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formerly F11b

DATE: Prepared January 20, 2012 for the February 10, 2012 Meeting

TO: Coastal Commissioners and Interested Parties

FROM: Charles Lester, Executive Director
Robert S. Merrill, North Coast District Manager
James R. Baskin AICP, Coastal Planner

SUBJECT: **Appeal No. A-1-ARC-12-003** (Humboldt State University Advancement Foundation, Local CDP-090-037), Appeal by Commissioners Brennan and Bloom of City of Arcata decision approving a coastal development permit to the Humboldt State University (HSU) Foundation / Trustees of the California State University for redevelopment of a 7.3 acre site, which is used as HSU's corporation yard, physical plant, shipping and receiving center, stops, warehousing center, and construction management offices. The project consists of remodeling the existing building, replacing existing fencing, patching small portions of the existing pavement and eventual repaving, adjustments to site access including an extended driveway, landscaping, hazardous material abatement, and the addition of ADA-compliant restrooms, a fire sprinkler system, doors and locker rooms, an elevator, new service doors, new roof, new paint, ceilings and flooring. The project is located at 1601 Samoa Boulevard, Arcata, Humboldt County.

Appeal filed: January 13, 2012; 49th day: March 2, 2012.

Recommendation: Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which Appeal No. A-1-ARC-12-003 has been filed and that the Commission hold a *de novo* hearing.

Staff recommends a **NO** vote on the following motion & resolution:

Motion & Resolution. I move that the Commission determine and resolve that: Appeal No. A-1-ARC-12-003 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Following the staff recommendation, by voting “NO,” the result will be adoption of the following findings and the Commission conducting a *de novo* review of the application. Passage of this motion, via a “YES” vote, thereby rejecting the staff recommendation, will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

The Coastal Act presumes that an appeal raises a substantial issue of conformity of the approved project with the certified LCP, unless the Commission decides to take public testimony and vote on the question of substantial issue.

IMPORTANT NOTE:
THE COMMISSION WILL NOT TAKE PUBLIC TESTIMONY DURING THE
SUBSTANTIAL ISSUE PHASE OF THE APPEAL HEARING UNLESS
THREE COMMISSIONERS REQUEST IT.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review at the same or subsequent meeting. The Commission will not take public testimony during this phase of the appeal hearing unless three Commissioners request it.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellant and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. Oral and written public testimony will be taken during this *de novo* review which may occur at the same or subsequent meeting.

Findings:

1. Project and Site Description

On December 13, 2011, the Arcata Planning Commission approved the *HSU Corporation Yard* development project, consisting of the redevelopment of an approximately 7.3 acre site, used as

HSU's corporation yard, physical plant, shipping and receiving center, stops, warehousing center, and construction management offices. The authorization includes the construction of 16,415 square feet of new paved delivery vehicle driveway area, remodeling the existing building, replacing existing fencing, patching small portions of the existing pavement and eventual repaving, adjustments to site access including an extended driveway, landscaping, hazardous material abatement, the addition of ADA compliant restrooms, a fire sprinkler system, doors and locker rooms, an elevator, new service doors, new roof, new paint, ceilings and flooring, and the construction of a five-space, gravel surfaced off-street parking public access support facility.

The development site is located at 1601 Samoa Boulevard (State Route 255) at the westernmost edge of the City of Arcata. The subject property, comprised of two parcels for a combined 7.3-acre area, abuts the highway frontage and extends southerly onto the reclaimed former tidelands of Humboldt Bay. The site is currently improved with an existing two-story, 43,006-square-foot building which formerly housed an industrial-commercial electrical motor repair and service firm. The front 2/3 of the building, its rear flank, and the western side of the property are developed with an array of asphalt-concrete surfaced off-street parking lots, driveways, and delivery truck maneuvering areas which lead to a series of freight doors along the rear of the building, representing another 1.42 acres of impervious surface. The remaining portions of the property with the exception of a roughly ¾-acre previously filled area comprise emergent wetlands totaling approximately 3.33 acres in size. These wetlands are a remnant of the former use of the site for cattle grazing, and consist primarily of a mixture of non-native pasture grasses together with an assortment of hydrophytic forbs and other pioneering species. These wetlands interconnect with other scrub-shrub and riverine wetlands adjoining Humboldt Bay within the adjacent McDaniel Slough Enhancement Project and Arcata Marsh and Wildlife Sanctuary complex to the south. The six-acre parcel (APNs 021-191-006 & 505-251-13) along the highway frontage is planned and zoned Coastal Heavy Industrial with Wetland and Creek Protection Combining Zone,” (“C-I-H:WCP”), while the 1.3-acre parcel to the rear of the property is designated “Coastal Agricultural Exclusive” (“C-A-E”).

2. Appeal

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the approved development is located (a) between the sea and the first public road paralleling the sea; and (b) within 100 feet of a wetland (See Appendix A).

Commissioner-Appellants Bloom and Brennan claim the development as approved by the City is inconsistent with the policies and standards of the City of Arcata certified LCP because: (1) filling wetlands to construct new delivery vehicle driveway through-circulation is not a permissible use; (2) feasible alternatives to filling the wetlands exist that would achieve the project objectives of establishing a corporation yard use; and (3) the development has not provided feasible mitigation to minimize adverse environmental effects (see Exhibit No. 4).

3. Substantial Issue Analysis

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.¹ Commission staff has analyzed the City's Notice of Final Local Action for the development (Exhibit No. 5), appellants' claims (Exhibit No. 4), and the relevant requirements of the LCP (Appendix C).

Staff recommends that the Commission find that the appeal raises a substantial issue of conformance of the approved development with respect to the policies of the certified LCP regarding the protection of wetlands as explained below.

Permissible Use for Diking, Filling, and Dredging of Wetlands: The approved wetlands filling is for the development of a longer, newly extended delivery driveway, which, while owned by Humboldt State University's (HSU) non-profit corporation, is currently shorter and in limited use over a smaller geographic areas for warehousing and other campus support functions. Coastal Land Use Element (CLUE) *Development Constraints* Policy IV-4 and *Dredging, Diking, Filling, and Shoreline Structures* Policy E-1, and Sections 1-0228.11(b)(1)(i), 1-0228.12(a), and 1-0312.2 of the Coastal Land Use and Development Guide (CLUDG) limit the allowable uses for fill in wetlands to the same kinds of uses for which filling of wetlands is permitted under Section 30233 of the Coastal Act. None of these policies specifically enumerate grading and filling of wetlands for the purposes of developing newly extended delivery vehicle driveways.

The wetlands development provisions of the City's LCP impose a 3-part test for projects involving wetland fill: (a) the allowable use test; (b) the alternatives test; and (c) the mitigation test. Under the first of these tests the question is whether the project qualifies as an allowable use for filling wetlands. The project record for the approved development includes a memorandum prepared by the applicant's consultant that identifies the purpose of the grading and filling of wetlands for the approved driveway as being a form of "incidental public service purposes" as identified in CLUE Development Constraints Policies IV-4, and E-1, and CLUDG Sections 1-0228.11 and 1-0312.2. However, to qualify as an incidental public service purpose, the wetlands fill being undertaken must demonstrate that: (a) it provides a "public service" insofar as it confers benefits onto the public, either at large, or to the segment served by the public entity; and (b) is "incidental," within the meaning of that term as it is used in the LCP and the Coastal Act (i.e., is ancillary and appurtenant to an existing public service purpose).

With respect to the "public service" nature of the approved newly extended through driveway use, no direct benefit would be reasonably afforded to the public, either as a whole, or to the university community the facility supports. As a corporation yard, entailing such activities as a materials shipping and receiving, warehousing, and trans-

1 The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: (a) the degree of factual and legal support for the local government's decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and (e) whether the appeal raises only local issues, or those of regional or statewide significance.

shipment terminal, plant operations fabrication facility, and campus construction administrative offices, the project site would be accessible only to a small subset of authorized University staff and delivery vehicle drivers rather than to the public, as a whole, or even by other HSU staff, faculty, or students. The ownership of the property is presently vested to the Humboldt State University Advancement Foundation, an Internal Revenue Code Section 501(c) organization, rather than as “public land” held by Humboldt State University. Accordingly, the benefits of developing newly extended driveway facilities through the site wetlands are not for public purposes but rather would be for the convenience of delivery vehicle drivers and the staff of the corporation yard. Consequently, the purported public service use of the driveway extension to an established is in question. Therefore, a substantial issue is raised as to whether the approved wetlands fill would be for a “public service purpose.”

Regarding whether the proposed fill is incidental to an existing public service purpose, the authorized fill would be in an area of the site where no such driveway paving currently exists and where no delivery vehicle circulation use occurs for which the approved filling of wetlands would be incidental. Additionally, a statement in the project record prepared by the applicant indicates that the driveway extension is needed to better separate delivery vehicle use from users of a future public access parking lot and pathway approved by the City elsewhere on the site. However, there are presently no public access facilities on the project site and no requirement that such facilities be specifically developed on the subject property. Thus, no public infrastructure exists at the project site for which the authorized filling of wetlands would be incidental.

In approving the subject wetlands filling for the newly extended driveway construction, the City characterized the facility as a form of “road” for which the Commission’s *Interpretative Guidelines for Wetlands and Wet Environmentally Sensitive Habitat Areas*, incorporated by reference into the City’s LCP at CLUDG Sections 1-0228.10 and 1-0228.12, allow for wetland fill for an “incidental public service purpose,” for limited expansion of roadbeds necessary to maintain existing traffic capacity (see Attachment “C,” Section 3, Footnote 3). However, a substantial issue is raised as to whether the approved driveway paving project qualifies as a limited expansion of an existing “road capacity needed to maintain existing traffic capacity.” In past permitting and local coastal program certification actions, the Commission has limited application of such a classification to activities associated with improvements to existing publicly-accessible surface transportation roadbeds along their established alignments. Although the approved wetlands filling for the through driveway would connect an existing asphalt surfaced delivery vehicle maneuvering area with a stubbed paved apron at the properties state highway frontage, the approved driveway would consist of completely new construction through a portion of the property with no history of use for delivery vehicle transit. As the proposed driveway extension essentially constitutes new road construction and an intensification of onsite circulation through a portion of the site currently not used for such vehicle routing, a substantial issue is raised as to whether the proposed road extension therefore qualifies as a limited expansion of an existing roadbed needed necessary to maintain existing traffic capacity.

The City's findings for permit approval also cite "nature study, aquaculture, or similar resource dependent uses" as being a permissible use for which the filling and grading of wetlands were authorized. This finding was based on the approved project's inclusion of the development of public access facilities along the western side of the project site, namely the dedication of a 30-foot-wide access easement leading and a five-space off-street trailhead parking lot. The City's rationale for citing this facility in the permitting of wetland filling for the new delivery vehicle driveway was that the presence of such a public access use would necessitate the segregation of outgoing traffic from the vicinity of the accessway facilities.

In its oral presentation at the Planning Commission hearing², City staff characterized the access facilities as being required to be constructed on the project property as part of the Commission's actions on a coastal development permit granted for the *McDaniel Slough Enhancement Project* (see Coastal Development Permit File No. 1-06-036, City of Arcata, Applicant). However, a review of Coastal Development Permit No. 1-06-036 indicates no such requirement: While the City was required to provide a "trail linkage to Samoa Boulevard," including the construction of a small parking lot, as had been proposed by the City, the location of these facilities, were indicated on materials provided by the City, as intended to be developed on adjoining City and private parcels, to the north and west respectively, with only limited crossing of the access driveway through the project site being envisioned.³

Furthermore, no filling or grading of wetlands would be directly involved in the construction of any of the approved coastal access improvements and support facilities. The City's coastal development permit does not approve or require any public access use of the driveway for which wetland fill was approved. Thus, a substantial issue of conformance is raised by the appeal with respect to whether the approved wetlands fill is for permissible "nature study, aquaculture, and similar resource dependent uses."

The Commission therefore concludes that the appeal raises a substantial issue of consistency of the approved wetland fill with the policies and standards of the certified LCP with respect to permissible uses for wetlands filling. The public record for the project lacks factual and legal support for the City's decision to approve the wetland filling component of the development as being a permissible use consistent with the certified LCP. Additionally, the decision to approve the wetland fill for the driveway extension would set a precedent with respect to how the City may interpret its LCP in future permitting actions.

Therefore, as there are significant questions regarding whether the approved wetland fill for the new driveway extension is for incidental to public service purposes, and given that the approved fill would not be for one of the other uses enumerated within CLUE Policies IV-4 and E-1, and CLUDG Sections 1-0228.11 and 1-0312.2, the Commission

2 See http://arcata.granicus.com/MediaPlayer.php?view_id=6&clip_id=1125 at 10:53-12:53

3 See Special Condition No. 13 and Exhibit No. 5 on pages 2 and 60, respectively, of the staff report and addendum for CDP No. 1-06-036: <http://documents.coastal.ca.gov/reports/2007/6/F12b-6-2007.pdf>

finds that the appeal raises a substantial issue regarding consistency of the project as approved by the City with the LCP provisions regarding permissible uses for the filling, diking, and dredging of wetlands.

Feasible Least Environmentally Damaging Alternative: CLUDG Sections 1-0228(b), 1-0228.12(a)2), and 1-0312.3 require that wetland fill only be allowed if the fill involved is for the least environmentally damaging feasible alternative. Under these policies and standards, even if the fill was for an allowable use, which, as discussed above, the Commission finds there is a substantial issue as to whether that is the case, wetland fill may only be allowed if the fill involved is for the least environmentally damaging feasible alternative. The City findings indicate the filling of the emergent wetlands under approved Modified Alternative F would be the least environmentally damaging feasible alternative. However, other than describing a series of full and partial build out development scenarios of the wetland areas on the site, the City findings provide no substantive analysis of project alternatives that address other feasible options to the grading and filling of over 1/3-acre of the roughly seven-acre site that would achieve the same delivery vehicle ingress, egress, and maneuvering objectives.

As enumerated in the appeal, several potential feasible options are available for managing onsite vehicular circulation without further paving over the emergent onsite wetlands, including, possibly in some combination of: (1) a “no project” alternative, defined as entailing the use of the existing non-through driveway configuration and utilizing alternate facility layouts and transport operational practices, utilizing smaller heavy-duty FHWA Class 8 and 9 commercial motor vehicles with shorter trailer lengths which could maneuver through the site on its existing driveway surfaces, and/or developing the public access off-street parking support facility improvements at another location; and (2) investigating other similar sized, appropriately zoned and designated upland properties where the proposed corporation yard uses could be feasibly conducted. By failing to investigate any of these other alternate project configurations to the approved onsite wetlands filling and grading, as required by CLUDG Section 1-0228.12, the infeasibility of other feasible less environmentally damaging alternatives was not factually established. Further, with regard to other offsite alternatives mentioned above, the findings for the approved project provide no analysis to substantiate that no such project alternatives existed, counter to the directives of the *Statewide Interpretative Guidelines for Wetlands and Wet Environmentally Sensitive Habitat Areas*, as incorporated as a criterion in the review of environmentally less damaging feasible alternatives for purposes of authorizing of dredging, diking, and filling of wetlands in CLUDG Section 1-0228.12(a)3) (see Attachment “C”, pages 24-25, and Exhibit No. 6). The applicable *Guidelines* citation observes that:

“...feasible” is defined in Section 30108 of the Coastal Act to mean “...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” The Guidelines continue on to state that, “A feasible less environmentally damaging alternative may involve a location for the proposed development which is off the project site on lands not owned by the applicant. Feasible under the Coastal Act is not confined to economic considerations. Environmental, social

and technological factors also shall be considered in any determination of feasibility.” [Emphasis added.]

As discussed above, the City did not critically assess other practicable alternatives to the approved filling and grading of wetlands for purposes of delivery vehicle circulation. Consequently, the public record for the project lacks substantive factual and legal support for the City’s decision to approve the development as being consistent with the requirements of the certified LCP that no feasible less environmentally damaging alternative to the authorized project exists. Additionally, the decision to approve such development without consideration of other feasible, less environmentally damaging alternatives would set an adverse precedent with respect to how the City may interpret its LCP in future permitting actions. Therefore the Commission finds that the appeal raises a substantial issue regarding consistency of the development as approved by the City with the requirements of CLUDG Sections 1-0228(b), 1-0228.12(a)2), and 1-0312.3 of the City’s certified LCP that, in approving the filling, diking, and dredging of wetlands, no feasible, less environmentally damaging alternative exist.

Consistency with Wetlands Impact Mitigation Policies: CLUE *Development Constraints* Policy IV-4 and *Dredging, Diking, Filling, and Shoreline Structures* Policy E-1, and CLUDG Sections 1-0228.7(c), 1-0228.10(5), 1-0228.11(b)(2), 1-0228.12(a)2), and 1-0312.2 require that feasible mitigation measures to minimize adverse environmental effects be provided with any project involving the filling of wetlands. The approved development entails construction activities to be conducted within and adjacent to wetlands and other environmentally sensitive areas (ESHA) specifically enumerated within the LCP at CLUE Appendix D *Water and Marine Resources*, namely “marshlands” along the periphery of Arcata Bay. As approved, the development would mitigate the direct loss of the 16,415 square-feet of wetlands to be filled and graded for the construction of the new driveway through the onsite restoration of previously filled wetlands at a minimum 2:1 compensatory replacement ratio subject to an approved preliminary wetlands mitigation and monitoring plan (see Exhibit No. 5, page 13, and Exhibit No. 8, respectively).

However, there is no information in the project record demonstrating that the approved grading and filling of wetlands include feasible mitigation measures that would adequately offset the direct loss of wetlands being filled. Although the approved wetlands mitigation and monitoring plan included many of the requisite contents specifically set forth in CLUDG Section 1-0228.7(c) for such documents, these documents do not substantiate why a 2:1 replacement ratio would provide adequate compensation for the wetlands that would be filled by the driveway construction. For example no analysis was provided as to how the wetlands mitigation site at the approved replacement ratio would be adequate to offset: (a) the *in situ* loss of hydrologic storage and highway runoff water quality bio-filtration functions provided by the wetlands to be filled; (b) the temporal loss of wetlands function during establishment of the replacement wetlands; and (c) the uncertainty of first-round success of creating wetland habitat and function. Accordingly, the adequacy of the approved 2:1 compensatory mitigation in its approved location has not been established.

Additionally, there is inadequate information in the project record as to whether the approved grading and filling of areas adjacent to wetlands and other ESHA has been designed and sited to prevent significantly degrading impacts to such adjoining areas, or would be compatible with the continuance of nearby habitat areas. These area resources include habitat for a wide variety of resident and migratory waterfowl, shorebirds, wading birds, songbirds, and raptors. A smaller number of mammals, amphibians and reptiles also inhabit the area. Several significant species of fish have been found in the adjoining coastal watercourses, including *coho* salmon (*Oncorhynchus kisutch*), listed as endangered federally and as a threatened species in California, steelhead (*Oncorhynchus mykiss*) a state-listed threatened species, coastal cutthroat trout (*Oncorhynchus clarki*), a California species-of-special-concern, and tidewater goby (*Eucyclogobius newberryi*), federally listed as endangered and a California species-of-special-concern. Numerous avian species are also known to commonly forage near the site include the northern harrier (*Circus cyaneus*), white-tailed kite (*Elanus leucurus*), Great blue heron (*Ardea herodias*), and Snowy egret (*Egretta thula*). In addition, three plant species enumerated on the California Native Plants Society's "List 1B" and "List 2"⁴ of rare native plants, Humboldt Bay Owl's Clover (*Castilleja ambigua* ssp. *humboldtensis*), Point Reyes Birdsbeak (*Cordylanthus maritimus* ssp. *palustris*), and Lyngbye's sedge (*Carex lyngbyei*), are found in the general vicinity of the project area.

The approved mitigation and monitoring plan contains a very limited discussion of the resources in the surrounding areas the project site borders, primarily limited to recitations of species listed appearing in the California Department of Fish and Game's Natural Diversity Data Base for the *Arcata South 7½* minute topographic quadrangle, plant species encountered in the immediate vicinity of the project site structure, and anecdotal reports of raptor use of the area. With regard to the typical scope and detail of such investigations, the *Interpretative Guidelines* note:

To meet the statutory requirements of Sections 30230, 30231, 30233, 30236, and 30240 of the Coastal Act, the applicant for a permit to develop within or near an environmentally sensitive habitat area may be required to submit supplemental information... The size of the study area will depend upon natural topographic features, location of existing development, and potential biological significance of adjacent lands. In undeveloped areas, the required study may extend 500 feet or more around the environmentally sensitive habitat area...

A report should be prepared which demonstrates that all of the criteria for development in environmentally sensitive habitat have been met. The report

4 Pursuant to the Native Plant Protection Act (NPPA) and the California Endangered Species Act (CESA), plants appearing on the California Native Plant Society's "List 1B" and "List 2" meet the definition as species eligible for state listing as a rare, threatened, or endangered plant. List 1B plants are defined as "rare plant species vulnerable under present circumstances or to have a high potential for becoming so because of its limited or vulnerable habitat, its low numbers of individuals per population (even though they may be wide ranging), or its limited number of populations." List 2 plants are defined as "plants rare, threatened, or endangered in California, but more common elsewhere." The NPPA mandates that plants so listed be considered in the preparation of all environmental analyses conducted pursuant to the California Environmental Quality Act (CEQA).

should investigate physical and biological features existing in the habitat area and evaluate the impact of the development on the existing ecosystem... The report should be based on an on-site investigation, in addition to a review of the existing information on the area, and should be sufficiently detailed to allow the Commission [or delegated local government hearing body] to determine potential immediate and long range impacts of the proposed project. [Emphasis added.]

In addition to the failure to document the adequacy of the approved wetlands mitigation and monitoring plan, including the replacement wetlands, on the biological resources of the surrounding area, the City deferred the requirement of CLUDG Section 1-0306.2 for the preparation of a prior to authorization landscaping plan which would have detailed the particular plant species that would be used in landscaping the existing building, grounds, and public access parking lot support facility. In the absence of such a plan, there is no information in the record that site landscaping would avoid impacts to the biological integrity of the area from the introduction of exotic invasive plant species or other genetically incompatible plantings.

Consequently, there is insufficient information to establish that the development has provided feasible mitigation to minimize adverse environmental effects to wetlands and other environmentally sensitive areas adjoining the project site. Thus, the record for the project lacks substantive factual and legal support for the City's decision to approve the development as being consistent with the requirements of the certified LCP that feasible mitigation measures be provided to minimize adverse environmental effects. Additionally, the decision to approve such development that might adversely effect aquatic and water resources would set an adverse precedent with respect to how the City may interpret its LCP in future permitting actions. Therefore, for all of the above reasons, the Commission finds that the appeal raises a substantial issue regarding consistency of the approved project with CLUE *Development Constraints* Policy IV-4 and *Dredging, Diking, Filling, and Shoreline Structures* Policy E-1, and CLUDG Sections 1-0228.7(c), 1-0228.10(5), 1-0228.11(b)(2), 1-0228.12(a)2), and 1-0312.2.

4. Summary of Findings

Overall, the City has not adopted findings that provide factual and legal support for its determination that the approved fill of wetlands conforms with the pertinent LCP policies. The approval of the proposed filing, dredging, and diking of the subject emergent wetlands for impermissible uses establishes an adverse precedent for allowing similar fill for other projects where there is a substantial issue of conformance with the LCP wetland fill, ESHA, and water quality policies. The protection of the biological productivity and quality of coastal waters, and environmentally sensitive wetlands is an issue of statewide concern addressed by Sections 30230, 30231, and 30233 of the Coastal Act, as it has been long established that coastal waters, and wetlands in particular, provide significant public benefits, such as fish and wildlife habitat, water quality filtration and recharge, flood control, and aesthetic values.

For the reasons stated above, the Commission finds that Appeal Number A-1-ARC-12-003 raises a substantial issue with respect to the grounds on which the appeal has been filed under Section

30603 of the Coastal Act regarding consistency of the approved development with the certified Local Coastal Program.

5. Information Needed for *De Novo* Review of Application

Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the information identified below.

Alternatives Analysis: As discussed above, to make the necessary findings that the proposed wetland fill is the least environmentally damaging feasible alternative pursuant to CLUDG Sections 1-0228(b), 1-0228.12(a)2), and 1-0312.3, an analysis of the feasibility and relative impact of alternative development site configurations and offsite project development options is needed. The alternatives analysis should examine additional alternatives, either to be implemented independently or in conjunction with one another, such as: (1) a “no project” alternative, wherein the existing driveway and maneuvering paved areas are utilized for onsite delivery vehicle circulation, employing shorter tractor and trailer lengths, with and without development of the public access facilities in their approved location; and (2) investigating other similar sized, appropriately zoned and designated upland properties where the proposed corporation yard uses could be feasibly conducted in whole or in part such that the filling of wetlands could be avoided.

Evaluation of Mitigation Adequacy: As discussed above, other than conclusory observations that no net loss of wetlands would result from the project and the anticipated likely enhanced viability of the replacement wetlands compared to that of the wetlands authorized to be filled, no analysis was provided regarding the adequacy of the approved 2:1 compensatory replacement wetlands mitigation and monitoring plan. As evaluation is needed addressing how the replacement wetlands would adequately mitigate for both the direct and indirect loss of the wetlands to be filled, in functional and temporal terms. The analysis should also include additional field surveyed information as to the specific biological resources situated in the adjoining *McDaniel Slough Enhancement Project*, *Arcata Marsh and Wildlife Sanctuary*, and *Mad River Slough Wildlife Area* complex, within a 500-foot proximity to the approved development, with regard to their sensitivity to disturbance and what, if, any additional mitigation measures would be warranted to

their protection from significant adverse impacts of the adjoining site development and uses.

Analysis of Plan and Zoning Consistency: The project record does not clearly establish that the approved corporation mixed uses and public access facility activities and improvements are consistent with the principally- or conditionally permissible uses enumerated for the Coastal Heavy Industrial and Agricultural Exclusive and Natural Resource Protection land use and zoning standards. In addition there is no comprehensive discussion of the approved project's compliance with all applicable zoning district prescriptive development standards. A supplemental analysis of the approved uses' conformance with these land use plan and zoning regulations is needed to conclude the development's consistency with these portions of the LCP.

Comprehensive Visual Resources Impacts Analysis: To review consistency with CLUE Development Constraints Policies IV-15 and IV-16, a comprehensive visual resources impact analysis is needed. The analysis should evaluate the effects the project would have on views to and along the ocean and scenic areas from the principal public vantage points in the project vicinity, including the project site's full Samoa Boulevard frontage, from the *McDaniel Slough Enhancement Project, Arcata Marsh and Wildlife Sanctuary*, and *Mad River Slough Wildlife Area* parklands and scenic areas, and lateral landward views from the publicly-accessible portions of the adjoining Reclamation District levee along Arcata Bay.

Landscaping Plan: To assess both the biological and visual resource implications of the proposed corporation yard building and grounds site and the approved public access off-street parking lot landscaping, a landscaping plan is needed. The plan should contain adequate detail as to the types and location of plantings to be utilized, as well as information as to the areas' maintenance and upkeep such that conformance with CLUDG Section 1-0306 may be established.

Public Access Facilities Dedication Information: To review the project's consistency with Coastal Act and LCP public access provisions, clarification is needed regarding what, if any, access facilities would be provided by the development and how such facilities, if any, would be offered for dedication, accepted by a qualified agency or entity, and the time, place, and manner the facility would be available for use by the public. This information should address how access at the site would integrate with accessways previously required to be developed on properties adjoining the project site. The description of any proposed new access facilities should include site map depiction of their location and improvement, standards, identify any limitations on their use, and detail how the facilities would be formally dedicated and who would assume title, and detail management responsibilities for the facilities' upkeep and maintenance.

Without the above information, the Commission cannot reach a final determination concerning the project's consistency with the policies of the certified LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above identified information.

APPENDICES:

APPENDIX “A:” COMMISSION’S Appeal Jurisdiction over Project

APPENDIX “B:” Coastal Act Policies Cited in Substantial Issue Analysis

APPENDIX “C:” EXCERPTS from the City of Arcata Certified Local Coastal Program

EXHIBITS:

1. Location Map
2. Vicinity Map
3. Site Aerial
4. Appeal Filed by Commissioners Richard Bloom and Brian Brennan, January 13, 2012
5. *Notice of Final Local Action*, Coastal Development Permit No. CDP-090-037
6. Excerpts, *Statewide Interpretative Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas*
7. *Wetland Mitigation and Monitoring Plan* (Winzler and Kelly, April, 2011)

APPENDIX “A”

COMMISSION’S APPEAL JURISDICTION OVER PROJECT

On December 13, 2011, the City of Arcata Planning Commission approved Coastal Development Permit No. CDP-090-037 for redevelopment of a 7.3-acre site, which is used as which is used as HSU's corporation yard, physical plant, shipping and receiving center, stops, warehousing center, and construction management offices. The project consists of remodeling the existing building, replacing existing fencing, patching small portions of the existing pavement and eventual repaving, adjustments to site access, landscaping, hazardous material abatement, and the addition of ADA compliant restrooms, a fire sprinkler system, doors and locker rooms, an elevator, new service doors, new roof, new paint, ceilings and flooring. The project is located at 1601 Samoa Boulevard, Arcata, Humboldt County.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is located (a) between the sea and the first public road paralleling the sea; and (b) within 100 feet of a wetland.

The decision of the Planning Commission was not appealed at the local level to the City Council. The City then issued a Notice of Final Action, which was received at the Commission’s North Coast District Office on December 22, 2011 (Exhibit No. 5). Section 13573 of the Commission’s regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

One appeal was filed with the Commission’s North Coast District Office on January 13, 2012 from Commissioners Brennan and Bloom (Exhibit No. 4). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the City's Notice of Final Action.

ATTACHMENT “B”

COASTAL ACT POLICIES CITED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30108 Feasible

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

Section 30230 Marine resources; maintenance

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

Section 30231 Biological productivity; water quality

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

Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients

(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 basins, 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 disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.

(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. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30236 Water supply and flood control

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply

projects, (2) flood control projects where no other method for protecting existing structures in the flood plain 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 30240 Environmentally sensitive habitat areas; adjacent developments

(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.

Section 30603 Appeal of actions taken after certification of local program; types of developments; grounds; finality of actions; notification to Commission

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

(5) Any development which constitutes a major public works project or a major energy facility.

(b) (1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

(2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards

set forth in the certified local coastal program and the public access policies set forth in this division.

(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.

(d) A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.

Section 30621 De novo hearings; notice; time; filing of appeals

(a) The commission shall provide for a de novo public hearing on applications for coastal development permits and any appeals brought pursuant to this division and shall give to any affected person a written public notice of the nature of the proceeding and of the time and place of the public hearing. Notice shall also be given to any person who requests, in writing, such notification. A hearing on any coastal development permit application or an appeal shall be set no later than 49 days after the date on which the application or appeal is filed with the commission.

(b) An appeal that is properly submitted shall be considered to be filed when any of the following occurs

(1) The executive director determines that the appeal is not patently frivolous pursuant to subdivision (d) of Section 30620.

(2) The five-day period for the executive director to determine whether an appeal is patently frivolous pursuant to subdivision (d) of Section 30620 expires without that determination.

(3) The appellant pays the filing fee within the five-day period set forth in subdivision (d) of Section 30620.

Section 30625 Persons who may appeal; powers of reviewing body; effect of decisions

(a) Except as otherwise specifically provided in subdivision (a) of Section 30602, any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the commission by an applicant, any aggrieved person, or any two members of the commission. The commission may approve, modify, or deny such proposed development, and if no action is taken within the time limit specified in Sections 30621 and 30622, the decision of the local government or port governing body, as the case may be, shall become final, unless the time limit in Section 30621 or 30622 is waived by the applicant.

(b) The commission shall hear an appeal unless it determines the following:

(1) With respect to appeals pursuant to subdivision (a) of Section 30602, that no substantial issue exists as to conformity with Chapter 3 (commencing with Section 30200).

(2) With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

(3) With respect to appeals to the commission after certification of a port master plan, that no substantial issue exists as to conformity with the certified port master plan.

(c) Decisions of the commission, where applicable, shall guide local governments or port governing bodies in their future actions under this division.

ATTACHMENT “C”

EXCERPTS OF LCP POLICIES AND STANDARDS CITED IN APPEAL

A. Land Use Plan

Coastal Land Use Element (CLUE) Section III – Environmental Constraints

- III-8. The City shall maintain the Natural Resource Protection designation on all tidelands and water areas of Arcata Bay, and shall declare that these areas are fragile coastal resources that require protection from uncontrolled access. The City shall use the following guidelines when permitting access to these areas:
- (a) Motorized vehicles should be restricted to paved roads and parking lots.
 - (b) Pedestrians should be restricted to designated trails and facilities.
 - (c) Valid scientific and educational studies of the wetlands and tidelands should be encouraged.

CLUE Section IV - Development Constraints

- IV-1. New development shall not restrict access to the shoreline. Access to coastal areas shall be required for new development. The City shall declare that the tidal and water areas of Arcata area fragile coastal resource that requires protection from uncontrolled access.
- IV-2. The City shall require a Use Permit or Nature Area Permit for any activity or development proposed in the Natural Resources Protection Zone.
- IV-4. Diking, filling, or dredging of Bay waters, wetlands, and estuaries shall be permitted where feasible mitigation measures have been provided to minimize adverse environmental effects, for the following limited uses:
- (a) For incidental public service purposes including, but not limited to, burying cables and pipes, and maintenance of existing dikes and public facilities;
 - (b) To maintain a channel adequate to serve the boat ramp at current levels of use;
 - (c) Resource restoration purposes;
 - (d) Nature study, aquaculture, or similar resource dependent activities;
 - (e) Agriculture within existing farmed wetlands but not including the expansion thereof.
- IV-14. The City shall identify the following areas as Coastal Scenic Areas:
- (a) Arcata Bay tideland and water areas;
 - (b) All land designated as Natural Resource Protection on the Land Use Map;
 - (c) All land between Highway 101 and Old Arcata Road designated Agriculture Exclusive on the Land Use Map;

- (d) All land on the western Arcata plain designated Agriculture Exclusive on the Land Use Map.

IV-15. The City shall follow the Environmental Impact Review procedures established in the Land Use and Development Guide for any proposed use in the Coastal Scenic Areas. An initial study that takes visual resources as a consideration shall be prepared to determine the appropriate environmental document. If it is determined that the proposed use would significantly alter the appearance of natural land forms, would significantly alter the appearance of existing land uses, or would significantly block views from existing public thoroughfares to the Bay, then no permit shall be issued unless it can be shown that the proposed use will serve to restore or enhance a visually degraded area.

IV-16. The City shall designate the following routes as Scenic Routes and shall establish guidelines to retain their scenic features: Old Arcata Road from the 7th Street Overcrossing to Crescent Drive; Bayside Cut-off from Highway 101 to Old Arcata Road; Samoa Boulevard (State Highway 255) from Sunny Brae to Manila; Janes Road from 11th Street to Simpson Mill; Highway 101 from Bayside Cut-off to Mad River; South "I" Street, from Highway 255 south; and South "G" Street from "H" Street to Highway 101.

CLUE Appendix E – Dredging, Diking, Filling, and Shoreline Structures

E-1 Diking, filling, or dredging of Bay waters, wetlands, and estuaries shall be permitted, where feasible mitigation measures have been provided to minimize adverse environmental effects, for the following limited uses:

- (a) For incidental public service purposes, including, but not limited to, burying cables and pipes, and maintenance of existing dikes and public facilities.
- (b) To maintain a channel adequate to serve the boat ramp at current levels of use.
- (c) Resource restoration purposes.
- (d) Nature study, aquaculture, or similar resource dependent activities.
- (e) Agriculture within existing wetlands, but not including the expansion thereof.

B. Implementation Plan

1. Permitting Processes

- a. Coastal Land Use and Development Guidelines (CLUDG) Chapter I, Article 4, Section 1-0408 Coastal Development Permits

Section 1-0408.2 Applicability.

...(c) Coastal Wetlands. All development in a wetland as shown on the adopted Coastal Wetlands Map shall be subject to the requirements of Section 1-0228 :WCP COMBINING ZONE...

(f) Diking, Dredging and Filling. All diking, dredging and filling Coastal Zone shall comply with the requirements of Section 1-0312 Diking, Dredging and Filling.

Section 1-0408.4 Findings.

A Coastal Development Permit may only be granted if the facts presented are such that the development conforms with the certified Coastal Land Use Element of the General Plan.

b. CLUDG Chapter I, Article 4, Section 1-0402 Conditional Use Permits

Section 1-0402.1 Purpose.

These provisions are intended to prescribe the procedures for the accommodation of uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, and shall apply to all proposals for which a conditional use permit is required.

Section 1-0402.3 Findings.

A conditional use permit may be granted if the facts prescribed are such as to establish:

- (a) That the proposed use at the size and intensity contemplated, and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community;
- (b) That such use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to the property improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
 - (1) The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures;
 - (2) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;
 - (3) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
 - (4) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and
- (c) That such use or feature as proposed will comply with the applicable provisions of this chapter and will be consistent with the policies and standards of the Arcata General Plan.

c. CLUDG Chapter I, Article 5 Additional Provisions

Section 1-0506 Conflict with Other Regulations and Private Agreements.

Where conflict occurs between the provisions of this Ordinance and the building code or other regulations effective with the City the more restrictive of any such regulations shall apply. It is not intended that this Ordinance shall interfere with or abrogate or annul any easements, covenants or other agreements now in effect, provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger open spaces than are imposed or required by such agreements, the provisions of this ordinance shall control.

Section 1-0507 Effect on Previous Issued Permits.

Except as specifically herein provided, it is not intended by this ordinance to impair or interfere with any permits previously adopted or issued relating to the erection, construction, establishment, moving, alteration, or enlargement of any buildings or improvements.

2. Applicable Wetlands Development Provisions

a. Zoning Requirements

CLUDG Chapter I, Article 2, Section 1-0228 Wetland and Creek Protection or :WCP Combining Zone

Section 1-0228.7 Procedures.

This subsection addresses procedures for reviewing development involving area in the :WCP Zone. Discretionary projects involve review procedures beyond those here. It is the intent of this ordinance that development with respect to the :WCP zone be processed in the manner usual for the particular type of development ...

- (c) Mitigation. If mitigation will be necessary to comply with this Section, an application for any project in the :WCP Zone shall include a Mitigation Plan pursuant to this subsection. The Mitigation Plan, and any additional mitigation established through the review and approval process shall be included among the conditions of approval of whatever permit is required pursuant to subsection 1-0228.6 Permits Required. Mitigation, including mitigation monitoring, shall be pursuant to CHAPTER IV. ARTICLE 1: ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE.

The applicant shall be responsible for developing (or retaining a consultant to develop) the mitigation plan. The Mitigation Plan shall include the following:

1. Statement of the project goals with respect to mitigation.
2. Time of year the project will be conducted.

3. Description of site preparation activities.
4. Planting materials and methods to be used.
5. Performance standards; defined criteria to measure success of the mitigation.
6. Drawings, maps, or illustrations necessary to adequately describe proposed mitigation.
7. Five-year monitoring plan.
8. Remediation measures (contingency plan).

Section 1-0228.10 Information Necessary for Review in the :WCP Zone.

Applicants for development involving the :WCP Zone shall submit part or all of the following additional information, depending on the size and complexity of the project, as determined by the Zoning Administrator:

- Wetland Delineation: as specified in subsection 1-0228.5 (b) (1).
- Topographic Base Map; scale no smaller than 1 inch 400 feet.
- Existing and Proposed Contour Map; contour intervals no less than 5 feet.
- Inundation Map showing the permanent seasonal pattern of inundation.
- Vegetation Map showing the location and scientific name of plant species and plant associations.
- Soils Map showing soil types and including a physical description of their characteristics, and site-specific characteristics contained within the soil profile.
- Supplemental Information including the following:
 - (1) Present extent of the habitat;
 - (2) Previous and existing ecological conditions;
 - (3) Present and potential adverse physical and biological impacts on the ecosystem;
 - (4) Alternatives to the proposed development including different projects and off-site alternatives;
 - (5) A Mitigation Plan, including including [*sic*] restoration measures and proposed buffer areas, pursuant to subsection 1-0228.7 (c) Mitigation (Procedures);
 - (6) Any other information that the Zoning Administrator deems necessary in order to analyze a project.

The above list of information items is based on the Section II. B. of the “Statewide Interpretative Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas[”] produced by the California Coastal Commission. This Section of the Statewide Guidelines should be referred to for clarification of list items.

Section 1-0228.11 Standards And Requirements.

... (b) WETLANDS. The following standards shall apply to all area identified as wetlands. There are some differences between standards for Wetlands located in the Coastal Zone, and standards for Wetlands outside the Coastal Zone. These are specified in (1) Exceptions, below.

- (1) Exceptions.
 - (i) Coastal Zone.Filling shall be pursuant to Section 1-0312 DIKING, FILLING OR DREDGING and the applicable provisions of this Section, only where there is no feasible less environmentally damaging alternative...
- (2) Mitigation For Filling Wetlands. In addition to the procedures set forth in subsection 1 - 0228.7 (c) Mitigation [Procedures], it is the intent of these regulations that the California Environmental Quality Act (CEQA), as set forth in CHAPTER IV. ARTICLE I: ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE, be followed to address the environmental impacts associated when filling of wetlands, for any reason, is allowed pursuant to the regulations specified in this Section...
- (4) Permitted Activities. Except as provided in (1) Exceptions, above, activities in wetlands shall be limited to the following:
 - (i) resource restoration projects;
 - (ii) outdoor passive recreational activities such as bird watching, hiking, boating, horseback riding, canoeing, and any other activities that will not adversely impact wetland functions;
 - (iii) education, scientific research, and use of nature trails;
 - (iv) the maintenance of drainage ditches. Construction of drainage ditches is only allowed pursuant to (1) Exceptions, above;
 - (v) normal maintenance, repair or operation of existing serviceable structures, facilities, or improved areas;
 - (vi) minor modification of existing serviceable structures where modification does not adversely impact wetland functions.

Section 1-0228.12 Required Findings in the :WCP Zone.

- (a) WETLANDS. Development in or adjacent to wetlands shall be found to meet the Coastal Wetlands Development Standards if the facts prescribed are sufficient to establish:
 - 1) the project is in compliance with the Arcata General Plan, including, if applicable, the Land Use Element of the City of Arcata's Local Coastal Program; and
 - 2) if located in the Coastal Zone, the project is in compliance with Section 30233 and all other applicable sections of the latest version California Coastal Act; and
 - 3) the project is in compliance with the Statewide Interpretative Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas."

b. Wetland Development Regulations

CLUDG Chapter I, Article 3, Section 1-0312 Diking, Filling or Dredging

Section 1-0312.2 Standards and Requirements in the Coastal Zone

These standards shall apply in the Coastal Zone, in addition to standards specified in 1-0312.3 (Standards and Requirements City-wide), and 1-0312.4 (Minimum Adverse Environmental Effects and Mitigation Measures), below.

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, Coastal Creek Zones, and lakes shall be permitted in accordance with other applicable provisions of this code only when there is no feasible less environmentally damaging alternative, and when feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: ...

5. 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...
8. Nature study, aquaculture, or similar resource dependent activities...
- (d) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

Section 1-0312.3 Standards and Requirements City-wide

- (a) Dredging, diking, and filling in a wetland may only occur pursuant to standards set forth in this section and in subsection 1-0228.11 (b) (Wetland Development Standards)...
3. Landscaping and Screening of New Development Regulations

CLUDG Chapter I, Article 3, Section 1-0306 Landscaping and Screening

Section 1-0306.2 Standards and Requirements.

- (a) Landscape Plan. A landscape plan shall be required for all new development except for projects exempt from review by the Design Review Committee pursuant to Chapter IV Article 2.

Where required, the landscape plan shall be reviewed by the Design Assistance Committee pursuant to CHAPTER IV ARTICLE 2: DESIGN REVIEW PROCEDURE. The Design Review Committee may determine that a landscape plan is not required for minor additions or enlargements...

- (b) Maintenance. All required planting shall be maintained in good growing condition. A written maintenance plan shall be included in the landscaping plan. This plan shall indicate the party responsible for maintenance and shall address the following: pruning, weeding, cleaning, fertilizing, and water provision.

Whenever necessary, planting shall be replaced with other plant materials to ensure continued compliance with applicable landscaping requirements.

- (c) **Materials.** The plant material selected shall be capable of healthy growth within the given range of soil and climate. Where trees are required, they shall be of a species, degree of maturity, and spacing acceptable to the Design Review Committee. A minimum size of five (5) gallons for each tree is required.

Where dense landscaping to a specified height is prescribed, the landscaping shall be of a type which will provide a year-round barrier at the prescribed heights, and shall be so spaced that vision of objects of the opposite side is effectively eliminated. The height requirement should be reached in a maximum of three to five years.

Plant materials which are capable of withstanding summers without irrigation and those which are solar friendly and wildlife friendly shall be encouraged and may be required where appropriate...

- (e) **Minimum Landscaped Area Requirement.** As established by each Zoning District; where not established by zoning district, then as specified during the development review process...

C. Cited “Latest Version” of Coastal Act Section 30233

Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients

- (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 basins, 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 disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.
- (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. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.
For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where the improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.
- (d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area. [Amended by: Ch. 673, Stats. 1978; Ch. 43, Stats. 1982; Ch. 1167, Stats. 1982; Ch. 454, Stats. 1983; Ch. 294, Stats. 2006]

D. Cited "Statewide Interpretative Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas" [Excerpts]

...III. WHEN IS DEVELOPMENT PERMITTED IN AN ENVIRONMENTALLY SENSITIVE HABITAT AREA?

...B. Requirements for Additional Project Information.

To meet the statutory requirements of Sections 30230, 30231, 30233, 30236, and 30240 of the Coastal Act, an applicant for a permit to develop within or near an environmentally sensitive habitat area may be required to submit supplemental information, including any or all of the maps described below. The size of the study area will depend upon natural topographic features, location of existing development, and potential biological significance of adjacent lands. In undeveloped areas, the required study area may extend 500 feet or more around the environmentally sensitive habitat area, but the 500 foot distance is not an absolute standard...

1. Maps

- a. Topographic base map. The base map should be at a scale sufficiently large to permit clear and accurate depiction of vegetative associations and soil types in relation to any and all proposed development (normally the scale required will be 1"=200'). Contour intervals should be five feet, and the map should contain a north arrow, graphic bar scale, and a citation for the source of the base map (including the date}. The map should show the following information:...
2. Supplemental information

A report should be prepared which demonstrates that all of the criteria for development in environmentally sensitive habitat areas have been met. The report should investigate physical and biological features existing in the habitat area and evaluate the impact of the development on the existing ecosystem. The information should be prepared by an ecologist or professional environmental scientist with expertise in the ecosystem in which the development is proposed. For example, in preparing such a report for a proposed development in a salt marsh, the expertise of a qualified wetland ecologist, botanist, ornithologist, hydrologist, soil scientist or other technical professional may be required. The report should be based on an on-site investigation, in addition to a review of the existing information on the area, and should be sufficiently detailed to enable the Commission to determine potential immediate and long range impacts of the proposed project.

The report should describe and analyze the following:...

- d. Alternatives to the proposed development, including different projects and off-site alternatives...

IV. DEVELOPMENTS PERMITTED IN WETLANDS AND ESTUARIES

Of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection. In order to approve a project involving the diking, filling, or dredging of a wetland or estuary, the Commission must first find that the project is one of the specific, enumerated uses set forth in Section 30233 of the Act (these developments and activities are listed in section A. and B. below). The Commission must then find that the project meets all three requirements of Section 30233 of the Act. In addition, permitted development in these areas must meet the requirements of other applicable provisions of the Coastal Act.

A. Developments and Activities Permitted in Wetlands and Estuaries...

5. Incidental public service purposes which temporarily impact the resources of the area, which include, but are not limited to, burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines (roads do not qualify)³... [Emphasis added.]
7. Nature study...or similar resource-dependent activities⁶...

D. Requirements for All Permitted Development

Any proposed project which is a permitted development must also meet the three statutory requirements enumerated below, in the sequence shown:

1. Diking, filling or dredging of a wetland or estuary will only be permitted if there is no feasible¹⁰ less environmentally damaging alternative (Section 30233(a)). The Commission may require the applicant to submit any or all of the information described in section III. B. above.
2. If there is no feasible less environmentally damaging alternative, feasible mitigation measures must be provided to minimize adverse environmental effects...
 - b. If the project involves diking or filling of a wetland, required minimum mitigation measures are the following:¹²
 - 1) If an appropriate restoration site is available, the applicant shall submit a detailed restoration plan which includes provisions for purchase and restoration of an equivalent area of equal or greater biological productivity¹³ and dedication of the land to a public agency or otherwise permanently restricts its use for open space purposes. The site shall be purchased before the dike or fill development may proceed...

A preferred restoration program would remove fill from a formerly productive wetland or estuary which is now biologically unproductive dry land and would establish a tidal prism necessary to assure adequate flushing. Few if any restoration projects have been implemented for a sufficient length of time to provide much guidance as to the long-term restorability of such areas. Since such projects necessarily involve many uncertainties, restoration should precede [*sic*] the diking or filling project. At a minimum [*sic*], the permit will be conditioned to assure that restoration will occur simultaneously with project construction. Restoration and management plans shall be submitted with the permit application.

The restoration plan should generally state when restoration work will commence and terminate, should include detailed diagrams drawn to scale showing any alterations to natural landforms, and should include a list of plant species to be used as well as the method of plant introduction (i.e., seeding, natural succession, vegetative transplanting, etc.).

The management plan would constitute an agreement between the applicant and the Commission to guarantee the wetland is restored to the extent established under stated management objectives and within a specified time frame.

The plan should describe the applicant's responsibilities in maintaining the restored area to assure the Commission that the project will be successful. The management plan should generally include provisions for a monitoring program and for making any necessary repairs or modifications to the mitigation site...

3. Diking, filling or dredging of a wetland or estuary must maintain or enhance the functional [sic] capacity of the wetland or estuary (Section 30233(c)). Functional capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity¹⁵. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:
 - a. That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance and composition are essentially unchanged as a result of the project.
 - b. That the project does not harm or destroy a species or habitat that is rare or endangered.
 - c. That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary.
 - d. That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem.
-

Footnotes

...³ When no other alternative exists, and when consistent with the other provisions of this section, limited expansion of roadbeds and bridges necessary to maintain existing traffic capacity may be permitted. Activities described in the Commission's Guideline on Exclusions from Permit Requirements applicable to roads also should be consulted... [Emphasis added.]

⁶ For the purposes of this guideline, similar resource-dependent activities include scientific research, hunting and fishing (where otherwise permitted). In addition, when wet lands are seasonally farmed, the continued use of agriculture is allowed. Expanding farming operations into non-farmed wetlands by diking or otherwise altering the functional capacity of the wetland is not permitted. Farm-related structures (including barns, sheds, and farm-owner occupied housing) necessary for the continuance of the existing operation of the farmed wetlands may be located on an existing farmed wetland parcel, only if no alternative upland location is available for such purpose and the structures are sited and designed to minimize the adverse environmental effects on the farmed wetland. Clustering and other construction techniques to minimize both the land area covered by such structures and the amount of fill necessary to protect such structures will be required...

¹⁰ "Feasible" is defined in Section 30108 of the Act to mean "...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." A feasible less environmentally damaging alternative may involve a location for the proposed development which is off the project site on lands not owned by the applicant. Feasible under the Coastal Act is not confined to economic considerations. Environmental, social and technological factors also shall be considered in any determination of feasibility.

- ¹² Mitigation measures shall not be required for temporary or short-term fill or diking, if and only if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. For the purposes of this guideline, short-term generally means that the fill or dikes would be removed immediately upon completion of the construction of the project necessitating the short-term fill or diking (Section 30607.1).
- ¹³ For an area to be of “equal or greater biological productivity,” it must provide equivalent or greater habitat values to the same type and variety of plant and animal species which use the area affected by the proposal...
- ¹⁵ The intention here is to convey the importance of not only how many species there are but also the size of their populations (abundance) and the relative importance of the different species to the whole system (composition). It cannot be overemphasized that the presence of a species by itself is an inadequate indicator of the condition of a natural system. In a “healthy” wetland ecosystem, the absolute number of individuals of a species and the relative number compared to other species will depend on the size of the organism and its place in the food web (what it feeds on, what feeds on it, and what competes with it for the same food or other resources). Major changes in absolute or relative numbers of some species will have far-reaching consequences for the whole ecosystem because of their interactions with other species...

D. Coastal Act Access and Recreation Policies (Public Resources Code, Division 20, Chapter 3, Article 2 - Public Access and Article 3 - Recreation)

Section 30210 Access; recreational opportunities; posting

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

Section 30211 Development not to interfere with access

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

Section 30212 New development projects

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

exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5 Public facilities; distribution

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 Lower cost visitor and recreational facilities; encouragement and provision; overnight room rentals

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214 Implementation of public access policies; legislative intent

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

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

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

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220 Protection of certain water-oriented activities

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 Oceanfront land; protection for recreational use and development

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 Private lands; priority of development purposes

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30222.5 Oceanfront lands; aquaculture facilities; priority

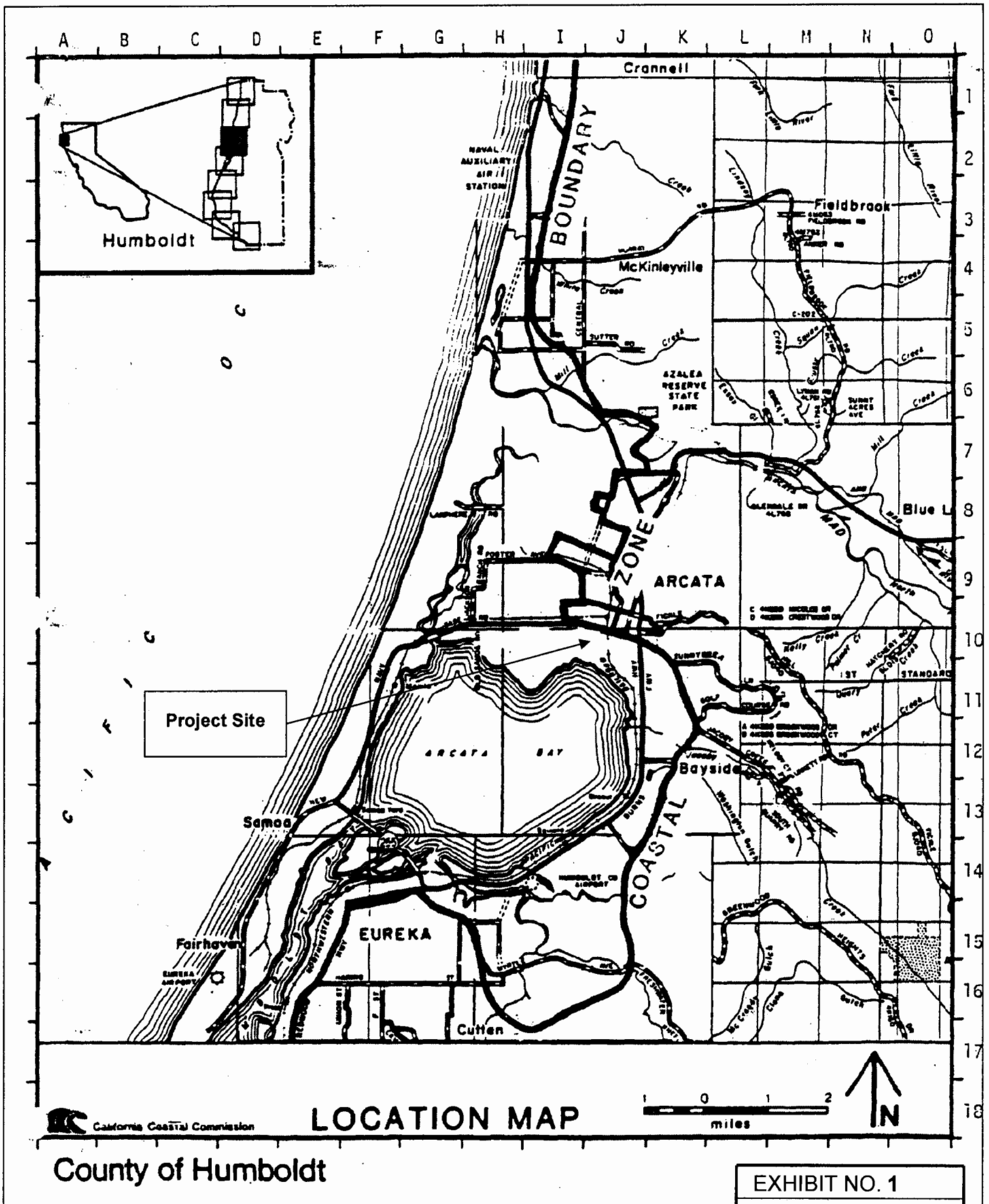
Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

Section 30223 Upland areas

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224 Recreational boating use; encouragement; facilities

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.



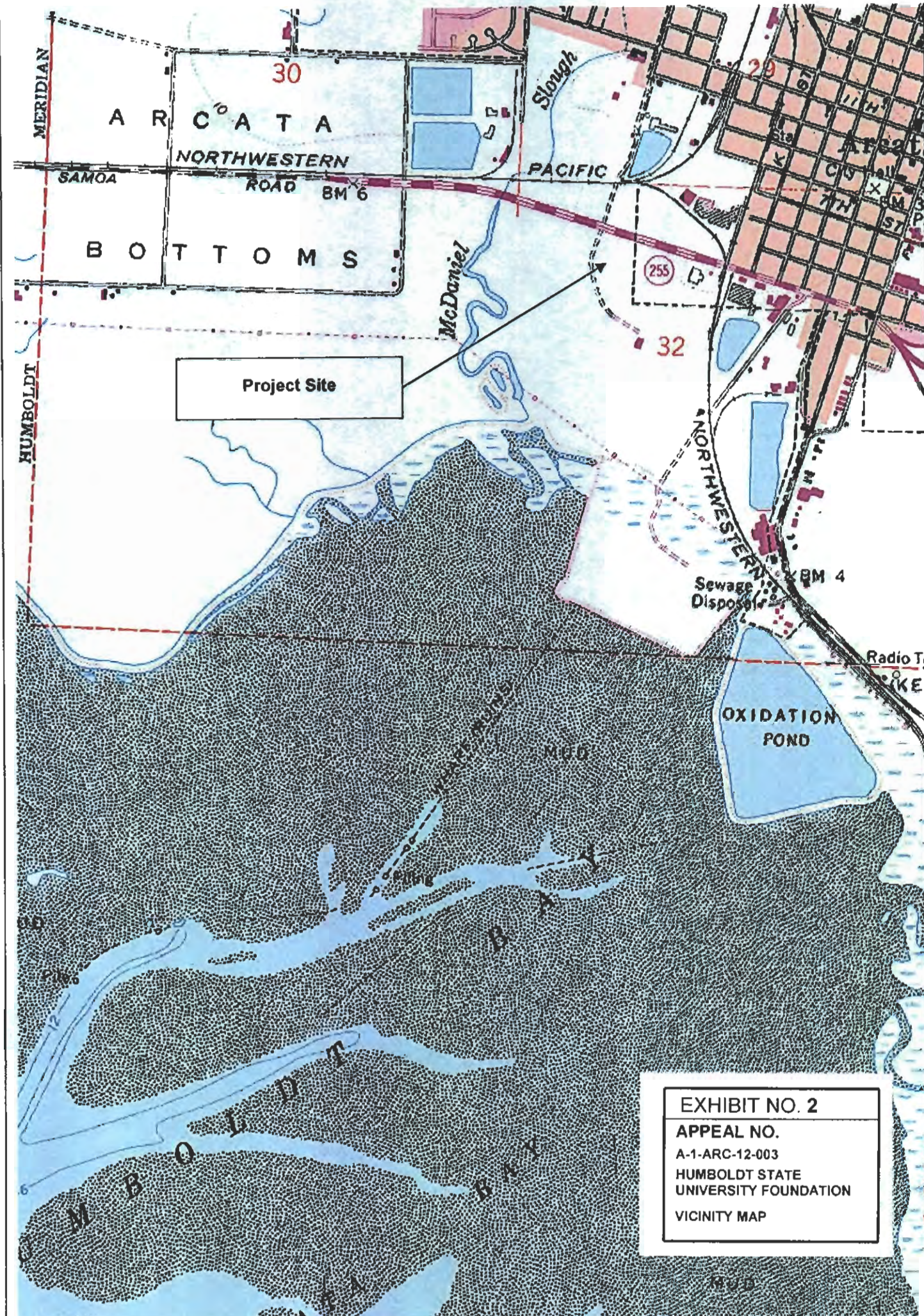


EXHIBIT NO. 3

APPEAL NO.

A-1-ARC-12-003

HUMBOLDT STATE
UNIVERSITY FOUNDATION

SITE AERIAL

Project Site

McDaniel Slough
Enhancement Project

Arcata Marsh and
Wildlife Sanctuary

Mad River Slough
Wildlife Area

Arcata Bay

Samoa Blvd

255

9th St
8th St
7th St
6th St
5th St
4th St
3rd St
2nd St
1st St

1st St

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET • SUITE 200

EUREKA, CA 95501

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name	SEE ATTACHMENT A		
Mailing Address:			
City:	Zip Code:	Phone:	

EXHIBIT NO. 4

APPEAL NO.

A-1-ARC-12-003 - HUMBOLDT
STATE UNIVERSITY FOUNDATIONAPPEAL FILED BY
COMMISSIONERS BLOOM &
BRENNAN, 1/12/12 (1 of 26)SECTION II. Decision Being Appealed

1. Name of Local/Port Government:

City of Arcata

2. Brief description of development being appealed:

HSU Corporation Yard Project - consisting of the redevelopment of an approximately 7.3 acre site, used as HSO's corporation yard, physical plant, shipping and receiving center, stops, warehousing center, and construction management offices. The project includes the construction of 16,415 square-feet of new paved delivery vehicle driveway area, remodeling the existing building, replacing existing fencing, patching small portions of the existing pavement and eventual repaving, adjustments to site access, landscaping, hazardous material abatement, the addition of ADA compliant restrooms, a fire sprinkler system, doors and locker rooms, an elevator, new service doors, new roof, new paint, ceilings and flooring, and the construction of a five-space, gravel surfaced off-street parking public access support facility.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

1601 Samoa Boulevard, Arcata (Humboldt County) (APN(s) 505-251-11 and -13, 21-191-06)

4. Description of decision being appealed (check one):

<input type="checkbox"/>	Approval; no special conditions
<input checked="" type="checkbox"/>	Approval with special conditions
<input type="checkbox"/>	Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:	A-1-ARC-12-003
DATE FILED:	JANUARY 13, 2012
DISTRICT:	NORTH COAST

5. Decision being appealed was made by (check one):

<input type="checkbox"/>	Planning Director/Zoning Administrator
<input type="checkbox"/>	City Council/Board of Supervisors
<input checked="" type="checkbox"/>	Planning Commission
<input type="checkbox"/>	Other

6.	Date of local government's decision:	December 13, 2011
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7.	Local government's file number (if any):	CDP-090-037
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SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper if necessary.)

a. Name and address of permit applicant:

Humboldt State University Advancement Foundation Attn: Gary Krietsch, Director of Planning & Design 1 Harpst Street Arcata, California 95521-8299
--

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Winzler & Kelly / GDH Consulting Attn: Misha Schwartz 718 Third Street Eureka, CA 95501
--

(2)

(3)

(4)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or the Commission to support the appeal request.

SEE ATTACHMENT B

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature on File

Signature of Appellant(s) or Authorized Agent

Date:

1/6/12

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date:

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: _____
Appellant or _____
Signature on File

Date: 1/13/12

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

ATTACHMENT A

SECTION I. Appellant(s)

1. Brian Brennan
45 Fremont Street, Suite 2000
San Francisco, CA 94105

(415) 904-5200
2. Richard Bloom
City of Santa Monica
P. O. Box 2200
Santa Monica, CA 90407-2200

(415) 904-5200

**ATTACHMENT B: REASONS SUPPORTING COASTAL DEVELOPMENT PERMIT
APPEAL NO. A-1-ARC-12-003 – HSU CORPORATION YARD**

The approved development is inconsistent with: (a) the certified LUP, including but not limited to Policies III-8, IV-1, IV-2, IV-4, and IV-15, as contained in Sections III *Environmental Constraints* and IV *Development Constraints*, respectively, of the Coastal Land Use Element of the City of Arcata's General Plan (herein "CLUE")—the City's certified Land Use Plan (LUP); (b) the implementing development regulations and standards of the Coastal Land Use and Development Guide (herein "CLUDG"), including but not limited to Sections 1-0228 *Wetlands and Creeks Protection Combining Zone*, 1-0312 *Diking, Dredging, or Filling in Coastal Zone Areas*, 1-0408 *Coastal Development Permits*, 1-0402 *Conditional Use Permits*, 1-0306 *Landscaping and Screening*, (see Attachment C containing cited LCP policies and standards); and (c) the public access and recreational policies of the Coastal Act (Public Resources Code Sections 30210 - 30224), for the following reasons:

A. Inconsistencies with LUP Wetland Policies and Coastal Zoning and Development Regulations Regarding Permissible Uses for, Less Environmentally Damaging Feasible Alternatives to, and Adequate Mitigation to Offset Impacts from, Filling, Diking, and Dredging of Wetlands

CLUE Development Constraints Policy Nos. IV-4 and E-1, and CLUDG Sections 1-0228.11 and 1-0312.2, and as set forth in incorporated by reference Coastal Act Section 30233(A), state that the diking, filling, or dredging of wetlands shall be permitted where: (1) the diking, dredging, and/or filling is for a permitted use enumerated in Policy IV-4 and CLUDG Sections 1-0312.2; (2) there is no feasible less environmentally damaging alternative; and (3) feasible mitigation measures have been provided to minimize adverse environmental effects.

1. Permissible Uses for Wetland Filling

CLUE Policy Nos. IV-4 and E-1 and CLUDG Sections 1-0228.11 and 1-0312.2 paraphrase the permissible uses enumerated in identified in Section 30233 of the Coastal Act, namely:

- Incidental public service purposes including, but not limited to, burying cables and pipes, and maintenance of existing dikes and public facilities;
- Maintenance of a channel adequate to serve the boat ramp at current levels of use;
- Resource restoration purposes;
- Nature study, aquaculture, or similar resource dependent activities;
- Agriculture within existing farmed wetlands but not including the expansion thereof;
- resource restoration projects;
- The maintenance of drainage ditches and construction of new drainage ditches subject to applicable wetlands standards and where there is no feasible less environmentally damaging alternative;
- 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; and
- Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

The development conditionally approved by the City is inconsistent with the above cited LUP policies and coastal land use and development standards from three perspectives: (1) the wetlands grading and filling development is not for a permissible use either under the wetlands filling provisions of LUP Policies IV-4 and CLUDG Sections 1-0228.11 and 1-0312.2 that apply to the wetlands on the site; (2) feasible environmentally less damaging alternatives to the filling of the project site wetlands exist; and (3) all feasible mitigation has not been provided to reduce significant impacts to the subject wetlands.

The project record for the approved development identifies the project purpose for the filling of wetlands for the development of a semi-circular delivery vehicle driveway system as being a combination of "incidental public service purposes" and "nature study... and other resource dependent uses," as identified in LUP *Development Constraints* Policy IV-4 and CLUDG Section 1-0312.2. "Incidental public service purposes" comprises actions that: (a) serve a public purpose; and (b) are incidental to an existing facility infrastructure.

The stated reason for the approved wetlands grading and filling is to develop a semi-circular driveway system around the periphery of an existing industrial-commercial building to allow adequate turning radii for ingress and egress and loading dock maneuvering area for FHWA Class 10 commercial motor vehicles with up to 42½-foot tractor trailer lengths. These modifications are being undertaken to facilitate delivery vehicle transportation associated with the use of the initiated use of the site as an off-campus warehousing and shipping-receiving center for Humboldt State University.¹ As the approved project also includes the development of a public coastal access off-street parking support facility, presented by the City as being mandated to be built on the subject project site, the rationale for the wetland filling associated with the driveway is also characterized as being for "nature study... and other resource dependent uses," although no filling would be involved in the construction of the accessway parking lot improvements. Moreover, considering that the approved new driveway construction

¹ The applicant has indicated that the property has been used in a limited capacity for several years by the University as a shipping & receiving and warehousing storage use. However, this permit action is the first undertaken by the applicant to fully establish the use on the site for the intended "corporation yard" use, including very basic and fundamental improvements that would typically be constructed upon the initiation of such a use type. Such baseline improvements include hazardous material abatement associated with the preceding industrial-commercial manufacturing and service use of the property, and the addition of federal and state-mandated Americans with Disabilities Act- and California Title 24-compliant restrooms, elevator, and entry public accommodations, a fire sprinkler system, locker rooms, and new service doors. Moreover, the ownership of the property is presently vested to the Humboldt State University Advancement Foundation, an Internal Revenue Code Section 501(c) organization, rather than as "public land" held by Humboldt State University. Consequently, the purported "incidental" of the proposed construction of the driveway extension to an *established* and *public* service use is tenuous at best.

would neither provide enhanced safety to the segment of the public the facility serves, namely the students of the California State University system, nor is incidental to an established existing through-driveway circulation system, the assertion that the filling and grading is for "incidental public service purposes" is inaccurate. The intended end use of the wetlands area to be filled and graded must be considered with respect to compliance with the permissible use requirements of LUP Development Constraints Policy No. IV-4 and CLUDG Sections 1-0312.2.

Therefore: (1) as the approved grading and filling of wetlands for resulting new delivery vehicle maneuvering and egress driveway area is not for incidental public service purposes, or for one of the other uses enumerated within *Development Constraints* Policy IV-4 and CLUDG Sections 1-0228.11 or 1-0312.2; and (2) no dredging, diking and filling would be directly involved in the construction of the approved public access facility improvements, the project as approved by the City is inconsistent with the LCP provisions regarding permissible uses for the filling, diking, and dredging of wetlands.

2. Alternatives. Other than an abbreviated review of the comparative effects that the varying degrees of full and near-full build-out of the project site would have on the environment, the City's findings for approval give no substantive consideration to alternatives to the proposed wetlands fill and grading project components. Instead, other project options that would also achieve the project's prime objective of establishing a corporation yard use were summarily dismissed, notwithstanding that the impacts on other biological resources would be lessened or avoided. Examples of these other possible project alternatives include: (1) a "no project" alternative, defined as entailing the use of the existing non-through driveway configuration and utilizing alternate facility layouts and transport operational practices, utilizing smaller heavy-duty FHWA Class 8 and 9 commercial motor vehicles with shorter trailer lengths which could maneuver through the site on its existing driveway surfaces, and developing the public access off-street parking support facility improvements at another location; and (2) investigating other similar sized, appropriately zoned and designated upland properties where the proposed corporation yard uses could be feasibly conducted.

In rejecting all other alternatives to the wetlands filling and grading, the City concluded that no other legally feasible option to the approved remedial actions exists. The rationale for this determination was partially based on the City misstating that the public access point and off-street parking support facility had been required by the Coastal Commission to be constructed along the western side of the subject property as part of the approval of the McDaniel Slough Wetland Enhancement Project. However, a review of Coastal Development Permit No. 1-06-036 indicates no such requirement: While the City was required to provide the "trail linkage to Samoa Boulevard," including the construction of a small parking lot, as had been proposed by the City, the location of these facilities were indicated as being developed on adjoining parcels, with only limited crossing of the access driveway through the corporation yard project site envisioned.²

² See Special Condition No. 13 and Exhibit No. 5 on pages 2 and 60, respectively, of the staff report and addendum for CDP No. 1-06-036: <http://documents.coastal.ca.gov/reports/2007/6F12b-6-2007.pdf>

Thus, the purported safety conflict between future public access and the truck traffic that the applicant presents as needing to be resolved by the development of the approved new driveway improvements in wetlands is both feasibly avoidable and overstated.

Further, with regard to other offsite alternatives mentioned above, the approved project provided no analysis to substantiate that any such project alternatives existed, regardless of the directives of the Statewide Interpretative Guidelines for Wetlands and Wet Environmentally Sensitive Habitat Areas, incorporated as a requisite requirement for the authorization of dredging, diking, and filling of wetlands in CLUDG Section 1-0228.12(a)3).³

Therefore, as LUP Policy No. IV-4 and CLUDG Sections 1-0228.10, 1-0228.11(b)(1)(i) and 1-0312.2 of the City's LCP require that wetland fill only be approved where there is no feasible, less environmentally damaging alternative exist. Given that the City did not critically assess alternatives to the approved filling and grading of wetlands for the purposed incidental public service purposes, the nonexistence of a feasible less environmentally damaging alternative was not established. Therefore the development as approved by the City is inconsistent with LUP Development Constraints Policy No. IV-4 and CLUDG Sections 1-0228.10, 1-0228.11(b)(1)(i) and 1-0312.2 of the City's certified LCP.

3. Mitigation Measures.

LUP Environmental Constraints Policy IV-4 and CLUDG Section 1-0312 also require that feasible mitigation measures be included to minimize adverse environmental impacts to wetlands. The approved project included provision for the development of onsite compensatory replacement wetlands at an approximately 2:1 areal ratio. However, no detailed mitigation plan, with contents as set forth by CLUDG Section 1-0228.7(c) and 1-0228.10 was prepared or considered in the review of the development. Moreover, the entirety of the open water and tideland areas of Arcata Bay and its margins adjoining the project site are declared by the LCP as "fragile coastal resources" for which the development of any new or restored wetlands areas should be assessed in terms of integration with the biological functions in the adjacent area, further underscoring the importance for consideration of a mitigation plan as part of the review of the development prior to its authorization. Accordingly, the adequacy of the approved 2:1 compensatory mitigation in its approved location has not been factually established. As such, the development as approved is inconsistent with LUP Policy IV-4 and CLUDG Sections 1-0312.2.

³ The applicable Guidelines citation directs: "'Feasible' is defined in Section 30108 of the Act to mean '...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.' A feasible less environmentally damaging alternative may involve a location for the proposed development which is off the project site on lands not owned by the applicant. Feasible under the Coastal Act is not confined to economic considerations. Environmental, social and technological factors also shall be considered in any determination of feasibility."

ATTACHMENT C:
CITED CITY OF ARCATA LCP AND COASTAL ACT POLICIES AND STANDARDS
APPEAL NO. A-1-ARC-12-001 – HSU CORPORATION YARD*

A. Land Use Plan

Coastal Land Use Element (CLUE) Section III – Environmental Constraints

- III-8. The City shall maintain the Natural Resource Protection designation on all tidelands and water areas of Arcata Bay, and shall declare that these areas are fragile coastal resources that require protection from uncontrolled access. The City shall use the following guidelines when permitting access to these areas:
- (a) Motorized vehicles should be restricted to paved roads and parking lots.
 - (b) Pedestrians should be restricted to designated trails and facilities.
 - (c) Valid scientific and educational studies of the wetlands and tidelands should be encouraged.

CLUE Section IV - Development Constraints

- IV-1. New development shall not restrict access to the shoreline. Access to coastal areas shall be required for new development. The City shall declare that the tidal and water areas of Arcata area fragile coastal resource that requires protection from uncontrolled access.
- IV-2. The City shall require a Use Permit or Nature Area Permit for any activity or development proposed in the Natural Resources Protection Zone.
- IV-4. Diking, filling, or dredging of Bay waters, wetlands, and estuaries shall be permitted where feasible mitigation measures have been provided to minimize adverse environmental effects, for the following limited uses:
- (a) For incidental public service purposes including, but not limited to, burying cables and pipes, and maintenance of existing dikes and public facilities,
 - (b) To maintain a channel adequate to serve the boat ramp at current levels of use;
 - (c) Resource restoration purposes;
 - (d) Nature study, aquaculture, or similar resource dependent activities;
 - (e) Agriculture within existing farmed wetlands but not including the expansion thereof.
- IV-14. The City shall identify the following areas as Coastal Scenic Areas:
- (a) Arcata Bay tideland and water areas;
 - (b) All land designated as Natural Resource Protection on the Land Use Map;
 - (c) All land between Highway 101 and Old Arcata Road designated Agriculture Exclusive on the Land Use Map;
 - (d) All land on the western Arcata plain designated Agriculture Exclusive on the Land Use Map.
- IV-15. The City shall follow the Environmental Impact Review procedures established in the Land Use and Development Guide for any proposed use in the Coastal Scenic

* Parentheticals in original; bracketed comments [in Arial font], references, and punctuation added. Emphases in **bold double-underlined Italicized text** added.]

Areas. An initial study that takes visual resources as a consideration shall be prepared to determine the appropriate environmental document. **If it is determined that the proposed use** would significantly alter the appearance of natural land forms, would significantly alter the appearance of existing land uses, or **would significantly block views from existing public thoroughfares to the Bay, then no permit shall be issued unless it can be shown that the proposed use will serve to restore or enhance a visually degraded area.**

- IV-16. **The City shall designate the following routes as Scenic Routes and shall establish guidelines to retain their scenic features:** Old Arcata Road from the 7th Street Overcrossing to Crescent Drive; Bayside Cut-off from Highway 101 to Old Arcata Road; **Samoa Boulevard (State Highway 255) from Sunny Brae to Manila;** Janes Road from 11th Street to Simpson Mill; Highway 101 from Bayside Cut-off to Mad River; South "T" Street, from Highway 255 south; and South "G" Street from "H" Street to Highway 101.

CLUE Appendix E – Dredging, Diking, Filling, and Shoreline Structures

- E-1 Diking, filling, or dredging of Bay waters, wetlands, and estuaries shall be permitted, where feasible mitigation measures have been provided to minimize adverse environmental effects, for the following limited uses:
- (a) For incidental public service purposes, including, but not limited to, burying cables and pipes, and maintenance of existing dikes and public facilities.
 - (b) To maintain a channel adequate to serve the boat ramp at current levels of use.
 - (c) Resource restoration purposes.
 - (d) Nature study, aquaculture, or similar resource dependent activities.
 - (e) Agriculture within existing wetlands, but not including the expansion thereof.

B. Implementation Plan

1. Permitting Processes

- a. **Coastal Land Use and Development Guidelines (CLUDG) Chapter I, Article 4, Section 1-0408 Coastal Development Permits**

Section 1-0408.2 Applicability.

...(c) **Coastal Wetlands. All development in a wetland as shown on the adopted Coastal Wetlands Map shall be subject to the requirements of Section 1-0228 :WCP COMBINING ZONE...**

(f) **Diking, Dredging and Filling. All diking, dredging and filling Coastal Zone shall comply with the requirements of Section 1-0312 Diking, Dredging and Filling.**

Section 1-0408.4 Findings.

A Coastal Development Permit may only be granted if the facts presented are such that the development conforms with the certified Coastal Land Use Element of the General Plan.

b. **CLUDG Chapter I, Article 4, Section 1-0402 Conditional Use Permits**

Section 1-0402.1 Purpose.

These provisions are intended to prescribe the procedures for the accommodation of **uses with special site or design requirements**, operating characteristics, **or potential adverse effects on surroundings, and shall apply to all proposals for which a conditional use permit is required.** [See CLUE Policy IV-2 above.]

Section 1-0402.3 Findings.

A conditional use permit may be granted if the facts prescribed are such as to establish:

- (a) That the proposed use at the size and intensity contemplated, and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community;
- (b) That such use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to the property improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
 - (1) The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures;
 - (2) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;
 - (3) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
 - (4) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and
- (c) **That such use or feature as proposed will comply with the applicable provisions of this chapter and will be consistent with the policies and standards of the Arcata General Plan** [i.e., the Coastal Land Use Element].

c. **CLUDG Chapter I, Article 5 Additional Provisions**

Section 1-0506 Conflict with Other Regulations and Private Agreements.

Where conflict occurs between the provisions of this Ordinance and the building code or other regulations effective with the City the more restrictive of any such regulations shall apply. It is not intended that this Ordinance shall interfere with or abrogate or annul any easements, covenants or other agreements now in effect, provided,

however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger open spaces than are imposed or required by such agreements, the provisions of this ordinance shall control.

Section 1-0507 Effect on Previous Issued Permits.

Except as specifically herein provided, *it is not intended by this ordinance to impair or interfere with any permits previously adopted or issued* relating to the erection, construction, establishment, moving, alteration, or enlargement of any buildings or improvements.

2. Applicable Wetlands Development Provisions

a. Zoning Requirements

CLUDG Chapter I, Article 2, Section 1-0228 Wetland and Creek Protection or :WCP Combining Zone

Section 1-0228.7 Procedures.

This subsection addresses procedures for reviewing development involving area in the :WCP Zone. Discretionary projects involve review procedures beyond those here. It is the intent of this ordinance that development with respect to the :WCP zone be processed in the manner usual for the particular type of development ...

(c) Mitigation. *If mitigation will be necessary to comply with this Section, an application for any project in the :WCP Zone shall include a Mitigation Plan* pursuant to this subsection. The Mitigation Plan, and any additional mitigation established through the review and approval process shall be included among the conditions of approval of whatever permit is required pursuant to subsection 1-0228.6 Permits Required. Mitigation, including mitigation monitoring, shall be pursuant to CHAPTER IV. ARTICLE 1: ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE.

The applicant shall be responsible for developing (or retaining a consultant to develop) the mitigation plan. *The Mitigation Plan shall include the following:*

- 1. Statement of the project goals with respect to mitigation.*
- 2. Time of year the project will be conducted.*
- 3. Description of site preparation activities.*
- 4. Planting materials and methods to be used.*
- 5. Performance standards; defined criteria to measure success of the mitigation.*
- 6. Drawings, maps, or illustrations necessary to adequately describe proposed mitigation.*
- 7. Five-year monitoring plan.*
- 8. Remediation measures (contingency plan).*

Section 1-0228.10 Information Necessary For Review In The :WCP Zone.

Applicants for development involving the :WCP Zone shall submit part or all of the following additional information, depending on the size and complexity of the project, as determined by the Zoning Administrator:

- Wetland Delineation: as specified in subsection 1-0228.5 (b) (1).
- Topographic Base Map; scale no smaller than 1 inch 400 feet.
- Existing and Proposed Contour Map; contour intervals no less than 5 feet.
- Inundation Map showing the permanent seasonal pattern of inundation.
- Vegetation Map showing the location and scientific name of plant species and plant associations.
- Soils Map showing soil types and including a physical description of their characteristics, and site-specific characteristics contained within the soil profile.
- **Supplemental Information including the following:**
 - (1) Present extent of the habitat;
 - (2) Previous and existing ecological conditions;
 - (3) Present and potential adverse physical and biological impacts on the ecosystem;
 - (4) **Alternatives to the proposed development including different projects and off-site alternatives,**
 - (5) **A Mitigation Plan, including** including [sic] **restoration measures and proposed buffer areas, pursuant to subsection 1-0228.7 (c) Mitigation (Procedures),**
 - (6) Any other information that the Zoning Administrator deems necessary in order to analyze a project.

The above list of information items is based on the Section II. B. of the "Statewide Interpretative Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas["] produced by the California Coastal Commission. This Section of the Statewide Guidelines should be referred to for clarification of list items.

Section 1-0228.11 Standards And Requirements.

... (b) WETLANDS. **The following standards shall apply to all area identified as wetlands.** There are some differences between standards for Wetlands located in the Coastal Zone, and standards for Wetlands outside the Coastal Zone. These are specified in (1) Exceptions, below.

- (1) **Exceptions.**
 - (i) Coastal Zone.
Filling shall be pursuant to Section 1-0312 DIKING, FILLING OR DREDGING and the applicable provisions of this Section, only where there is no feasible less environmentally damaging alternative...
- (2) **Mitigation For Filling Wetlands.** In addition to the procedures set forth in subsection 1 - 0228.7 (c) Mitigation [Procedures], it is the intent of these regulations that the California Environmental Quality Act (CEQA), as set forth in CHAPTER IV. ARTICLE I: ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE, be

followed to address the environmental impacts associated when filling of wetlands, for any reason, is allowed pursuant to the regulations specified in this Section...

(4) Permitted Activities. Except as provided in (1) Exceptions, above, activities in wetlands shall be limited to the following:

- (i) resource restoration projects;
- (ii) outdoor passive recreational activities such as bird watching, hiking, boating, horseback riding, canoeing, and any other activities that will not adversely impact wetland functions;
- (iii) education, scientific research, and use of nature trails;
- (iv) the maintenance of drainage ditches. Construction of drainage ditches is only allowed pursuant to (1) Exceptions, above;
- (v) normal maintenance, repair or operation of existing serviceable structures, facilities, or improved areas;
- (vi) minor modification of existing serviceable structures where modification does not adversely impact wetland functions.

Section 1-0228.12 Required Findings in the :WCP Zone.

(a) WETLANDS. Development in or adjacent to wetlands shall be found to meet the Coastal Wetlands Development Standards if the facts prescribed are sufficient to establish:

- 1) the project is in compliance with the Arcata General Plan, including, if applicable, the Land Use Element of the City of Arcata's Local Coastal Program; and
- 2) if located in the Coastal Zone, the project is in compliance with Section 30233 and all other applicable sections of the latest version California Coastal Act, and
- 3) the project is in compliance with the Statewide Interpretative Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas."

b. Wetland Development Regulations

CLUDG Chapter I, Article 3, Section 1-0312 Diking, Filling or Dredging

Section 1-0312.2 Standards And Requirements In The Coastal Zone

These standards shall apply in the Coastal Zone, in addition to standards specified in 1-0312.3 (Standards And Requirements City-wide), and 1-0312.4 (Minimum Adverse Environmental Effects and Mitigation Measures), below.

The diking, **filling**, or dredging **of** open coastal waters, **wetlands**, estuaries, Coastal Creek Zones, and lakes **shall be permitted in accordance with other applicable provisions of this code only when there is no feasible less environmentally damaging alternative, and when feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:** ...

5. 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...
8. Nature study, aquaculture, or similar resource dependent activities...
- (d) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

Section 1-0312.3 Standards And Requirements City-wide

- (a) Dredging, diking, and filling in a wetland may only occur pursuant to standards set forth in this section and in subsection 1-0228.11 (b) (Wetland Development Standards)...
3. Landscaping and Screening of New Development Regulations

CLUDG Chapter I, Article 3, Section 1-0306 Landscaping and Screening

Section 1-0306.2 Standards and Requirements.

- (a) Landscape Plan. A landscape plan shall be required for all new development except for projects exempt from review by the Design Review Committee pursuant to Chapter IV Article 2.

Where required, the landscape plan shall be reviewed by the Design Assistance Committee pursuant to CHAPTER IV ARTICLE 2: DESIGN REVIEW PROCEDURE. The Design Review Committee may determine that a landscape plan is not required for minor additions or enlargements...

- (b) Maintenance. All required planting shall be maintained in good growing condition. A written maintenance plan shall be included in the landscaping plan. This plan shall indicate the party responsible for maintenance and shall address the following: pruning, weeding, cleaning, fertilizing, and water provision. Whenever necessary, planting shall be replaced with other plant materials to ensure continued compliance with applicable landscaping requirements.
- (c) Materials. The plant material selected shall be capable of healthy growth within the given range of soil and climate. Where trees are required, they shall be of a species, degree of maturity, and spacing acceptable to the Design Review Committee. A minimum size of five (5) gallons for each tree is required.

Where dense landscaping to a specified height is prescribed, the landscaping shall be of a type which will provide a year-round barrier at the prescribed heights, and

shall be so spaced that vision of objects of the opposite side is effectively eliminated. The height requirement should be reached in a maximum of three to five years.

Plant materials which are capable of withstanding summers without irrigation and those which are solar friendly and wildlife friendly shall be encouraged and may be required where appropriate...

- (e) Minimum Landscaped Area Requirement. As established by each Zoning District; where not established by zoning district, then as specified during the development review process...

CLUDG Appendix A - Definitions

C. Cited "Latest Version" of Coastal Act Section 30233

Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients

(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 basins, 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 disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.

(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. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its

report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where the improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area. [Amended by: Ch. 673, Stats. 1978; Ch. 43, Stats. 1982; Ch. 1167, Stats. 1982; Ch. 454, Stats. 1983; Ch. 294, Stats. 2006]

D. Cited "Statewide Interpretative Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas"[Excerpts]

...III. WHEN IS DEVELOPMENT PERMITTED IN AN ENVIRONMENTALLY SENSITIVE HABITAT AREA?

...B. Requirements for Additional Project Information.

To meet the statutory requirements of Sections 30230, 30231, 30233, 30236, and 30240 of the Coastal Act, an applicant for a permit to develop within or near an environmentally sensitive habitat area may be required to submit supplemental information, including any or all of the maps described below. The size of the study area will depend upon natural topographic features, location of existing development, and potential biological significance of adjacent lands. In undeveloped areas, the required study area may extend 500 feet or more around the environmentally sensitive habitat area, but the 500 foot distance is not an absolute standard...

1. Maps

a. Topographic base map. The base map should be at a scale sufficiently large to permit clear and accurate depiction of vegetative associations and soil types in relation to any and all proposed development (normally the scale required will be 1"=200'). Contour intervals should be five feet, and the map should contain a north arrow, graphic bar scale, and a citation for the source of the base map (including the date). The map should show the following information:...

2. Supplemental information

A report should be prepared which demonstrates that all of the criteria for development in environmentally sensitive habitat areas have been met. *The report should investigate physical and biological features existing in the habitat area and evaluate the impact of the development on the existing ecosystem.* The information should be prepared by an ecologist or professional environmental scientist with expertise in the ecosystem in which the development is proposed. For example, in preparing such a report for a proposed development in a salt marsh, the expertise of a qualified wetland ecologist, botanist, ornithologist, hydrologist, soil scientist or other technical professional may be required. The report should be based on an on-site investigation, in addition to a review of the existing information on the area, and should be sufficiently detailed to enable the Commission to determine potential immediate and long range impacts of the proposed project.

The report should describe and analyze the following:...

- d. *Alternatives to the proposed development, including different projects and off-site alternatives...*

IV. DEVELOPMENTS PERMITTED IN WETLANDS AND ESTUARIES

Of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection. *In order to approve a project involving the* diking, *filling*, or dredging *of a wetland* or estuary, *the Commission* [or delegated local government hearing body] *must first find that the project is one of the specific, enumerated uses set forth in Section 30233 of the Act* (these developments and activities are listed in section A. and B. below). *The Commission* [or delegated local government hearing body] *must then find that the project meets all three requirements of Section 30233 of the Act* [see sub-section D.3., below]. In addition, permitted development in these areas must meet the requirements of other applicable provisions of the Coastal Act.

A. Developments and Activities Permitted in Wetlands and Estuaries...

5. *Incidental public service purposes which temporarily impact the resources of the area, which include, but are not limited to, burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines (roads do not qualify)*³...

7. *Nature study*...or similar resource-dependent activities⁶...

D. Requirements for All Permitted Development

Any proposed project which is a permitted development must also meet the three statutory requirements enumerated below, in the sequence shown:

1. Diking, filling or dredging of a wetland or estuary will only be permitted if there is no feasible¹⁰ less environmentally damaging alternative (Section 30233(a)). The Commission may require the applicant to submit any or all of the information described in section III. B. above.

2. If there is no feasible less environmentally damaging alternative, feasible mitigation measures must be provided to minimize adverse environmental effects...

b. If the project involves diking or filling of a wetland, required minimum mitigation measures are the following:¹²

1) If an appropriate restoration site is available, the applicant shall submit a detailed restoration plan which includes provisions for purchase and restoration of an equivalent area of equal or greater biological productivity¹³ and dedication of the land to a public agency or otherwise permanently restricts its use for open space purposes. The site shall be purchased before the dike or fill development may proceed...

A preferred restoration program would remove fill from a formerly productive wetland or estuary which is now biologically unproductive dry land and would establish a tidal prism necessary to assure adequate flushing. Few if any restoration projects have been implemented for a sufficient length of time to provide much guidance as to the long-term restorability of such areas. Since such projects necessarily involve many uncertainties, restoration should precede [sic] the diking or filling project. At a minimum [sic], the permit will be conditioned to assure that restoration will occur simultaneously with project construction. Restoration and management plans shall be submitted with the permit application.

The restoration plan should generally state when restoration work will commence and terminate, should include detailed diagrams drawn to scale showing any alterations to natural landforms, and should include a list of plant species to be used as well as the method of plant introduction (i.e., seeding, natural succession, vegetative transplanting, etc.).

The management plan would constitute an agreement between the applicant and the Commission to guarantee the wetland is restored to the extent established under stated management objectives and within a specified time frame.

The plan should describe the applicant's responsibilities in maintaining the restored area to assure the Commission that the project will be successful. The management plan should generally include provisions for a monitoring program and for making any necessary repairs or modifications to the mitigation site...

3. Diking, filling or dredging of a wetland or estuary must maintain or enhance the functional [sic] capacity of the wetland or estuary (Section 30233(c)). Functional

capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity¹⁵. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:

- a. That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance and composition are essentially unchanged as a result of the project.
- b. That the project does not harm or destroy a species or habitat that is rare or endangered.
- c. That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary.
- d. That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem.

...³ When no other alternative exists, and when consistent with the other provisions of this section, limited expansion of roadbeds and bridges necessary to maintain existing traffic capacity may be permitted. Activities described in the Commission's Guideline on Exclusions from Permit Requirements applicable to roads also should be consulted...

⁶ For the purposes of this guideline, similar resource-dependent activities include scientific research, hunting and fishing (where otherwise permitted). In addition, when wet lands are seasonally farmed, the continued use of agriculture is allowed. Expanding farming operations into non-farmed wetlands by diking or otherwise altering the functional capacity of the wetland is not permitted. Farm-related structures (including barns, sheds, and farm-owner occupied housing) necessary for the continuance of the existing operation of the farmed wetlands may be located on an existing farmed wetland parcel, only if no alternative upland location is available for such purpose and the structures are sited and designed to minimize the adverse environmental effects on the farmed wetland. Clustering and other construction techniques to minimize both the land area covered by such structures and the amount of fill necessary to protect such structures will be required...

¹⁰ "Feasible" is defined in Section 30108 of the Act to mean "...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." A feasible less environmentally damaging alternative may involve a location for the proposed development which is off the project site on lands not owned by the applicant. Feasible under the Coastal Act is not confined to economic considerations. Environmental, social and technological factors also shall be considered in any determination of feasibility.

¹² Mitigation measures shall not be required for temporary or short-term fill or diking, if and only if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. For the purposes of this guideline, short-term generally means that the fill or dikes would be removed immediately upon completion of the construction of the project necessitating the short-term fill or diking (Section 30607.1).

¹³ For an area to be of "equal or greater biological productivity," it must provide equivalent or greater habitat values to the same type and variety of plant and animal species which use the area affected by the proposal...

¹⁵ The intention here is to convey the importance of not only how many species there are but also the size of their populations (abundance) and the relative importance of the different species to the whole system (composition). It cannot be overemphasized that the presence of a species by itself is an inadequate indicator of the condition of a natural system. In a "healthy" wetland ecosystem, the absolute number of individuals of a species and the relative number compared to other species will depend on the size of the organism and its place in the food web (what it feeds on, what feeds on it, and what competes with it for the same food or other resources). Major changes in absolute or relative numbers of some species will have far-reaching consequences for the whole ecosystem because of their interactions with other species...

D. Coastal Act Access and Recreation Policies (Public Resources Code, Division 20, Chapter 3, Article 2 - Public Access and Article 3 - Recreation)

Section 30210 Access; recreational opportunities; posting

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

Section 30211 Development not to interfere with access

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

Section 30212 New development projects

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed

residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5 Public facilities; distribution

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 Lower cost visitor and recreational facilities; encouragement and provision; overnight room rentals

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214 Implementation of public access policies; legislative intent

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

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.

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

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

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

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220 Protection of certain water-oriented activities

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 Oceanfront land; protection for recreational use and development

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 Private lands; priority of development purposes

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30222.5 Oceanfront lands; aquaculture facilities; priority

Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

Section 30223 Upland areas

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224 Recreational boating use; encouragement; facilities

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

RECEIVED

DEC 2 2 2011

**CITY OF ARCATA
ACTION OF THE PLANNING COMMISSION**

CALIFORNIA
COASTAL COMMISSION

Following a public hearing conducted on December 13, 2011, the Planning Commission conditionally approved the Humboldt State University Corporation Yard Coastal Development Permit.

Action: ON A MOTION BY Hagen, SECOND BY Giannini, and voice vote of 4-1-0 **Ayes:** Vaissade-Elcock, Giannini, Hagen; **Noes:** Mayer, the project was approved.

Project: The HSU Corporation Yard project consists of the redevelopment of an approximately 7.3 acre site, which is used as HSU's corporation yard, physical plant, shipping and receiving center, shops, warehousing center, and construction management offices. The project consists of remodeling the existing building, replacing existing fencing, patching small portions of the existing pavement and eventual repaving, adjustments to site access, landscaping, hazardous material abatement, and the addition of ADA compliant restrooms, a fire sprinkler system, doors and locker rooms, an elevator, new service doors, new roof, new paint, ceilings and flooring.

Application Type: Coastal Development Permit (CDP) required as land use regulation exemption for State Applicant does not extend to the CDP.

Location: 1601 Samoa Boulevard, Assessor's Parcel Nos. 505-251-011 and 505-251-012

Owner/ Applicant: Humboldt State University Foundation/Trustees of the California State University

File Number: 090-037-CDP

Zoning: Coastal Heavy Industrial with Wetland and Creek Protection Combining Zone (C-I-H:WCP)

General Plan: Coastal Heavy Industrial (C-I-H)

Coastal Status: Project is located in the Coastal Zone – City's Jurisdiction; and in a mapped Categorical Exclusion E-88-3 area. A Coastal Development Permit is required. The Coastal Development Permit is appealable to the State Coastal Commission.

Environmental: Initial Study has been completed for this project and a Mitigated Negative Declaration (Exhibit 1) was adopted. Circulation period October 1 – October 30, 2009; State Clearinghouse Number: 2009102004.

Findings: This Action is based on the Findings of Approval (Exhibit 2).

Conditions of Approval: This Action is based on the Conditions of Approval (Exhibit 3).

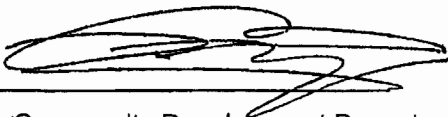
Appeals: This Action of the Planning Commission and/or City Council may be appealed to the State Coastal Commission pursuant to California Code of Regulations, Title 14, Division 5.5, §13110 ten (10) working days after the Planning Commission appeal period ends. The Planning Commission appeal period is ten (10) working days from the date of approval.

Effective Date: This permit becomes effective on the next working day after the appeal period.

Date Approved: December 13, 2011

Notice Date: December 14, 2011

ATTEST:

 12/20/11

David Loya, Community Development Department Deputy Director

EXHIBIT NO. 5

APPEAL NO.

A-1-ARC-12-003 - HUMBOLDT
STATE UNIVERSITY FOUNDATION
NOTICE OF FINAL LOCAL
ACTION, COASTAL
DEVELOPMENT PERMIT NO.
CDP-090-037 (1 of 14)

The Trustees of the California State University

401 Golden Shore – Long Beach, California 90802-4210

(562) 951-4120

PC Action Exhibit 1

CEQA – NOTICE OF DETERMINATION

This Notice is being filed in compliance with Section 21108 and 21152 of the Public Resources Code.

Project Title

Humboldt State University, Proposed Remodel of the Corporation Yard Facility and Minor Master Plan Revision

State Clearinghouse Number

2009102004

Lead Agency Contact Person

Mr. Gary Krietsch, Director of Planning and Design – (707) 826-4111

Project Location – City of Arcata, Humboldt County Specific Campus – Humboldt State University

Project Description:

The California State University at Humboldt State, in Arcata, California, proposes redevelopment of an approximately 7.3 acre site, which is to be used as Humboldt State University's corporation yard, physical plant, shipping and receiving center, shops, warehousing center, and construction management offices. The University proposes to include this property on the campus master plan, through a Minor Master Plan revision submittal, approved by the Board of Trustees. The project consists of remodeling the existing building, replacing existing fencing, patching of small portions of the existing pavement and eventual repaving, adjustments to site access, landscaping, hazardous material abatement, and the addition of ADA compliant restrooms, a fire sprinkler system, doors and locker rooms, an elevator, new service doors, new roof, new paint, ceilings, and flooring.

This is to advise that the Trustees as the lead agency approved the above-described project on November 23, 2009 and have made the following determinations regarding the above-described project:

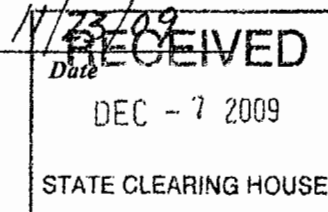
1. The project: ☐ will have a significant effect on the environment.
☒ will not have a significant effect on the environment.
2. ☐ A Final Environmental Impact Report (EIR) was prepared for this project pursuant to the provisions of CEQA.
☒ A Negative Declaration (ND) was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation Measures: ☒ were made a condition of approval of the project.
☐ were not made a condition of approval of the project.
4. A statement of Overriding Consideration: ☐ was adopted for this project.
☒ was not adopted for this project.
5. Findings ☒ were made pursuant to the provisions of CEQA.
☐ were not made pursuant to the provisions of CEQA

This is to certify that the final Negative Declaration / ~~EIR~~ with comments and responses and record of project approval is available to the General Public at: Humboldt State University, Physical Services, 1 Harpst Street, Arcata, CA 95521 and CSU Chancellor's Office, Capital Planning, Design and Construction, 401 Golden Shore, Long Beach, CA 90802-4210

Signature

David A. Rosso

Chief, Land Use Planning and Environmental Review
Title



FINDINGS of APPROVAL

Exhibit 2

The Coastal Land Use and Development Guide (CLUDG) specify findings for approval of Coastal Development Permits, and Wetland and Creek protection Combining Zones. As such, the City of Arcata finds that the following statements are true for the reasons described and facts provided in the bracketed discussion following each statement:

I. REQUIRED COASTAL DEVELOPMENT PERMIT FINDINGS PER LUDG SECTION 1-0408.4.

I-A The proposed development conforms with the Certified Local Coastal Program.

[The Project conforms to the Local Coastal Program (LCP). The Certified LCP includes the City's 1985 General Plan Coastal Element, as amended in 1995 and zoning ordinance, the Coastal Land Use and Development Guide. The project was demonstrated to meet the standards of the CLUDG in the December 13, 2011 Planning Commission hearing staff report. Relevant sections of the LCP are considered individually below:

General Plan Urban Development and Community Design

Policy 1 states: "Agriculturally suitable areas (Grades 1 or 2 on the Storie Index) are not appropriate for urban development, with the exception of designated areas contiguous to existing urban uses." The project site is designated as Industrial – General and Agricultural Exclusive, and is contiguous to existing urban uses. The project site is zoned Industrial General and is a developed industrial property.

Policy 1 also reads: "Flood prone areas are not suitable for most types of urban development." The project site is within the 100-year flood zone; however, the development area is located outside of this area. The site is within the Matthew's Dam Inundation area and within the Tsunami Evacuation zone. The project has been conditioned to require tsunami hazard and Mathew's Dam inundation notification and evacuation plans

Policy 2 states: "Greenbelts of agricultural use should be preserved adjacent to urban development." The proposed project site includes Agricultural Exclusive zoning to the south of the development area. A portion of this agricultural area is proposed to create a mitigation wetland. This wetland area will provide a greenbelt that will partially screen the developed area from Arcata Bay.

Policy 5 reads: "Approval should be given to development in areas where water and sewer infrastructure is available, prior to the approval of any projects which would require major new facility construction." This project does not include any new water and sewer facility construction as it is reuse of an existing industrial site.

Policy 6 states: "New urban development should be located in areas contiguous to existing urbanized areas to achieve economies in the provision of public services facilities, and to minimize the loss of agricultural land. In addition, urban development should occur only within the incorporated areas of the City; areas should be annexed to the City prior to development approval." The proposed development occurs within the City of Arcata, contiguous to existing urbanized areas. The site is currently used for an industrial use and will not result in the loss of agricultural land.

Policy 14 reads: "A variety of recreational opportunities and common open spaces should be provided to serve the full range of residents' needs." The proposed development is located between Samoa Blvd. and Humboldt Bay. A public access corridor and parking area is proposed that will provide public access to the network of recreational opportunities south of the project site.

Policy 15 reads: "In order to improve pedestrian safety, special provisions should be made to minimize conflicts between pedestrians, autos, and bicycles." The proposed project integrates with the Samoa Boulevard traffic safety improvements; will provide for safer traffic circulation,

segregating truck traffic from recreation traffic.

Policy 23 states in part: "Buildings should be designed to reduce the potential for theft, robbery, vandalism and assault by the utilization of security measures." The proposed project makes use of an existing structure. A fence surrounding the property will be utilized to reduce the potential for theft and vandalism.

Policy 25 states: "The creeks, marshes and wetlands of Arcata provide a natural open space system. The City should take an active role in restoring and maintaining this system for the benefit of residents, visitors, fish and wildlife." The proposed development includes filing of an area defined as a wetland, and wetland restoration and enhancement.

Policy 26 reads: "The City should be aware of the significance of Arcata Bay and the Bay shore as an urban design element. Access to the Bay and development near the Bay should be designed to take advantage of that design potential. The project includes an access road and small parking lot to allow public members to access the Arcata Bay shore.

Seismic Safety Element

Policy A.5. reads: "To the extent practical, urban development should not be sited in areas susceptible to excessive geologic hazards."

Policy B.1. states: "The City should follow the current Alquist-Priolo Special Studies Zone policy and should incorporate the Geologic Hazard Land Use Matrix to minimize surface fault rupture hazard exposure."

Policy C.1. states: "The City should incorporate the most recent advances in earthquake engineering into construction regulations for new development."

Policy C.2. reads: "The City should provide for the identification and evaluation of existing structural hazards with an emphasis placed on the earth-quake resistant design of the buildings."

Policy D. states: "The City should restrict construction in areas highly susceptible to liquefaction."

Policy E. reads: "The City should prohibit critical facilities from being located in low-lying coastal and inland portions of the study area subject to potential tsunami hazards."

Policy F. reads: "The City should develop and early-warning system and evacuation plan for areas that lie within the inundation potential area in the unlikely event of a catastrophic failure of Mathews Dam.

No new structures are proposed as a part of this project. According to the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist, there are no known earthquake faults located on the subject property, nor is the site located near a potentially active fault pursuant to the State Alquist-Priolo Earthquake Fault Zoning Map, and GP2020, Figure PS-a. According to the GP2020 Hazards Map, and Seismic Safety Element, 1985 Arcata General Plan - Plate B (Liquefaction Potential Map), the project is located in a "Moderate Liquefaction" area.

The City of Arcata is located in a seismically active region that can expect a large earthquake during the economic lifespan of the proposed project.

The Geologic Hazards Land Use Matrix (Geologic Matrix), CLUDG §4-302 also classifies types of development and geologic hazards. The matrix is used to determine if a type of project is prohibited; requires a geologic reports; or if a geologic report is discretionary. The geologic matrix indicates that industrial development in a moderate liquefaction zone requires an R-1 engineering geologic report and soils report. The City has no authority to issue building permits to the university. The City suggests the university consider the soils in any work they do on site.

Tsunami run-up may affect the project site. The project has been conditioned to require development and implementation of a tsunami hazard notification and evacuation plan. The site is industrial and no residential uses are proposed.

Based on the above, the project is in compliance with the Seismic Safety Element.

Conservation Element

Policy 1 reads: "Land should be used for the purpose for which it is most suited by virtue of its inherent natural characteristics, as modified by its locational relationships, whether that use be urban development, natural resource preservation and utilization, or agricultural production." The project site is located in an industrial zone, and has been used for industrial purposes. The proposed corporation yard use is considered an industrial use, and it is located on Samoa Blvd., an arterial street. The access onto Samoa Blvd. will be in conformance with the Public Works Department and Caltrans standards.

The property also contains wetlands and is adjacent to Arcata Bay. The proposed project avoids dredging or filling of coastal wetlands except for filling of approximately 20,000 square feet of "wetland". This wetland fill is proposed to provide safe maneuvering of large trucks and smaller vehicles around the site. Segregating the traffic will result in safer conditions for the public and users of the HSU corporation yard. The project has been designed and conditioned with the least amount of fill as necessary to meet the goals of the project and is the least environmentally damaging feasible alternative. On site mitigation of the wetland fill is proposed to compensate for the loss of wetlands at a minimum ratio of 2:1

Policy 4 states: "Floodprone areas should be used for agricultural and recreational purposes and kept free from urban development wherever possible." The subject parcel does not contain area within the Federal Emergency Management Agency (FEMA) Flood Zone A, or Floodway.

Policy 5 reads as follows: "Rivers, streams and adjacent areas, marshes, and other wetland areas should remain in a natural condition whenever possible." The proposed development will increase development and human activity from the existing conditions. The wetlands affected on site are already altered from "natural conditions", and the Creeks and Wetlands Committee has reviewed the mitigation plan, the project, and the delineation recommending the mitigation is adequate.

Policies 11, 12, and 13 read as follows: "The City supports a 'no net loss' policy with respect to wetlands and wetland values." "The City encourages enhancement of wetlands." "The City is in favor of wetland mitigation, including enhancing or replacing wetlands, if wetland values lost to development can be replaced." The proposed project will result in no net loss of wetland and/or wetland values. The project is designed to enhance the wetland values by adding habitat structure and quality.

Policy 17 states: "With respect to streams, City policy shall be to protect, restore and enhance Arcata's creeks and their watersheds." No watercourses are located on-site.

Implementation Measure "O" of the Conservation Element states: "Diking, filling or dredging of Bay waters, Coastal Wetlands, and estuaries in the Coastal Zone shall be permitted where feasible mitigation measures have been provided to minimize adverse environmental effects, for the following limited uses:

- (a) For incidental public service purposes including, but not limited to, burying cables and pipes, and maintenance of existing dikes and public facilities;
- (b) To maintain a channel adequate to serve the boat ramp at current levels of use;
- (c) Resource restoration purposes;
- (d) Nature study, aquaculture, or similar resource dependent activities;
- (e) Agriculture within existing farmed wetlands but not including the expansion thereof."

The proposed project avoids dredging or filling of coastal wetlands except for filling of

approximately 20,000 square feet of "wetland". This wetland fill is proposed to provide safe maneuvering of large trucks and smaller vehicles around the site. Segregating the traffic will result in safer conditions for the public and users of the HSU corporation yard. The project has been designed and conditioned with the least amount of fill as necessary to meet the goals of the project and is the least environmentally damaging feasible alternative. On site mitigation of the wetland fill is proposed to compensate for the loss of wetlands at a minimum ratio of 2:1.

Goal II of the Parks and Recreation Element is: "to provide all residents with a wide assortment of parks and related facilities." Implementation measure 2.a. indicates that a park is needed south of Samoa Boulevard. The proposed project includes an access to Arcata Bay via the McDaniel's Slough trail network.

Policy 5 of the Public Facilities Element states: "The City should support bicycling and walking as significant transportation modes which promote personal health and recreational enjoyment while minimizing energy consumption and environmental degradation." The proposed project includes a public access drive and small parking lot.

Policy 2 of the Creek Zone Management section of the Arcata Creeks Management Plan has policies encouraging limiting culverting of creeks. The proposed project does not involve culverting of the creek thus is consistent with the above policy.

Policy IV-16 of the Coastal Land Use Element indicates that Samoa Boulevard from Sunny Brae to Manila is designated as a Scenic Route. The project is designed to improve the design of the original building without adding any square footage. The only addition to the existing landscape will be trees and a fence. The project will not obstruct public views of coastal resources because of the site topography and existing development in relation to coastal resources and public view areas.

All of the above policies of the General Plan support the proposed development.]

I-B For development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, the development is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act.

[The project site is located between the nearest public road and the sea (shoreline of Arcata Bay). The project does include improvements to public access and recreation. The Project includes access to a parking area from which the City may develop a trailhead to the McDaniel's Slough restoration project. This network of trails connects with the larger system of Arcata Marsh trails. The project will ultimately integrate with the segment of the Coastal Trail that is being developed through the City of Arcata.]

II. FINDINGS REQUIRED IN THE :WCP ZONE Per LUDG 1-0228.12 [Required Findings in the :WCP Zone.] Development in or adjacent to wetlands shall be found to meet the following wetlands development standards if the facts prescribed are sufficient to establish:

II-A The project is in compliance with the Arcata General Plan.

[The Arcata General Plan includes language that the City of Arcata should take an active role in maintaining and restoring wetlands for the benefit of residents, visitors, fish and wildlife. The proposed :WCP zone boundary and setbacks, and the conditions of approval, will result in restoration and enhancement of wetland areas. See also Finding I-A above]

II-B If located in the Coastal Zone, the project is in compliance with Section 30233 and all other applicable sections of the latest version California Coastal Act; and

[Section 30233 of the California Coastal Act reads, in part, as follows: "(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 one of the eight specified purposes:... 4. Incidental public purposes including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.... 7. Nature study, aquaculture or similar resource dependent activities." The project satisfies the Coastal Commission Administrative Guidelines criteria for incidental public service, which provides that "when no other alternative exists, and when consistent with other provisions of [the Coastal Act], limited expansion of roadbeds....necessary to maintain existing traffic capacity may be permitted". The Planning Commission finds that the proposed road expansion is limited, necessary, no other alternative exists, and maintains existing capacity. The project is motivated by a number of improvements to both on- and off-site vehicular, pedestrian, and non-motorized vehicle safety, as well as emergency vehicle ingress and egress, and emergency public egress.

The project also satisfies the nature study allowance for wetland fill. While the project is not directly motivated by public access, the project does include a public access road and parking area to access the McDaniel's Slough trail network. This component of the project does not itself require wetland fill. However, the project does require segregation of the public traffic from the Corporation Yard traffic for safety purposes. Furthermore, the trail is consistent as a requirement of the Coastal Act Section 30212. While access may be provided in a manner that required wetland fill on the project, the approved project includes the least environmentally damaging feasible alternative, which does not directly require fill of wetlands to provide public access. For these reasons, the Planning Commission finds the project is consistent with the allowance for nature study.]

II-C The project is in compliance with the "Statewide Interpretive Guidelines for Wetlands and other Wet Environmentally Sensitive Habitat Areas."

[The proposed project, alternatives analysis, conditioned project, and mitigation plan have been reviewed against the Guidelines. The project satisfies the least environmentally damaging feasible alternative test and the mitigation ratio of 2:1 is sufficient to ameliorate impacts to adjoining wetlands and the directly affected wetlands. The City's Creeks and Wetlands Committee, the California Department of Fish and Game, the Regional Water Quality Control Board, the Army Corps of Engineers, and the City's Environmental Services Department have reviewed the project and have recommended approval of the project.]

II-D Any mitigation, necessary to ensure new development does not adversely affect the wetland habitat values, is included in the project approval conditions.

[Habitat values of the site will be improved by the proposed mitigation. The project will fill and create similar type wetlands, but the created wetlands will have significantly more habitat structure and complexity. The created wetlands are likely to be successful given the results of the biological monitoring done on site. Furthermore, project Conditions of Approval are designed to ensure the short- and long-term effects of the project do not adversely impact the sensitive habitat areas. The Conditions of Approval include the implementation of project components such as the drainage plan, wetland restoration/enhancement; Stormwater Pollution Prevention Plan, Best Management Practices, Sediment and Erosion Control Plans, etc. In addition, a Notice of Wetland Creek Protection zone is required to identify the property is subject to special uses and protection measures.]

II-E Development within the Coastal Wetland Buffer Areas shall be permitted only if the following findings are made;

- 1. The Wetland Setback will be sufficient to prevent significant effects to the wetland.*
- 2. The development will be sited and designed to prevent impacts which would significantly degrade wetland habitat areas, and shall be compatible with the continuance of such habitat areas; and*
- 3. The quality of coastal waters, streams wetlands estuaries, and lakes shall be maintained, and were feasible restored.*

[The project includes very little new development. The existing conditions have a zero setback from wetlands. The project proposes to fill wetlands. As such, it is impossible to setback from wetlands under the project. However, the effects of the project as conditioned eliminate significant effects to the wetland. In addition, the conditions require screening and forebay pretreatment of stormwater to prevent debris entering the wetland. No significant degradation of the wetland habitat is expected to result from the project. The project was reviewed for its impact on wetlands by the Creeks and Wetlands Committee, which suggested conditions as incorporated and recommended that the project met the least environmentally damaging feasible alternative, and that the mitigation was sufficient at a 2:1 ratio to offset the impacts and ensure the wetlands were maintained on site.

Wetland buffer areas are typically intended for large expanses of wetlands or very sensitive habitat areas. Areas surrounding Humboldt Bay or along the Mad River have examples of large, contiguous areas of wetlands that would qualify for additional protection measures. Based on the wetland and habitat values, recommended conditions of approval and mitigation measures a buffer area is not required. Adequate protection measures, as noted below, are included in the project approval to protect the wetland habitat.]

IV. ENVIRONMENTAL FINDINGS.

IV-A. Pursuant to an initial study report, the proposed project is found to not have a significant effect on the environment and a Mitigated Negative Declaration is adopted in conformance with the California Environmental Quality Act (CEQA).

[Prior to making a decision of the project application, the Planning Commission has received and considered the Initial Study Report and approved Mitigated Negative Declaration, together with all written and oral comments thereon received at or before the public hearing conducted on December 13, 2011. The Initial Study was completed for this project and a Mitigated Negative Declaration was adopted by the Trustees of the University of California. The circulation period was October 1 – October 30, 2009; State Clearinghouse Number: 2009102004. The Mitigated Negative Declaration is the CEQA document for the proposed Coastal Development Permit, which is one of many permits required under the proposed project. Pursuant to CEQA Guidelines,

1. The proposed Mitigated Negative Declaration was prepared and circulated pursuant to the CEQA Guidelines and applicable state and local law. A Notice of Intent to Adopt the Mitigated Negative Declaration was provided in accordance with the foregoing.
2. The administrative record for the final Mitigated Negative Declaration includes the Initial Study Report (with attachments), the written and oral comments received, and the response to said comments. The Arcata Community Development Department, located at 736 "F" Street, Arcata, is the custodian of the documents and other materials which constitute the record of proceedings upon which the Planning Commission's decision is based.
3. The Initial Study shows that the project could potentially cause significant effects on the environment but that modifications to the project and mitigation measures agreed to by the

applicant are sufficient, in light of the whole record before the Agency, to reduce or avoid the effects or to mitigate the effects to a point where clearly no significant effects would occur.

4. There is no substantial evidence, in light of the whole record before the Agency, that the project as mitigated may have a significant adverse effect on the environment.
5. The Mitigation Measures for the project are reflected in Conditions of the Approval of the project. The method and program for reporting on or monitoring the project changes and mitigation measures are expressed directly therein.
6. The Initial Study Report is a complete and adequate informational document and the Mitigated Negative Declaration was adopted on November 23, 2009.

CONDITIONS OF APPROVAL

Exhibit 3

A Coastal Development Permit file # 090-037-CDP, for the remodel of the Humboldt State University (HSU) Corporation Yard facility as described and conditioned below. Approval is subject to the conditions set forth herein.

A. AUTHORIZED DEVELOPMENT.

- A-1 The HSU Corporation Yard project consists of the redevelopment of an approximately 7.3 acre site, which is to be used as HSU's corporation yard, physical plant, shipping and receiving center, shops, warehousing center, and construction management offices.
- A-2 The project consists of:
- Remodeling the existing building,
 - Removing approximately 810 feet of existing fencing,
 - Installation of approximately 1,440 feet of fencing,
 - Patching of small portions of the existing pavement and eventual repaving, landscaping, hazardous material abatement,
 - The addition of ADA compliant restrooms, a fire sprinkler system, doors and locker rooms, an elevator, new service doors, new roof, new paint, ceilings and flooring,
 - Reconstructing approximately 5,000 square feet of existing pavement, removing 2,900 square feet of pavement, and installing 16,415 square feet of new pavement overlapping existing wetlands, for a project total pavement area of 79,950.
 - Upgrading and connecting a third driveway accessing the site (at the northeast corner of the property) to the rear paved area and paving a narrow roadway to the south.
 - Installation of low-gradient concrete lined swales for drainage.
- A-3 **COMPLIANCE WITH COASTAL DEVELOPMENT PERMIT, AND LAND USE AND DEVELOPMENT GUIDE REQUIREMENTS.** The project conforms to the approved Alternative F map attached hereto. All future development shall comply with the approved Coastal Development Permit. Except as modified by this action, the authorized development shall comply with the standards and provisions of the Land Use and Development Guide or equivalent, and other applicable provisions of the Arcata Municipal Code.

- B. REQUIRED CONDITIONS OF APPROVAL.** The applicant shall complete the following conditions.

Community Development Department

- B-1 **COMMUNITY DEVELOPMENT FEES.** The applicant/developer shall pay outstanding Community Development Department fees pursuant to City Council Fee Resolution No. 101-02.
- B-2 **MAINTENANCE OF CONSTRUCTION SITE.** The construction site shall be maintained in a clean and orderly fashion, free of debris; and include an area designated for recycling and re-use. Solid waste shall be reduced by recycling or re-use of material to the extent feasible or disposed of when recycling or re-use is not available. Such construction material which may be re-used or recycled may include, but not be limited to: wood, metals, roofing materials, concrete forms, waste concrete and asphalt, cardboard, empty containers of building materials, and excess building materials.
- B-3 **DISCOVERY OF PREHISTORIC OR ARCHAEOLOGICAL RESOURCES.** Should archaeological or paleontological materials be encountered during construction or grading

operations, all ground-disturbing work shall be temporarily halted on the site and the Community Development Department contacted. Work near the archaeological finds shall not be resumed until a qualified archaeologist has evaluated the materials and offered recommendations for further action. Prehistoric materials which could be encountered include: obsidian or chert flakes or tools, locally darkened midden, groundstone artifacts, depositions of shell, dietary bone, and human burials. Should human remains be uncovered, State law requires that the County Coroner be contacted immediately. Should the Coroner determine that the remains are likely those of a Native American, the California Native American Heritage Commission must be contacted. The Heritage Commission consults with the most likely Native American descendants to determine the appropriate treatment of the remains.

B-4 DUST CONTROL DURING CONSTRUCTION/RESTORATION/ENHANCEMENT.

1. Water all active construction areas twice per day and use erosion control measures to prevent water runoff containing silt and debris from entering the storm drain system.
2. Cover trucks hauling soil, sand, and other loose material. Limit truck and equipment idling by coordinating fill/spoils transport.
3. Sweep paved areas if visible material is carried onto adjacent public streets.
4. Reuse onsite construction materials as permitted to reduce offsite vehicle trips to landfills.
5. Construction equipment powered by internal combustion engines will be kept tuned and will use biofuels where feasible to minimize emissions.

B-5 HOURS OF CONSTRUCTION/RESTORATION/ENHANCEMENT. The operation of tools and equipment used in construction shall be limited to the hours of 8:00 a.m. to 7:00 p.m. on weekdays, and 9:00 a.m. to 7:00 p.m. on Saturdays. No heavy equipment related construction activity is allowed on Sundays or Holidays. If the City adopts a noise ordinance in the future, applicable provisions of said ordinance shall replace this condition.

B-6 TSUNAMI HAZARD NOTIFICATION AND EVACUATION PLAN AND MATTHEW'S DAM INUNDATION AREA. The applicant shall complete a tsunami hazard notification and evacuation plan and Matthew's Dam inundation area notification and evacuation plan. Applicant shall supply a copy of these plans to the Community Development Department.

B-7 RIGHT TO FARM. The applicant shall record a "Notice of Right to Farm" at the Humboldt County Recorder's Office. The applicant shall submit a "Notice of Right to Farm" for review and approval by the Community Development Director (form available at the Community Development Department). Applicant shall include payment for applicable recording fees.

B-8 NOTICE OF WETLAND AND CREEK PROTECTION COMBINING ZONE (:WCP) RECORDATION. A Notice of :WCP Zone shall be recorded with the Humboldt County Recorder's office. The notice shall be in a form prescribed by the City of Arcata and shall contain information regarding the location and nature of the :WCP Zone, and any applicable restrictions thereto. The notice shall include a map of the wetland areas. The notice shall be recorded at the expense of the applicant prior to ground disturbing activities in wetlands.

B-9 OTHER AGENCY REQUIREMENTS. The applicant shall contact the Regional Water Quality Control Board (RWQCB), the U.S. Army Corps of Engineers, the California Department of Fish and Game, Pacific Gas and Electric, CalTrans, and any other pertinent organizations to meet their requirements.

Environmental Services Department

C-1 WETLAND SETBACK AND WETLAND RESTORATION AND ENHANCEMENT. The developer shall implement the adopted *Wetland Mitigation and Monitoring Plan Humboldt State University Corporation Yard*, by Winzler & Kelly, April 2011 (Wetland Restoration Plan (WR Plan) and any amendments to plan approved by the Environmental Services Department Director. The revised WR Plan shall be submitted for review and approval by the Environmental

Services Department prior to implementation. The revised WR Plan shall include, but not be limited to the following:

1. Uplands shall be converted to wetland equal to a minimum 2:1 ratio based on the area of wetlands filled.
2. The wetland restoration/enhancement grading activities shall only occur during the dry season, generally from June 1 to October 30 of any given year, unless prior approval is granted by federal, state and local regulatory resource agencies and departments.
3. The use of herbicides is prohibited in the wetland areas or within 100 feet of the wetland.
4. No signs shall be allowed in the wetland area.
5. Contingency plan for additional mitigation in the event that a portion of the mitigation area does not achieve wetland values within a 5-year period.

During construction, restoration, and enhancement activities, a permanent fence shall clearly mark the wetland areas. No equipment shall be located in the wetland and wetland setback area unless it is related to wetland restoration and enhancement activities.

C-2 COASTAL WETLAND (MODIFIED) BUFFER AREAS. Setbacks and buffers shall be provided as shown on the approved development plan map (Alternative F). The applicant/developer shall ensure:

1. The release rate of stormwater run-off to adjacent wetlands shall not exceed the natural surface rate of stormwater run-off for a 50-year storm of ten (10) minutes duration.
2. Stormwater outfalls, culverts, gutters and the like shall be dissipated, and where feasible screened.
3. Areas disturbed during construction, grading, etc., within the approved wetland, and wetland setback area shall be restored to original contours (except as approved with the adopted Wetland Mitigation or Drainage Plan), and sufficiently and promptly replanted with native plant material or vegetation naturally occurring in the immediate areas except as approved with the adopted WR Plan.
4. Development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through constructing temporary and permanent sediment basins, seeding or planting bare soil, diverting run-off away from graded areas and areas heavily used during construction, and when feasible, avoidance of grading during the rainy season, November through April.

Activities involved in (3) and (4), above, shall include the use of mulch material. Mulch material used shall have the following characteristics: be permeable to water but not to sediment; prevent erosion; and not contain and material (seeds, tubers, corms) that could generate non-native plant material that would out-compete existing wetland vegetation. Acceptable mulch materials include sterilized hay, rice straw, pine needles, leaf litter, redwood chips, and non petroleum based and biodegradable fabric specially designed for this purpose.

C-3 LIGHTING. Any new exterior lighting shall be adjusted to fall on subject site and be shielded from illuminating adjacent wetland areas and ESHAs.

C-4 STORMWATER TREATMENT. Post-project operations and facilities shall be maintained to prevent trash and debris from entering stormwater system. Roof runoff shall be segregated from surface flow to the greatest extent feasible.

C-5 PUBLIC ACCESS EASEMENT: The Procedures for Open Space Easements and Public Access Documents (C-LUDG § 1-0408.5) shall guide provision of public access easement.

Public Works Department

D-1 ENCROACHMENT PERMITS. The applicant shall obtain Encroachment Permits from the Public Works Department and Caltrans for all work performed within City or State rights-of-way

respectively.

- D-2 **DRAINAGE FEES.** All applicable Drainage Impact and Maintenance fees must be paid per fee resolution current as of application date for said fees.
- D-3 **EASEMENTS.** Easements and/or dedications will be required for drainage, sewer, water and public and City access to the satisfaction of the City Engineer and Environmental Services Director. Applicant shall record said easements and/or dedications at the County of Humboldt Records Office. Prior to site work for establishing driveway #3, easements necessary to provide emergency and public ingress/egress to the benefit of the City of Arcata or its designee between parcel (APN 021-191-002) east of subject parcel and driveway #3 shall be recorded.

E. EFFECTIVE DATE OF PERMITS

- E-1 **MINOR MODIFICATIONS.** Minor modifications to the development and or operating parameters of the approved HSU Coastal Development Permit may be made in accordance of the City of Arcata Coastal Land Use and Development Guide (CLUDG) or its equivalent. The Arcata Community Development Director may act upon or refer to the Planning Commission modifications of up to ten percent (10%) in area. Applicant/developer shall submit applicable City fees and application materials for review of the minor modification.
- E-2 **VIOLATION GROUNDS TO REVOKE PERMIT.** The violation of any specification or condition of this permit shall constitute a violation of the LUDG (or its equivalent) and may constitute grounds for revocation of this permit.
- E-3 **INSPECTIONS.** The applicant/developer and subject property owner are to permit the City of Arcata or representative(s) or designee(s) to make inspections at any reasonable time deemed necessary to assure that the activities being performed under the authority of this permit are in accordance with the terms and conditions prescribed herein.
- E-4 **EXPANSION OR CHANGE OF USE.** Except as provided above, any proposed expansion or modification of the authorized use, or change to a different use than principally permitted in the zone or specified through the permit shall require the prior approval of an amendment.
- E-5 **EFFECTIVE DATE:** The permit, including the findings and conditions of approval, shall become effective on the day after all appeal periods have expired. The permit shall be deemed issued after all conditions are met and documented to the City of Arcata.

CALIFORNIA
COASTAL COMMISSION

STATEWIDE
INTERPRETIVE GUIDELINES

These Statewide Interpretive Guidelines were adopted by the California Coastal Commission pursuant to Public Resources Code Section 30620 (b) and are "designed to assist local governments, the commission, and persons subject to the provisions of this chapter in determining how the policies of this division shall be applied in the coastal zone prior to certification of local coastal programs."

The guidelines should assist in applying various Coastal Act policies to permit decisions; they in no case supersede the provisions of the Coastal Act nor enlarge or diminish the powers or authority of the Commission or other public agencies.

Interpretive guidelines for the six districts are published separately.

AS OF DECEMBER 16, 1981

(SUPERSEDES MAY 5, 1981 EDITION)

(SECTIONS RESCINDED June 13, 2000 as NOTED)

EXHIBIT NO. 6

APPEAL NO.

A-1-ARC-12-003 - HUMBOLDT
STATE UNIVERSITY FOUNDATION
EXCERPTS, STATEWIDE
INTERPRETATIVE GUIDELINES
FOR WETLANDS AND OTHER WET
ENVIRONMENTALLY SENSITIVE
HABITAT AREAS (1 of 19)

STATEWIDE INTERPRETIVE GUIDELINE FOR WETLANDS
AND OTHER WET ENVIRONMENTALLY SENSITIVE HABITAT AREAS

(Adopted 2/4/81) (Sections
Rescinded 6/13/00)

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Rescinded
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Rescinded
6/30/00

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STATEWIDE INTERPRETIVE GUIDELINE FOR WETLANDS AND OTHER WET ENVIRONMENTALLY SENSITIVE HABITAT AREAS (Adopted 2/4/81)

I. INTRODUCTION

The Commission adopted this guideline as a decision of the Commission after receiving extensive public testimony and comments and holding ten public hearings at numerous locations in the coastal zone. In addition, the Regional Commissions provided valuable comments and information as a result of an approximately equal number of hearings which they held. Guidelines should be viewed as a tool in reviewing coastal permit applications and LCPs for wetlands and adjacent areas. The Commission intends local governments to use the guideline when developing LCPs but believes that more flexibility may be appropriate in an LCP than in an individual permit decision. Guidelines of necessity must focus on issues primarily of statewide concern. The LCPs will focus in depth on regional wetlands issues. For example, the Humboldt County Northcoast Area Land Use Plan addressed farmed wetlands in detail, a subject only footnoted in this guideline. It adopted explicit criteria for identifying farmed wetlands and designated the areas exclusive agriculture. The Commission certified the LUP as consistent with the policies of Chapter 3, even though such specific criteria are not contained or endorsed in this guideline. This example illustrates that the guideline is a valuable tool, but only a tool, to be used in conjunction with permit and planning decisions.

A. What Are "Wetlands"?

The Coastal Act defines wetlands as land "which may be covered periodically or permanently with shallow water." Wetland areas, such as marshes, mudflats and lagoons, serve many functions: to absorb pollutants and storm energy; to serve as nutrient sources and genetic reservoirs; and to provide some of the world's richest wildlife habitats.

Wetlands are highly diverse and productive. The combination of shallow and deep water, and the variety of vegetation and substrates produce far greater possibilities for wildlife feeding, nesting and resting than is found in less diverse areas. Individual wetlands may be inhabited by hundreds of species of birds, mammals, fish and smaller organisms. Abundant microorganisms serve as food for crabs, clams, oysters, and mussels which live in the tidal flats.

Wetlands' natural abundance draws people for recreation such as clamming, bird watching and fishing. Fish such as the king and silver salmon and steelhead trout live much of their lives in the ocean but return to freshwater to spawn. Commercially important fish such as herring, anchovy and California halibut are also found in California's estuaries.

Food for ocean fauna is supplied from California's coastal estuaries. Estuarine productivity therefore contributes to a complex ocean food web. For example, a significant amount of the net areal primary productivity of the Tijuana Estuary is exported in the form of dissolved carbon which can be taken up and used by oysters, bacteria and phytoplankton, which may in turn be eaten by other creatures. Perhaps more importantly, estuaries provide habitat for organisms to use that food, therefore making these habitats important for man, for example, as aquaculture sites.

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Migratory animals feed and rest in California's coastal wetlands in large enough numbers to make the wetlands invaluable habitat areas. Most waterfowl and shorebirds found in North America, such as ducks, geese, sandpipers, and dunlins, are migratory. They nest in Alaska or Canada in the summer, and winter in the U.S. or points south. During the fall and spring migrations, millions of these birds move along well-defined routes called flyways. The California coast, part of the Pacific Flyways, was assigned third highest priority (out of a total of 33 areas nationally) for wintering habitat preservation by the U.S. Fish and Wildlife Service.

Wetlands also serve as rich laboratories for ecological studies.

B. How the Coastal Act Protects Wetlands

Since wetlands are so valuable from both an economic and biologic standpoint, the California Coastal Act, and many other Federal and state statutes and regulations, mandates governmental regulation of these areas. Section 30001 of the Coastal Act states (in part) that the Legislature finds and declares as follows: that the California coastal zone is a distinct and valuable resource and exists as a delicately balanced ecosystem; that the permanent protection of the state's natural resources is of paramount concern to present and future residents of the state and the nation; and that it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction. Therefore, the Act requires that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes be maintained and, where feasible, restored. Sections of the Act provide general policies for development in and adjacent to wetlands, and specific policies for protecting these areas.

In order to apply Coastal Act policies on wetlands to specific areas and developments, the Commission has adopted this interpretive guideline. The guideline integrates ecological concepts and policies found in many sections of the Act into a consistent whole, explains policies for protecting natural resources, defines technical terms, and facilitates application of the policies by the State and regional commissions. Since many of the natural resource policies in the Coastal Act overlap, this guideline distinguishes the relative importance of the policies and their interrelationships. Statutory provisions which govern all environmentally sensitive habitat areas are laid out and specific development standards and criteria are explained for particular habitat areas (e.g., wetlands, estuaries, open coastal waters, lakes and streams).

Wetlands are not isolated, independently functioning systems, and they depend upon and are highly influenced by their surroundings. Therefore, the guideline includes standards for the review and evaluation of proposed projects adjacent to environmentally sensitive habitat areas.

The State Department of Fish and Game is the authorized custodian of California's fish and wildlife resources and serves as the Commission's principal consultant on all matters related to these resources. This responsibility includes but is not limited to: determination of project impacts; adequacy of technical data; and identification of appropriate mitigation or restoration measures for affected habitat.

C. Use of the Guideline and Its Relationship to LCPs

This guideline is meant to assist the public and the Commissions in applying Coastal Act policies for wet environmentally sensitive habitat areas and is in no way meant to supersede those policies. The guideline should be viewed as a tool in reviewing coastal permit applications and LCPs for wetlands and adjacent areas as explained above.

The question of the relationship between interpretive guidelines and Local Coastal Programs (LCPs) has been hotly debated and underscores the importance of developing a comprehensive, consistent approach to these valuable coastal areas, but the LCPs (such as Humboldt County example discussed above) become the standard of review after certification. This guideline is a decision of the Commission, and therefore, it does serve as a tool or guide to local governments in preparing their LCPs as specified in Section 30625 (c) of the Act and in Section 00113 of the LCP Regulations.

II. WHAT ARE "ENVIRONMENTALLY SENSITIVE HABITAT AREAS"?

The Coastal Act defines "environmentally sensitive area" in Section 30107.5 as follows:

"'Environmentally sensitive area' means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

The term "environmentally sensitive habitat area" is also used in Section 30240 of the Coastal Act. The two terms are synonymous.

The Commission generally considers wetlands, estuaries, streams, riparian habitats, lakes and portions of open coastal waters to be environmentally sensitive habitat areas because of the especially valuable role of these habitat areas in maintaining the natural ecological functioning of many coastal habitat areas and because these areas are easily degraded by human developments. In acting on an application for development one of these areas, the Commission considers all relevant information. The following specific policies apply to these habitat areas: Sections 30230; 30231; 30233; and 30236. Section 30240, a more general policy, also applies, but the more specific language in the former sections is controlling where conflicts exist with general provisions of Section 30240 (e.g., port facilities may be permitted in wetlands under Section 30233 even though they may not be resource dependent). This guideline addresses wet environmentally sensitive habitat areas only. The discussion in this section and in section VII is not intended to describe or include all environmentally sensitive habitat areas which may fall under Section 30240 of the Coastal Act.

As stated in the "INTRODUCTION," wetlands are not isolated, independently functioning systems. Rather, they depend upon and are highly influenced by their associated watersheds and upland transition areas. Therefore, when the Commission determines that any adjacent area is necessary to maintain the functional capacity of the wetland, the Commission will require that this area be protected against any significant disruption of habitat values consistent with Section 30240(a). These areas may be protected either by inclusion in a buffer area subject to land use restrictions or through provision of a buffer area around the ecological related adjacent area itself, or through other means. Section VII of this guideline discusses the use of buffers.

A. "Wetlands"

The Coastal Act defines "wetland" in Section 30121 as follows:

"'Wetland' means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens."

This is the definition upon which the Commission relies to identify "wetlands." The definition refers to lands "...which may be periodically or permanently covered with shallow water ..." However, due to highly variable environmental conditions along the length of the California coast, wetlands may include a variety of different types of habitat areas. For this reason, some wetlands may not be readily identifiable by simple means. In such cases, the Commission also will rely on the presence of hydrophytes and/or the presence of hydric soils as evidence that an area may be periodically or permanently covered with shallow water. These are useful indicators of wetland conditions, but the presence or absence of hydric soils and/or hydrophytes alone are not necessarily determinative when the Commission identifies wetlands under the Coastal Act. In the past, the Commission has considered all relevant information in making such determinations and relied upon the advice and judgement of experts before reaching its own independent conclusion as to whether a particular area will be considered wetland under the Coastal Act. The Commission intends to continue to follow this policy. The discussion in "APPENDIX D" provides more detail and further guidance on wetland identification.

B. "Estuaries"

An "estuary" is a coastal water body usually semi-enclosed by land, but which has open, partially obstructed, or intermittent exchange with the ocean and in which ocean water is at least occasionally diluted by fresh water runoff from the land. The salinity may be periodically increased above the open ocean by evaporation. In general, the boundary between "wetland" and "estuary" is the line of extreme low water (see Appendix D for a more complete discussion of wetland/estuary boundaries).

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C. "Streams" and "Rivers"

A "stream or a "river" is a natural watercourse as designated by a solid line or dash and three dots symbol shown on the United States Geological Survey map most recently published, or any well-defined channel with distinguishable bed and bank that shows evidence of having contained flowing water as indicated by scour or deposit of rock, sand, gravel, soil, or debris.

D. "Lakes"

A "lake" is a confined, perennial water body mapped by the United States Geologic Survey on the most current 7.5 minute quadrangle series.

E. "Open Coastal Waters" and "Coastal Waters"

The terms "open coastal waters" or "coastal waters" refer to the open ocean overlying the continental shelf and its associated coastline. Salinities exceed 30 parts per thousand with little or no dilution except opposite mouths of estuaries (see Appendix D).

Some portions of open coastal waters, generally areas without especially significant plant or animal life, may not be considered environmentally sensitive habitat areas. Environmentally sensitive habitat areas within open coastal waters may include "Areas of Special Biological Significance", as identified by the State Water Resources Control Board, habitats of rare or endangered plant and animal species, nearshore reefs, rocky intertidal areas (such as tidepools), and kelp beds.

F. "Riparian Habitats"

A "riparian habitat" is an area of riparian vegetation. This vegetation is an association of plant species which grows adjacent to freshwater watercourses, including perennial and intermittent streams, lakes, and other bodies of fresh water (see Appendix D).

III. WHEN IS DEVELOPMENT PERMITTED IN AN ENVIRONMENTALLY SENSITIVE HABITAT AREA?

"Development" is defined in Section 30106 of the Coastal Act, and includes the placement of fill; construction or alteration of any structure or facility; discharge of any waste material; dredging or extraction of any materials; change in the density or intensity of use of land; removal or harvest of major vegetation except for agricultural purposes; and other alterations to the land and water in the coastal zone (see Appendix A).

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A. Requirements For All Development Proposals in Environmentally Sensitive Habitat Areas

Under the Coastal Act, there are two basic steps in determining if development is permitted in an environmentally sensitive habitat area. First, the type of development proposed must be a permitted use under the applicable section of the Coastal Act. For example, any development proposed in a wetland must be specifically described in Section 30233(a) of the Act. The permitted developments allowed in each type of environmentally sensitive habitat area are discussed in subsequent sections. Additional permitted developments in environmentally sensitive habitat areas are projects which depend on the natural resources in that habitat area and therefore require a site in that particular type of environmentally sensitive habitat area in order to function.

Second, any permitted use must also meet all general requirements. For example, before development could be approved in a wetland, the Commission must find that there is no feasible, less environmentally damaging alternative, that feasible mitigation measures have been provided to minimize adverse environmental effects, and that the functional capacity of the wetland is maintained or enhanced. These requirements are discussed in subsequent sections.

B. Requirements for Additional Project Information.

To meet the statutory requirements of Sections 30230, 30231, 30233, 30236, and 30240 of the Coastal Act, an applicant for a permit to develop within or near an environmentally sensitive habitat area may be required to submit supplemental information, including any or all of the maps described below. The size of the study area will depend upon natural topographic features, location of existing development, and potential biological significance of adjacent lands. In undeveloped areas, the required study area may extend 500 feet or more around the environmentally sensitive habitat area, but the 500 foot distance is not an absolute standard. It is recommended that this information be developed before the application comes before the Commission, but the Commission may require additional information as a part of its permit process.

When there is a dispute over the adequacy of the information, the Commission will request the State Department of Fish and Game to review the material and submit written comments to the Commission. A qualified private professional acceptable to the applicant may be employed by the Commission to assist in this review or to provide additional information. The Commission may require the applicant to reimburse it for any reasonable expenses incurred in providing additional information or in the review of the applicant's information.

1. Maps

a. Topographic base map. The base map should be at a scale sufficiently large to permit clear and accurate depiction of vegetative associations and soil types in relation to any and all proposed development (normally the scale required will be 1"=200'). Contour intervals should be five feet, and the map should contain a north arrow, graphic bar scale, and a citation for the source of the base map (including the date). The map should show the following information:

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- 1) Boundary lines of the applicant's property and adjacent property, including assessor's parcel numbers, as well as the boundaries of any tidelands, submerged lands or public trust lands.
- 2) Names and locations of adjacent or nearby roads, streets or highways, and other important geographic, topographic and physical features.
- 3) Location and elevation of any levees, dikes or flood control channels.
- 4) Location, size and invert elevation of any culverts or tide gates.

b. Inundation map. For nontidal wetlands, a map should be prepared indicating permanent or seasonal patterns of inundation (including sources) in a year of normal rainfall.

c. Vegetation map. Location and names of plant species (e.g., Salicornia virginica) and vegetation associations (e.g., saltmarsh). This map should be prepared by a qualified ecologist or botanist based upon the technical criteria provided in Appendix D.

c. Soils map. If no soil survey is available, a soils map should be prepared by a qualified soils scientist, and should show the location of soil types and include a physical description of their characteristics based upon the technical criteria provided in Appendix D.

2. Supplemental information

A report should be prepared which demonstrates that all of the criteria for development in environmentally sensitive habitat areas have been met. The report should investigate physical and biological features existing in the habitat area and evaluate the impact of the development on the existing ecosystem. The information should be prepared by an ecologist or professional environmental scientist with expertise in the ecosystem in which the development is proposed. For example, in preparing such a report for a proposed development in a salt marsh, the expertise of a qualified wetland ecologist, botanist, ornithologist, hydrologist, soil scientist or other technical professional may be required. The report should be based on an on-site investigation, in addition to a review of the existing information on the area, and should be sufficiently detailed to enable the Commission to determine potential immediate and long range impacts of the proposed project.

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The report should describe and analyze the following:

- a. Present extent of the habitat, and if available, maps, photographs or drawings showing historical extent of the habitat area.
- b. Previous and existing ecological conditions.
 - 1) The life history, ecology and habitat requirements of the relevant resources, such as plants, fish and wildlife, in sufficient detail to permit a biologist familiar with similar systems to infer functional relationships (the maps described in above may supply part of this information).
 - 2) Restoration potentials.
- c. Present and potential adverse physical and biological impacts on the ecosystem.
- d. Alternatives to the proposed development, including different projects and off-site alternatives.
- e. Mitigation measures, including restoration measures and proposed buffer areas (see pp. 14-17 and pp. 20-23).
- f. If the project includes dredging, explain the following:
 - 1) The purpose of the dredging.
 - 2) The existing and proposed depths.
 - 3) The volume (cubic yards) and area (acres or square feet) to be dredged.
 - 4) Location of dredging (e.g., estuaries, open coastal waters or streams).
 - 5) The location of proposed spoil disposal.
 - 6) The grain size distribution of spoils.
 - 7) The occurrence of any pollutants in the dredge spoils.
- g. If the project includes filling, identify the type of fill material to be used, including pilings or other structures, and specify the proposed location for the placement of the fill, the quantity to be used and the surface area to be covered.

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h. If the project includes diking, identify on a map the location, size (length, top and base width, depth and elevation of the proposed dike(s)) as well as the location, size and invert elevation of any existing or proposed culverts or tide gates.

i. If the project is adjacent to a wetland and may cause mud waves, a report shall be prepared by a qualified geotechnical engineer which explains ways to prevent or mitigate the problem.

j. Benchmark and survey data used to locate the project, the lines of highest tidal action, mean high tide, or other reference points applicable to the particular project.

k. Other governmental approvals required and obtained. Indicate the public notice number of Army Corps of Engineers permit if applicable.

Any maps or technical data submitted by the applicant will be subject to review by the State Department of Fish and Game, the State Lands Commission, or other applicable agencies who may submit comments to the Commission.

IV. DEVELOPMENTS PERMITTED IN WETLANDS AND ESTUARIES

Of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection. In order to approve a project involving the diking, filling¹, or dredging of a wetland or estuary, the Commission must first find that the project is one of the specific, enumerated uses set forth in Section 30233 of the Act (these developments and activities are listed in section A. and B. below). The Commission must then find that the project meets all three requirements of Section 30233 of the Act (see pp. 14-17). In addition, permitted development in these areas must meet the requirements of other applicable provisions of the Coastal Act.

A. Developments and Activities Permitted in Wetlands and Estuaries

1. Port facilities.
2. Energy facilities.

¹ The Coastal Act defines "fill" as ". . . earth or any other substances or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area" (Section 30108.2).

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3. Coastal-dependent industrial facilities², such as commercial fishing facilities.
4. Maintenance of existing or restoration of previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
5. Incidental public service purposes which temporarily impact the resources of the area, which include, but are not limited to, burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines (roads do not qualify)³.
6. Restoration projects.⁴

(continued on next page)

² For the purposes of this guideline, a coastal-dependent industrial facility is one which requires a site on, or adjacent to, the sea to function. See also Sections 30260 through 30264.

³ When no other alternative exists, and when consistent with the other provisions of this section, limited expansion of roadbeds and bridges necessary to maintain existing traffic capacity may be permitted. Activities described in the Commission's Guideline on Exclusions from Permit Requirements applicable to roads also should be consulted.

⁴ Restoration projects allowable under Section 30233 are discussed in detail on pp. 13-14.

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7. Nature study, aquaculture,⁵ or similar resource-dependent activities⁶

8. In wetland areas, only entrance channels for new or expanded boating facilities⁷ may be constructed, except that in a degraded wetland,⁸ other boating facilities may be permitted according to the requirements of Section 30411 discussed on pp. 23-27.

9. New or expanded boating facilities in estuaries.⁹

⁵ Aquaculture is not defined in the Coastal Act. The definition contained in Public Resources Code, Division 1, Chapter 4, Section 828 will be used for the purposes of this guideline. ". . . 'aquaculture' means the culture and husbandry of aquatic organisms, including, but not limited to, fish, shellfish, mollusks, crustaceans, kelp and algae. Aquaculture shall not mean the culture and husbandry of commercially utilized inland crops, including, but not limited to, rice, watercress, and bean sprouts." Aquaculture activities could only be sited in a wetland or estuary if they depended upon the resources of the wetland or estuary to be able to function at all. Support facilities which could be located on upland sites (e.g., parking lots, buildings) would not be permitted in the wetland or estuary. This requirement is not intended to discourage aquaculture projects or to prohibit vertical access. The Coastal Act encourages aquaculture.

⁶ For the purposes of this guideline, similar resource-dependent activities include scientific research, hunting and fishing (where otherwise permitted). In addition, when wetlands are seasonally farmed, the continued use of agriculture is allowed. Expanding farming operations into non-farmed wetlands by diking or otherwise altering the functional capacity of the wetland is not permitted. Farm-related structures (including barns, sheds, and farm-owner occupied housing) necessary for the continuance of the existing operation of the farmed wetlands may be located on an existing farmed wetland parcel, only if no alternative upland location is available for such purpose and the structures are sited and designed to minimize the adverse environmental effects on the farmed wetland. Clustering and other construction techniques to minimize both the land area covered by such structures and the amount of fill necessary to protect such structures will be required.

⁷ Boating facilities include, but are not limited to, boat landings, boat launching ramps, and marinas.

⁸ The term "degraded wetland" (emphasis added) is discussed on pp. 24-25.

⁹ The list of developments permitted in wetlands and estuaries is the same except that new or expanded boating facilities are permitted in estuaries but are not permitted in wetlands.

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B. Special Limitations on Development in Those Coastal Wetlands Identified by the Department of Fish and Game.

Pursuant to Section 30233(c) of the Act, the type and amount of development in the coastal wetlands identified by the Department of Fish and Game is even more limited than those developments set forth in section A. above.

Not all coastal wetlands are identified by the Department of Fish and Game; rather, only 19 are identified for acquisition purposes in their report, "Acquisition Priorities for the Coastal Wetlands of California." However, the Department of Fish and Game may identify additional coastal wetlands pursuant to Section 30233(c). If the Department elects to identify additional wetlands pursuant to Section 30233(c), the Commission recommends that the Department develop standards and procedures for doing so. Wetlands not identified by the Department of Fish and Game are still protected by the Coastal Act, because development in any wetland as defined in the Coastal Act (see section II. A., above) must meet the requirements of Section 30233 and other applicable sections of the Act. The coastal wetlands identified for acquisition purposes to date are as follows:

- | | |
|--------------------------|----------------------------|
| 1. Lake Earl | 11. Carpenteria Marsh |
| 2. Ten Mile River | 12. Upper Newport Bay |
| 3. Big River | 13. Agua Hedionda Lagoon |
| 4. Bodega Bay | 14. Batiquitos Lagoon |
| 5. Estero Americano | 15. San Elijo Lagoon |
| 6. Estero de San Antonio | 16. San Dieguito Lagoon |
| 7. Pescadero Marsh | 17. Los Penasquitos Lagoon |
| 8. Elkhorn Slough | 18. South San Diego Bay |
| 9. Morro Bay | 19. Tijuana River |
| 10. Santa Maria River | |

Development permitted in the wetland portions of those areas named above is limited to the following:

1. Very minor incidental public facilities which temporarily impact the resources of the area, such as the inspection of piers, and the maintenance of existing intake and outfall lines (see footnote #3).
2. Wetland restoration.
3. Nature study.
4. Commercial fishing facilities in Bodega Bay (the meaning of this phrase is further defined in Section 30233(c)).
5. Development in already developed parts of south San Diego Bay.

Additional flexibility will be allowed for restoration projects located in wetlands which are degraded (as that term is used in Section 30411 of the Coastal Act). Section VIII discusses the requirements of such projects.

D. Requirements for All Permitted Development

Any proposed project which is a permitted development must also meet the three statutory requirements enumerated below, in the sequence shown:

1. Diking, filling or dredging of a wetland or estuary will only be permitted if there is no feasible¹⁰ less environmentally damaging alternative (Section 30233(a)). The Commission may require the applicant to submit any or all of the information described in section III. B. above.

2. If there is no feasible less environmentally damaging alternative, feasible mitigation measures must be provided to minimize adverse environmental effects.

a. If the project involves dredging, mitigation measures must include at least the following (Section 30233(b)):

1) Dredging and spoils disposal must be planned and carried out to avoid significant disruption¹¹ to wetland habitats and to water circulation.

2) Limitations may be imposed on the timing of the operation, the type of operation, the quantity of dredged material removed, and the location of the spoil site.

3) Dredge spoils suitable for beach replenishment shall, where feasible, be transported to appropriate beaches or into suitable longshore current systems.

¹⁰ "Feasible" is defined in Section 30108 of the Act to mean "... capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." A feasible less environmentally damaging alternative may involve a location for the proposed development which is off the project site on lands not owned by the applicant. Feasible under the Coastal Act is not confined to economic considerations. Environmental, social and technological factors also shall be considered in any determination of feasibility.

¹¹ To avoid significant disruption to wetland habitats and to water circulation the functional capacity of a wetland or estuary must be maintained. Functional capacity is discussed on page 17.

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- 4) Other mitigation measures may include opening up areas to tidal action, removing dikes, improving tidal flushing, or other restoration measures.

The Executive Director or the Commission may request the Department of Fish and Game to review dredging plans for developments in or adjacent to wetlands or estuaries. The Department may recommend measures to mitigate disruptions to habitats or to water circulation.

- b. If the project involves diking or filling of a wetland, required minimum mitigation measures are the following:¹²

- 1) If an appropriate restoration site is available, the applicant shall submit a detailed restoration plan which includes provisions for purchase and restoration of an equivalent area of equal or greater biological productivity¹³ and dedication of the land to a public agency or otherwise permanently restricts its use for open space purposes. The site shall be purchased before the dike or fill development may proceed.

- 2) The applicant may, in some cases, be permitted to open equivalent areas to tidal action¹⁴ or provide other sources of surface water. This method of mitigation would be appropriate if the applicant already owned filled, diked areas which themselves were not environmentally sensitive habitat areas but would become so, if such areas were opened to tidal action or provided with other sources of surface water.

¹² Mitigation measures shall not be required for temporary or short-term fill or diking, if and only if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. For the purposes of this guideline, short-term generally means that the fill or dikes would be removed immediately upon completion of the construction of the project necessitating the short-term fill or diking (Section 30607.1).

¹³ For an area to be of "equal or greater biological productivity," it must provide equivalent or greater habitat values to the same type and variety of plant and animal species which use the area affected by the proposal.

¹⁴ "Opening up equivalent areas to tidal action" means to permanently open to tidal action former intertidal wetlands capable of providing equal or greater biological productivity. Mitigation measures should restore areas which are no longer functioning in a manner beneficial to wetland species. For example, returning a diked-off, formerly saltwater, but presently freshwater marsh to tidal action would not constitute mitigation. However, improving tidal flushing by removing tide gates, digging tidal channels and clearing culverts might qualify, if the Commission determines that such actions would restore an area to equal or greater habitat value than the area lost.

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3) However, if no appropriate restoration sites under options 1 and 2 are available, the applicant shall pay an in-lieu fee of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area.

This third option would be allowed only if the applicant is unable to find a willing seller of a potential restoration site. The public agency may also face difficulties in acquiring appropriate sites even though it has the ability to condemn property. Thus, the in-lieu fee shall reflect the additional costs of acquisition, including litigation, as well as the cost of restoration. If the public agency's restoration project is not already approved by the Commission, the public agency may need to be a co-applicant for a coastal development permit to provide adequate assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to issuance of the permit. In addition, such restoration must occur in the same general region (e.g., within the same stream, lake, or estuary where the fill occurred).

A preferred restoration program would remove fill from a formerly productive wetland or estuary which is now biologically unproductive dry land and would establish a tidal prism necessary to assure adequate flushing. Few if any restoration projects have been implemented for a sufficient length of time to provide much guidance as to the long-term restorability of such areas. Since such projects necessarily involve many uncertainties, restoration should precede the diking or filling project. At a minimum, the permit will be conditioned to assure that restoration will occur simultaneously with project construction. Restoration and management plans shall be submitted with the permit application.

The restoration plan should generally state when restoration work will commence and terminate, should include detailed diagrams drawn to scale showing any alterations to natural landforms, and should include a list of plant species to be used as well as the method of plant introduction (i.e., seeding, natural succession, vegetative transplanting, etc.).

The management plan would constitute an agreement between the applicant and the Commission to guarantee the wetland is restored to the extent established under stated management objectives and within a specified time frame.

The plan should describe the applicant's responsibilities in maintaining the restored area to assure the Commission that the project will be successful. The management plan should generally include provisions for a monitoring program and for making any necessary repairs or modifications to the mitigation site.

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The applicant should periodically submit reports on the project which give information on the following:

- distribution and type of vegetation established
- benthic invertebrate abundance
- bird useage and establishment of endangered species
- fish and other vertebrate abundance

3. Diking, filling or dredging of a wetland or estuary must maintain or enhance the funtional capacity of the wetland or estuary [Section 30233(c)]. Functional capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity¹⁵. In order to establish that the functional capacity is being maintained, the applicant must demonstrate all of the following:

- a. That the project does not alter presently occurring plant and animal populations in the ecosystem in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance and composition are essentially unchanged as a result of the project.
- b. That the project does not harm or destroy a species or habitat that is rare or endangered.
- c. That the project does not harm a species or habitat that is essential to the natural biological functioning of the wetland or estuary.
- d. That the project does not significantly reduce consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of the wetland or estuarine ecosystem.

¹⁵ The intention here is to convey the importance of not only how many species there are but also the size of their populations (abundance) and the relative importance of the different species to the whole system (composition). It cannot be overemphasized that the presence of a species by itself is an inadequate indicator of the condition of a natural system. In a "healthy" wetland ecosystem, the absolute number of individuals of a species and the relative number compared to other species will depend on the size of the organism and its place in the food web (what it feeds on, what feeds on it, and what competes with it for the same food or other resources). Major changes in absolute or relative numbers of some species will have far-reaching consequences for the whole ecosystem because of their interactions with other species.

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