground-disturbing activities. Additionally, the THPO from the Bear River Band of Rohnerville Rancheria requested that a tribal monitor be present during all ground-disturbing activities. No response was received from the Wiyot Tribe.

Therefore, to ensure protection of any archaeological resources that may be inadvertently discovered at the site during ground-disturbing activities associated with the proposed development, the Commission attaches **Special Condition 5**. This condition requires that a tribal monitor or appointed qualified cultural resource specialist approved by the Wiyot Tribe in coordination with Blue Lake Rancheria and Bear River Band of Rohnerville Rancheria be on-site as recommended during ground-disturbing activities. Additionally, if cultural resources are discovered during the course of the project, the condition requires that all construction must cease and not recommence until a qualified cultural resource specialist analyzes the significance of the find in compliance with state and federal laws. To recommence construction following discovery of cultural deposits, the Permittee is required to notify the Executive Director of any changes to the project required to ensure protection of cultural resources in the project area and obtain a permit amendment for changes the Executive Director determines are not de minimis in nature and scope.

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

K. California Environmental Quality Act (CEQA)

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

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

⁸ Commission staff referred to project (via email) to tribal representatives on December 13, 2022.

would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency as if set forth in full. No public comments regarding potential significant adverse environmental effects of the project were received by the Commission prior to preparation of the staff report. As discussed above, the project has been conditioned to be consistent with the policies of the Coastal Act. As specifically discussed in these above findings, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts, either individually or cumulatively, which the activity may have on the environment. Therefore, the Commission finds that the proposed development, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

1-22-0251 (Sorrel Leaf Healing Center Inc.)

APPENDIX A

Application File for CDP Application No. 1-22-0251

City of Eureka Consolidation Request