

**CALIFORNIA COASTAL COMMISSION**

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# Th10a

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Staff:	C. Kenyon-A
Staff Report:	02/24/17
Hearing Date:	03/09/17

## STAFF REPORT: REGULAR CALENDAR

<b>Application No.:</b>	<b>1-17-0151</b>
<b>Applicant:</b>	<b>City of Arcata</b>
<b>Location:</b>	At the Arcata Marsh & Wildlife Sanctuary, approximately 180 feet northwest of the Arcata Marsh Interpretive Center in Arcata, Humboldt County (APN 503-241-001).
<b>Project Description:</b>	Construct an approximately 700-square-foot outdoor amphitheater including 14 benches, a campfire ring, a storage box, and a podium with a removable projection screen.
<b>Staff Recommendation:</b>	Approval with Special Conditions

## SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends approval of CDP Application 1-17-0151 with conditions.

The City of Arcata proposes to construct an outdoor campfire assembly area at the Arcata Marsh & Wildlife Sanctuary adjacent to the Arcata Marsh Interpretive Center to enhance public educational programs offered at the center. The assembly area would be approximately 700 square feet in size and would contain 14 wooden benches, a contained campfire ring, a small podium, and a storage box with fittings for a removable projection screen.

Staff had initially determined that the proposed development qualified as an immaterial permit amendment to a permit the Commission had granted to the City for development of the Arcata Marsh Interpretive Center. However, prior to review by the Commission at the Commission meeting of April 2016, staff received a letter from Humboldt Baykeeper expressing concern about potential dioxin contamination in soils at the project site as a result of historic lumber mill operations in the vicinity, and requesting soil sampling to determine the extent and concentration of contamination. Staff withdrew its determination to allow time for Humboldt Baykeeper's concerns to be addressed. The City subsequently withdrew the application and submitted an application for a new permit with a revised project description, revising the construction methods to prevent any excavation, handling, or mobilization of the underlying soil at the site. The City now proposes to anchor the concrete posts of the benches and the concrete bases of the podium and storage box into layers of imported compacted soil and gravel fill rather than into the underlying ground, and to use a battery-operated project screen to avoid utility trenching.

Because the proposed project will avoid mobilization of or exposure to potential dioxin contamination, Commission staff believes the project has been sited and designed to: (1) maintain the biological productivity and quality of the adjoining coastal waters consistent with Section 30231 of the Coastal Act; (2) prevent impacts that would significantly degrade adjoining riparian ESHA; and (3) be compatible with the continuance of the habitat consistent with Section 30240(b).

To ensure the project is constructed as proposed to avoid disturbance of the underlying soil, staff recommends the imposition of **Special Condition 1**. In addition, staff recommends the addition of **Special Condition 2** requiring adherence to various construction-related responsibilities so that no construction materials, debris, or waste shall be allowed to enter coastal waters. Staff also recommends the addition of **Special Condition 3** which requires mitigation measures to avoid potential impacts to archaeological resources, and **Special Condition 4** to ensure that the City obtains permission if necessary from the State Lands Commission.

Staff believes that the project, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act. The motion to adopt the staff recommendation of approval with special conditions is on [page 4](#).

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## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission approve coastal development permit 1-17-0151 pursuant to the staff recommendation.*

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

### Resolution:

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

## II. Standard Conditions

This permit is granted subject to the following standard conditions:

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

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

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Future Development Restriction.** This permit is only for the development described in Coastal Development Permit Application No. 1-17-0151. Any repair and maintenance of the approved development as well as any future improvements or additions to the approved development, including, but not limited to, any excavation or penetration into the existing site soils or installation of additional structures will require an amendment to Permit No. 1-17-0151. Such a permit amendment application shall be accompanied by written evidence and analysis demonstrating that the amended development will remain consistent with all applicable Chapter 3 policies of the Coastal Act, including but not limited to Coastal Act policies requiring the protection of water quality and environmentally sensitive habitat areas.
2. **Construction Responsibilities.** The permittee shall comply with the following construction-related requirements:
  - A. Construction shall occur during the dry season (May 15 – October 15) during periods of dry weather only;
  - B. Sediment control BMPs including silt fencing shall be installed as proposed prior to and maintained throughout the construction period to trap and remove eroded sediment from runoff in order to prevent sedimentation of coastal waters;
  - C. To minimize wildlife entanglement and plastic debris pollution, temporary rolled erosion and sediment control products (such as fiber rolls and silt fencing) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall not be used. Acceptable alternatives include erosion and sediment control products without netting, products made with loose-weave natural fiber netting, and unreinforced silt fences;
  - D. Construction shall be performed with hand tools only;
  - E. No pressure-treated wood shall be utilized;
  - F. Staging and storage of construction equipment and materials shall occur on paved or gravel surfaces at least 50 feet from coastal wetlands, drainage courses, and storm drain inlets;
  - G. All on-site stockpiles of construction materials, soil, and other excavated materials shall be contained at all times and shall be covered during storm events to minimize discharge of sediments and other pollutants; and
  - H. Any debris resulting from construction activities shall be removed immediately upon completion of component construction, and shall be disposed of at a disposal site outside the coastal zone or within the coastal zone pursuant to a valid coastal development permit.

3. **Protection of Archeological Resources.** If an area of cultural deposits or human remains is discovered during the course of the project, all construction shall cease and shall not recommence until a qualified cultural resource specialist, in consultation with the Tribal Historic Preservation Officers of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria, analyzes the significance of the find and prepares a supplementary archaeological plan for the review and approval of the Executive Director, and either: (a) the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, or (b) the Executive Director reviews the Supplementary Archaeological Plan, determines that the changes proposed therein are not *de minimis*, and the permittee has thereafter obtained an amendment to CDP 1-17-0151.
4. **State Lands Commission Review.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-17-0151, the Applicant shall provide to the Executive Director a written determination from the State Lands Commission that: (A) no State or public trust lands are involved in the development; or (B) State or public trust lands are involved in the development and all permits required by the State Lands Commission have been obtained; or (C) State or public trust lands may be involved in the development, but, pending a final determination, an agreement has been made with the State Lands Commission for the approved project as conditioned by the Commission to proceed without prejudice to that determination.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The City of Arcata proposes to construct an outdoor "amphitheater" along an existing gravel trail about 180 feet northwest of the Arcata Marsh Interpretive Center in the Arcata Marsh and Wildlife Sanctuary off of South "G" Street in Arcata on the northeastern edge of Humboldt Bay (APN 503-241-001). The purpose of the amphitheater is to enhance public educational programs offered at the Arcata Marsh Interpretive Center by providing an outdoor, campfire-type assembly area for groups of visitors. The proposed approximately 700-square-foot assembly area would contain fourteen benches, a campfire ring, a small podium, and a storage box with fittings for a removable projection screen.

The amphitheater would be located between a gravel trail to the north and Butcher's Slough to the south at an elevation of approximately 13 to 14 feet (NAVD 88)<sup>1</sup>. The project site is a flat upland area comprised mostly of grasses and other forbes. The site is currently used by Arcata Marsh summer camps as a recreational area. To construct the outdoor amphitheater, the City proposes to first mow surface vegetation close to the ground and install a ground-level layer of geotextile fabric over a 700-square-foot area. Next, approximately eight inches of imported clean soil would be spread on top of the fabric and compacted, and a second layer of geotextile fabric

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<sup>1</sup> For reference, the mean monthly maximum water elevation on Humboldt Bay at the North Spit tide gage is 7.74 feet elevation (NAVD 88).

would be secured on top of the soil. Approximately eighteen inches of gravel would then be placed on top of the second layer of geotextile fabric and compacted. The fourteen wooden benches would be constructed offsite at the City Corporation Yard and installed on concrete posts anchored in the imported compacted fill. In addition, approximately fifty square feet of concrete would be poured on grade in order to install a base for the podium (2' X 2' X 4' tall) and storage box (8' long X 2.5' deep X 4' tall). The work would be performed with hand tools only and staging would occur along the existing gravel trail with access from a nearby Arcata Marsh parking lot off South G Street. The project would maintain a minimum 50-foot setback from the bank of Butcher's Slough, and the City proposes a number of construction BMPs to avoid disturbance of adjacent coastal waters.

### **History of Site**

The Arcata Marsh Interpretive Center, the site of the proposed amphitheater, and the connecting trail are located on the site of a former lumber mill on the southern dike of a former nine-acre log pond. The lumber mill was constructed in tidal saltmarsh habitat in the early 1950's. Butcher's Slough, which flows through the site and connects Jolly Giant Creek with Arcata Bay, was diverted into a straight channel when the mill was constructed. The mill operated until the late 1960's and an extensive cleanup of the site began in 1976. A subsequent grant from the Coastal Conservancy allowed the City of Arcata to complete a substantial wetland restoration and public access trail project in 1985 and 1986. The restoration involved realigning Butcher's Slough to an alignment more consistent with its historic course, and recontouring the former log pond and turning it into a marsh<sup>2</sup>. The interpretive center was built in 1992 using portions of the old mill foundation.

### **History of Proposed Project**

The City first applied for a permit for the amphitheater project in October 2015. The Commission originally processed the application as an amendment to a CDP for the Arcata Marsh Interpretive Center issued in August 1992 (CDP Amendment Application No. 1-92-127-A1) and on April 1, 2016, the Executive Director determined that the proposed amendment was immaterial and notice of the amendment was included in the North Coast's Deputy Director's report for the April 15, 2016 Coastal Commission hearing. After notice of the immaterial amendment was sent and prior to the Commission hearing, Humboldt Baykeeper sent a letter to the North Coast District Office of the Coastal Commission raising concern about the potential for dioxin contamination at the proposed location of the amphitheater due to: (1) the historical location of nearby teepee burners that may have been used as part of the previous lumber mill operation at the site; and (2) previously recorded levels of dioxin on a nearby parcel. The Executive Director determined that Humboldt Baykeeper's objection raised an issue of conformity with the Coastal Act and withdrew his determination that the amendment qualified for processing as an immaterial amendment. The amendment request was removed from the North Coast Deputy Director's report to enable the contamination concerns to be addressed. The City subsequently withdrew the amendment application and submitted an application for a new CDP with a revised project description. The revised project description revises the construction methods to prevent any excavation, handling, or mobilization of the underlying soil at the site.

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<sup>2</sup> The Butcher's Slough Wetland Restoration Project was permitted under CDP 1-84-156 and a subsequent amendment.

The City now proposes to anchor the concrete posts of the benches and the concrete bases of the podium and storage box into layers of imported compacted soil and gravel fill rather than into the underlying ground, and to use a battery-operated project screen to avoid utility trenching to connect the amphitheater to a power source at the Interpretive Center.

## **B. STANDARD OF REVIEW**

The proposed project is located within the Commission's retained jurisdiction. The City of Arcata has a certified local coastal program (LCP), but the site is within an area shown on State Lands Commission maps over which the state retains a public trust interest. Therefore, the standard of review that the Commission must apply to the development is the Chapter 3 policies of the Coastal Act.

## **C. OTHER AGENCY APPROVALS**

### **City of Arcata**

The City of Arcata's Historic and Design Review Commission approved a Design Review Permit for the proposed project on October 14, 2015.

### **California State Lands Commission (SLC)**

The SLC has direct jurisdiction and authority over ungranted sovereign tidelands and submerged lands underlying the State's navigable waterways (ocean, bays, sloughs, lakes, and rivers) as well as over lands subject to the public trust. The project area includes filled former tidelands that are subject to the public trust. To ensure that the Applicant has the legal ability to undertake all aspects of the project on these public lands, the Commission attaches **Special Condition 4**. This condition requires that the project be reviewed and where necessary approved by the SLC.

## **D. ENVIRONMENTALLY SENSITIVE HABITAT AREAS AND WATER QUALITY**

Section 30230 of the Coastal Act states, in applicable part:

*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 of the Coastal Act states:

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



Coastal Act Section 30240 states:

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

### **Avoiding Encroachment and Runoff Impacts to Wetlands and Riparian ESHA**

The approximately 700-square foot project area contains no special status plants, wetlands, or other sensitive habitat but is located adjacent to Butcher's Slough, a tributary of Humboldt Bay. Riparian habitat associated with the slough grows directly to the east of the project area adjacent to the proposed podium, and riparian habitat associated with the former log pond grows across the narrow public access trail to the north. To avoid impacts to Butcher's Slough, the City proposes a fifty foot minimum setback from the bank of the slough. No setback is proposed from adjacent riparian ESHA.

To prevent any sediment, construction debris, or hazardous materials from washing into the estuary or entering adjoining riparian ESHA during project construction, construction will occur during the dry season, no heavy equipment will be utilized, and a silt fence will be installed alongside Butcher's Slough adjacent to the project site. Because all tools will be hand-operated, staging will require minimal space and will occur along the existing adjacent gravel trail without disturbing adjacent vegetation. Paved access roads, parking areas, and trails will be swept daily during construction. The City proposes to build the amphitheater benches off-site at the City Corporation Yard in order to minimize power tool noise disturbance and construction debris. After project completion, any construction debris or spoils will be disposed of at the City Corporation Yard, or another appropriate waste disposal facility. In addition, no pressure-treated wood will be utilized that could potentially release toxic wood preservative chemicals into coastal waters. To ensure that the water quality protection benefits of these best management practices (BMPs) are realized, **Special Condition 2** requires that the BMPs are implemented during project construction as proposed.

No woody shrubs or trees will be removed as part of the project, and due to frequent disturbance, proximity to a public access trail, and adequate habitat nearby, ground-nesting birds are unlikely to use the proposed project area for nesting. Nevertheless, to avoid disturbance to nesting birds and other potential wildlife utilizing the project area and surrounding riparian habitat, the City proposes to either remove vegetation prior to the nesting season, or conduct nesting bird surveys and avoid any nests identified. In addition, no permanent lighting will be installed as part of the project that could impact nesting birds or other wildlife. Temporary, removable, solar ground-level lighting may be placed during nighttime programs in order to illuminate the path from the interpretive center to the campfire circle. Lighting will be removed the same evening after the program concludes.

Therefore, the Commission finds that the development, as conditioned, will maintain marine resources and the biological productivity and quality of coastal waters consistent with the requirements of Sections 30230 and 30231 of the Coastal Act, and will not significantly degrade nearby ESHA and will be compatible with the continuance of all habitat areas consistent with Section 30240(b) of the Coastal Act.

### **Potential Contamination**

As discussed in Finding A above (Project Description), Humboldt Baykeeper raised concerns about the potential for dioxin contamination at the project site in a letter dated April 13, 2016. Dioxins are toxic, long-lasting compounds that can cause reproductive damage and cancer. These compounds bind to sediments which slowly move through the Bay on tides. The compounds accumulate in fish and shellfish, becoming more concentrated as they move up the food chain, potentially harming humans and wildlife alike. Humboldt Bay was designated as impaired by dioxins under Section 303(d) of the Clean Water Act in 2006. In the Humboldt Bay area, dioxin hotspots remain from lumber mills that used the wood preservative pentachlorophenol from the 1950s through the 1980s. The letter stated that Humboldt Baykeeper was particularly concerned about the potential for dioxin contamination at the project site because dioxins have been detected at high levels at the nearby Little Lake Industries property along Butcher's Slough just upstream from the project site, and old aerial photographs show that treated wood waste may have been burned in a teepee burner in close proximity to the project site during the operation of the mill. Humboldt Baykeeper requested that the City perform soil sampling to determine the extent and concentration of potential contamination before moving forward with the proposed outdoor amphitheater.

On November 18, 2016 the City submitted an updated project description changing the project's construction methods to avoid mobilization of or exposure to potential dioxin contamination. The City now proposes to cover the entire project site with a geotextile fabric, eight inches of compacted imported soil, another geotextile fabric, and eighteen inches of compacted gravel. In order to avoid exposure during project construction, the City also proposes to wet soils within the project area that could mobilize dust, and to only mow vegetation close to the ground without removing any woody shrubs or trees that could disturb the underlying soil. Under the original project description, the footings for the benches would have been dug into native soil and trenching would have occurred along the adjacent gravel trail for an electrical conduit to the interpretive center. The City now proposes to install the footings into a new layer of imported soil and install a battery-operated projector to avoid the need for trenching. Freshwater Environmental Services reviewed the City's revised construction methods and in a letter dated September 8, 2016, asserted that (a) there will be minimal exposure to potentially dioxin-impacted soil; (b) any exposure would likely be no greater than the current use of existing trails in the vicinity, and (c) the completion of the project will eliminate contact with potentially dioxin-impacted soil within the project area.

The approved development is limited to the development described in Finding A, as conditioned. Because of the type and location of the approved development, any future improvements to the approved development and any repair and maintenance of the approved development, will require additional authorization as discussed below.

Section 30610(b) of the Coastal Act exempts specified improvement to existing structures from coastal development permit requirements. However, public works facilities are expressly excluded from this exemption. Section 30114(c) of the Coastal Act defines “public works” to include “all publicly financed recreational facilities, all project of the State Coastal Conservancy, and any development by a special district.” As the amphitheater development is a publicly financed recreational facility, any improvements or additions to the approved amphitheater development is a form of improvement or addition to a public work facility that is not exempt under Section 30106(b) of the Coastal Act. Thus, all improvements or additions to the approved amphitheater facility will require additional coastal development permit authorization. Therefore, **Special Condition 1** expressly acknowledges the Coastal Act requirement that all future improvements to the approved development obtain a coastal development permit.

Section 30610(d) of the Coastal Act exempts certain repair and maintenance activities from coastal development permit requirements. However, Sections 30610(d) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such development. Pursuant to Section 30610(d) of the Coastal Act, the Commission adopted Section 13252 of Title 14 of the California Code of regulations. Section 13252 specifically requires a permit for any repair and maintenance activities located in specified locations, including within 50 feet of the edge of an environmentally sensitive habitat area. The amphitheater improvements are located within 50 feet of riparian ESHA. Therefore, pursuant to Section 13252 of the Commission’s regulations, **Special Condition 1** expressly acknowledges the Coastal Act requirement that additional coastal development permit authorization be required for all repair and maintenance of the approved amphitheater improvements.

Therefore, as any future improvements or additions to the approved development and any repair and maintenance of the approved development will require a coastal development permit amendment, the Commission will have the ability to review all future development on the site to ensure that such development will be carried out as described above without any mobilization of underlying soils.

Therefore, the Commission finds that the project has been sited and designed to maintain the biological productivity and quality of the adjoining coastal waters and adjoining riparian ESHA by avoiding impacts associated with possible mobilization of potential contaminated soils consistent with Sections 30231 and 30240(b) of the Coastal Act.

## **E. ARCHAEOLOGICAL RESOURCES**

Section 30244 of the Coastal Act states:

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

The project area lies within the traditional territory of the Wiki division of the Wiyot tribe. At the time that Euro-Americans first made contact in this region, the Wiyot lived almost exclusively in

villages along the protected shores of Humboldt Bay and near the mouths of the Eel and Mad Rivers. Today, representatives of the Wiyot Tribe are the Table Bluff Reservation Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria.

The project is located adjacent to Butcher Slough near the current shoreline of Humboldt Bay. According to the Environmental Impact Report for the 1992 CDP for the Arcata Marsh Interpretive Center, an archaeological survey of the area was completed in 1984 and found that the site had been disturbed so thoroughly since the 1940's that no cultural resources remain. In addition, the three Wiyot area Tribal Heritage Preservation Officers (THPOs) were contacted about the proposed project and responded that they are unaware of Wiyot cultural resources in the project vicinity. Furthermore, the City has amended the proposed construction methods to avoid any excavation of the underlying soil that could unearth potential archaeological resources.

Nevertheless, to ensure protection of any cultural resources that may be discovered at the site during construction of the proposed project, the Commission attaches **Special Condition 3**. This special condition requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease and a qualified cultural resource specialist, in conjunction with the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria THPOs, must analyze the significance of the find. To recommence construction following discovery of cultural deposits, the permittee is required to submit a supplementary archaeological plan for the review and approval of the Executive Director, who determines whether the changes are de minimis in nature and scope, or whether an amendment to this permit is required.

Therefore, the Commission finds that the development, as conditioned, is consistent with Coastal Act Section 30244.

## **F. PUBLIC ACCESS**

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects, except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or where adequate access exists nearby. Section 30211 of the Coastal Act requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214, the Commission is also limited by the need to show that any denial of a permit application based on these sections or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The 307-acre Arcata Marsh and Wildlife Sanctuary is located at the north end of Humboldt Bay and is home to a variety of habitats including freshwater, brackish, and saltwater marshes,

mudflats, and tidal sloughs. The sanctuary also includes the City's wastewater treatment facility which combines conventional treatment methods with constructed wetlands. The public has access to the marsh through a number of parking lots, approximately 5 miles of walking and biking paths, and the Arcata Marsh Interpretive Center. The interpretive center contains exhibits on the treatment plant and marsh habitats and wildlife, and provides tours of the marsh as well as lectures and educational programs for schools, special interest groups, and the public, including a youth summer camp. The proposed amphitheater will be located along an existing trail adjacent to the interpretive center and will provide alternative space for interpretive center programming. The campfire-type assembly area will provide an opportunity for groups of visitors to learn about and experience the wildlife area simultaneously in an outdoor setting. The project is designed to meet ADA accessibility standards to allow access for all users. Construction of the amphitheater is expected to last less than two weeks and will not require closures of the adjacent trail or interpretive center. As the amphitheater will provide an outdoor space for presentations and other interpretive center programming as an alternative to the use of existing indoor meeting space within the Marsh Interpretive Center building, the amphitheater will not significantly affect the demand for public use of the public parking, trails, or other public access facilities at the Arcata Marsh and Wildlife Sanctuary where the interpretive center is located. Therefore, the Commission finds that the project as conditioned is consistent with the public access and coastal recreation policies of the Coastal Act.

## **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The City of Arcata served as the lead agency for the project for CEQA purposes and adopted a Categorical Exemption for the project (Title 14, Chapter 3, Article 19, §15301 Existing Facilities; §15303 New Construction of Small Structures; and §15304 Minor Alterations to Land). Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to be consistent with the policies of the Coastal Act. The findings address and respond to all public comments regarding potential significant adverse environmental effects of the project on coastal resources that were received prior to preparation of the staff report. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**APPENDIX A**  
**SUBSTANTIVE FILE DOCUMENTS**

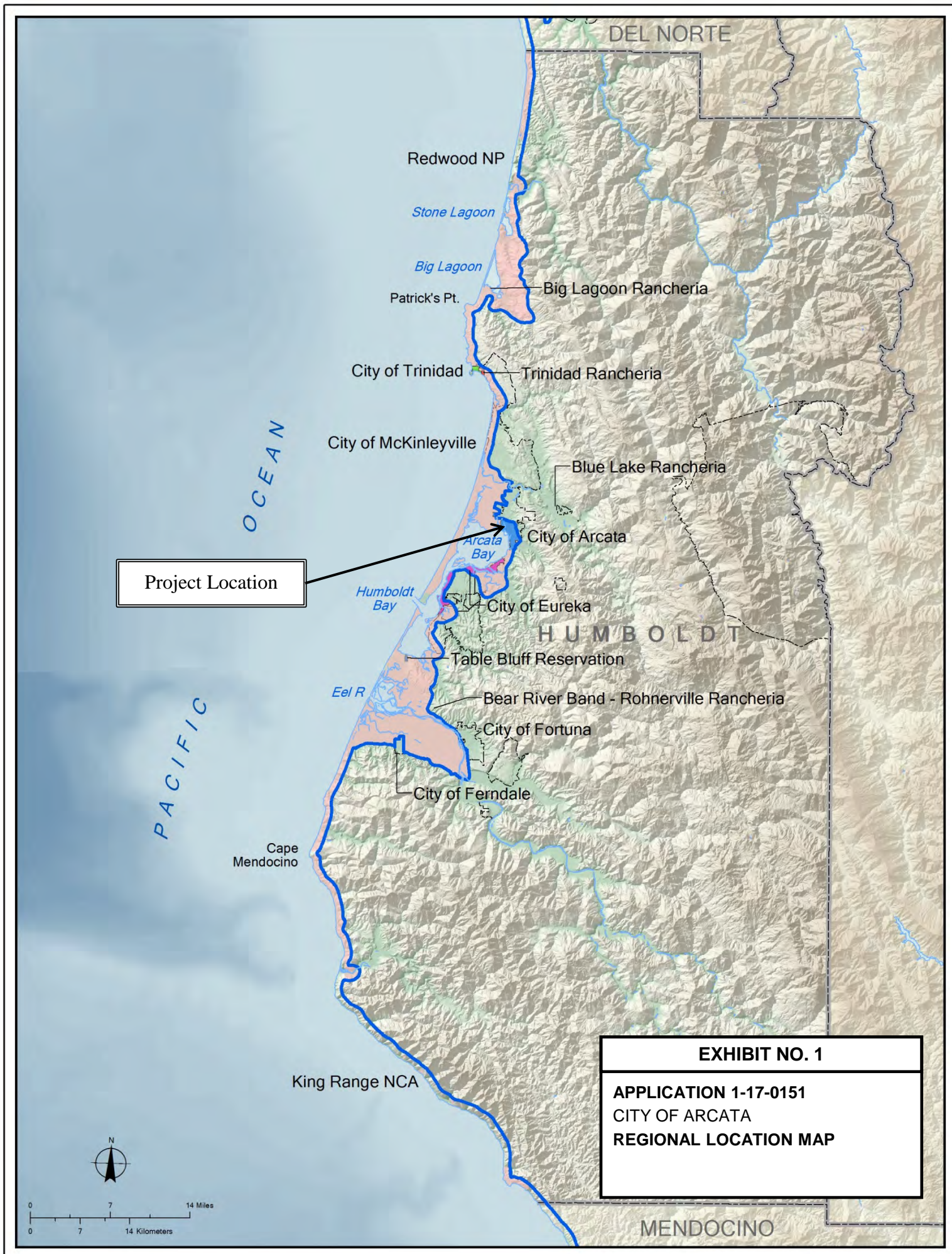
File for Coastal Development Permit No. 1-92-127-A1.

File for Coastal Development Permit No. 1-92-127.

Hull, David M. (1991, November). Draft Environmental Impact Report for the Arcata Marsh Interpretive Center; State Clearinghouse Number 91093038. Prepared for the City of Arcata.

City of Arcata's Arcata Marsh and Wildlife Sanctuary website:  
<http://www.cityofarcata.org/340/Arcata-Marsh-Wildlife-Sanctuary>







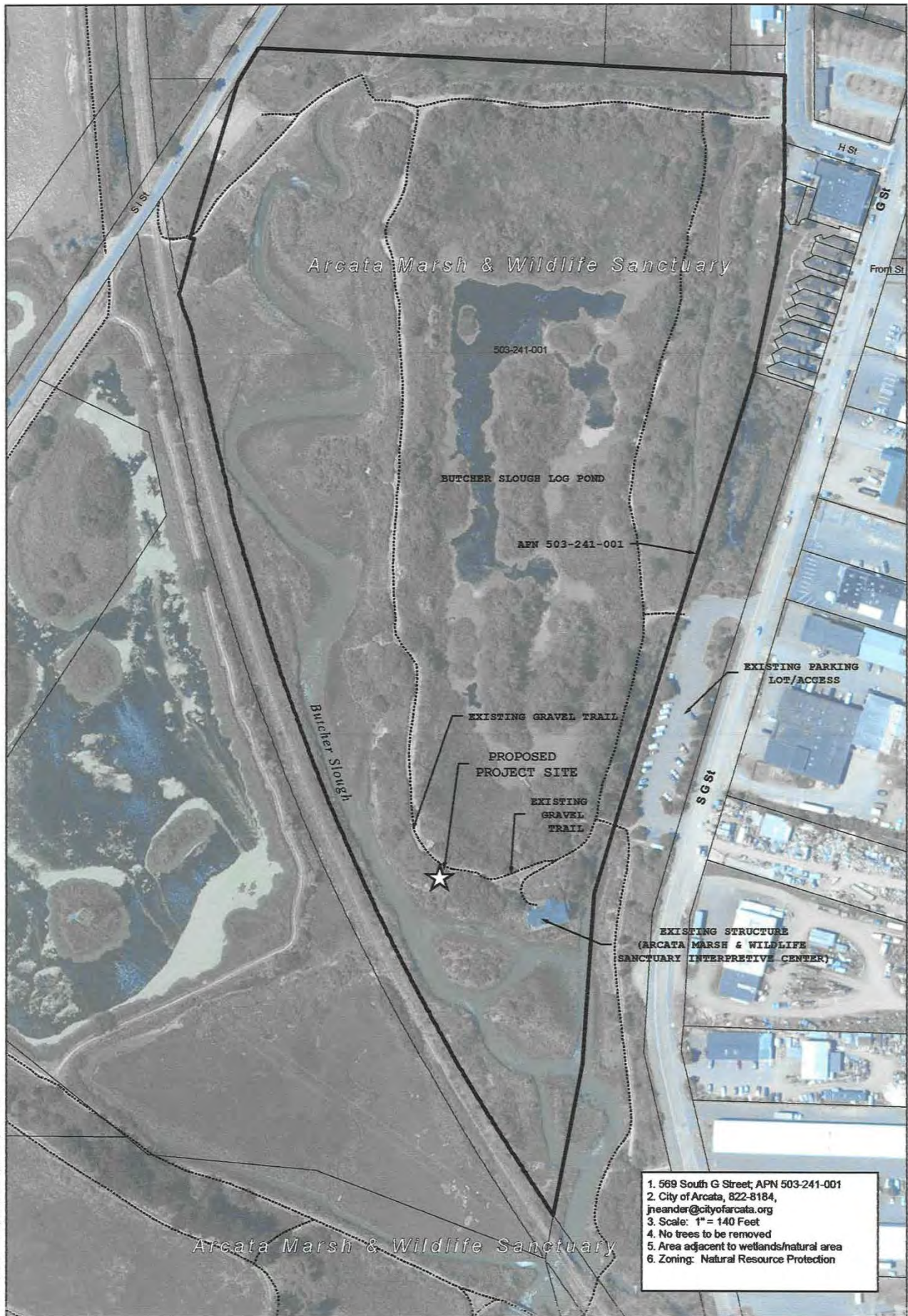


Bing Maps

## EXHIBIT NO. 2

APPLICATION 1-17-0151  
CITY OF ARCATA  
PROJECT VICINITY  
1 of 2





File: R:\Arcata\GIS\Projects\Amphitheater\Amphitheater.aprx Date: 8/17/2015 10:48 AM

REVISIONS		
NO.	ITEM	DATE

NOTES:

DESIGNED BY:  
 DRAWN BY:  
 CHECKED BY:  
 EXPIRES:  
 FILE DATE:  
 FILE: Amphitheater plot plan 8-17-2015



CITY OF ARCATA

2 of 2

## Arcata Marsh Amphitheater Plot Plan

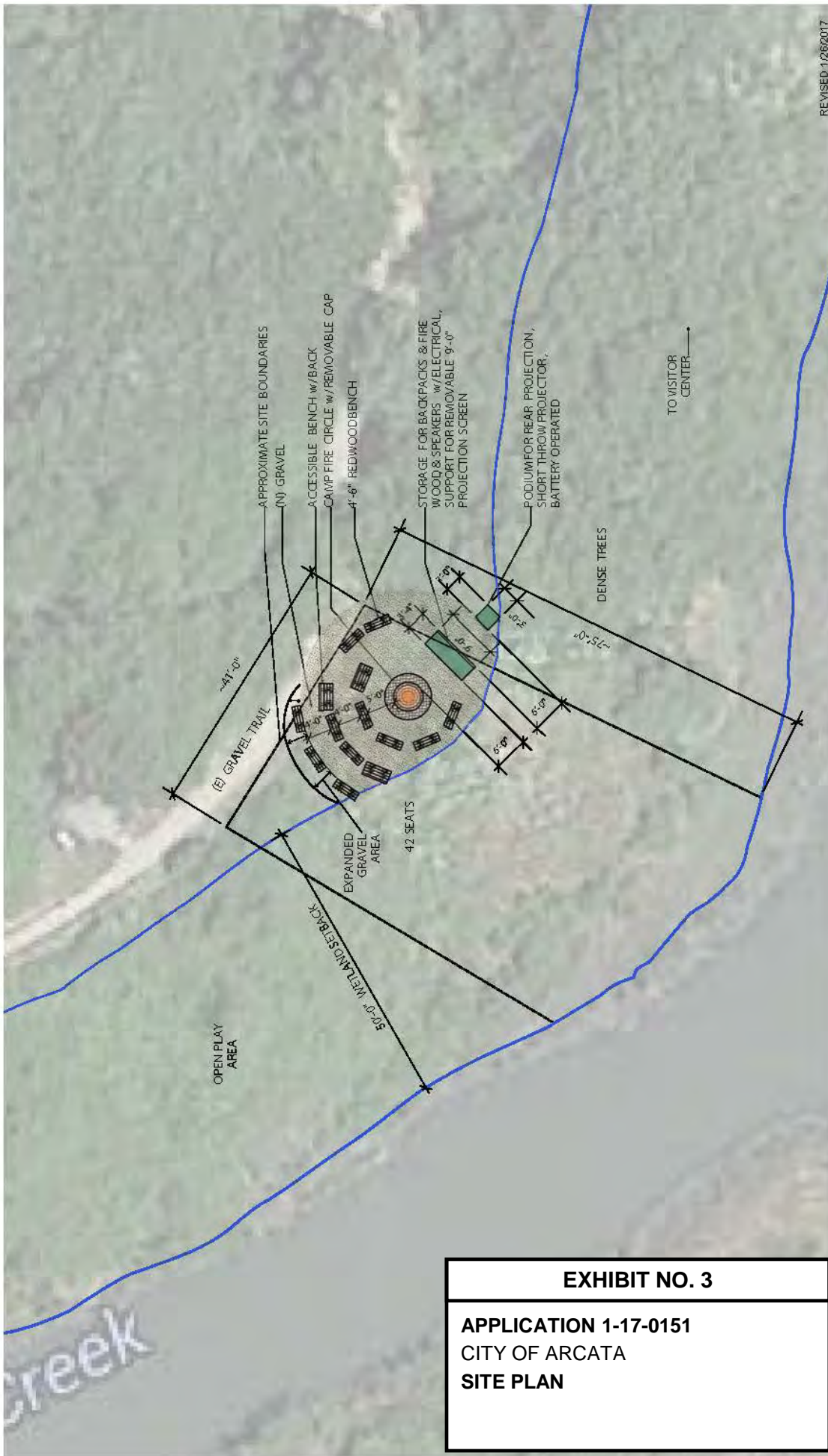
City of Arcata

**VERIFY SCALES**  
 1" = 140 FEET  
 IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY

**SCALE: 1" = 140 FEET**

**SHEET 1 of 1**





REVISED 1/26/2017



### EXHIBIT NO. 3

APPLICATION 1-17-0151  
CITY OF ARCATA  
SITE PLAN

ARCATA MARSH AMPHITHEATER PROPOSED SITE PLAN

Scale: 1/16" = 1'-0"



736 F Street Arcata, California 95521

City Council  
822-5953

City Manager  
822-5953

Public Works  
822-5957

Police  
822-2428

Community Development  
822-5955

Environmental Services  
822-8184

A&MRTS  
822-3775

Finance  
822-5951

Recreation Division  
822-7091

FAX  
822-8018

Freshwater Environmental Services  
78 Sunny Brae Center  
Arcata, CA 95521

September 6, 2016

#### EXHIBIT NO. 4

**APPLICATION 1-17-0151**  
**CITY OF ARCATA**  
**MEASURES TO AVOID EXPOSURE**  
**TO POTENTIAL CONTAMINATION**  
1 of 7

**RE: Plan review for the construction of an outdoor amphitheater at the City of Arcata Marsh & Wildlife Sanctuary (APN 503-241-001)**

Dear Mr. Plocher,

The City of Arcata is proposing to build an outdoor amphitheater approximately 180' northwest of the Arcata Marsh Interpretive Center including bench seating, a contained fire ring, small podium, and storage box with fittings for a removable outdoor screen (Attachment 1). The City of Arcata applied for a Coastal Development Permit amendment (CDP 1-92-127) from the California Coastal Commission. A notice was received from the California Coastal Commission on April 4, 2016 with a determination from the Executive Director that the proposed amendment is immaterial (Attachment 2).

However, the Coastal Commission has raised the concern about the potential that the site may be contaminated with dioxins due to the historical location of teepee burners nearby and previously recorded levels of dioxin on a nearby parcel. According to historical aerial imagery, the two teepee burners were approximately 53' and 188' feet to the south of the proposed project area, located in what is now Butcher's Slough channel (Attachment 3). The closer teepee burner was at an elevation of approximately 11.33' (NAVD88); the proposed amphitheater will be at an elevation of approximately 13-14' (NAVD88).

Based on the historic location of teepee burners, the City proposes the following construction methods to minimize potential mobilization or exposure to any dioxins should they be present onsite:

#### Construction Methodology

##### 1) Vegetation removal:

- Surface vegetation will be mowed close to the ground and no woody shrubs or trees are proposed for removal. Existing soil will not be mobilized (no excavation).

##### 2) Geotextile fabric and soil:

- A ground-level layer of geotextile fabric will be secured over the approximate 700 ft.<sup>2</sup> project area. Approximately 8" of compacted clean soil will be spread on top



of the fabric, then a second layer of geotextile fabric will be secured on top of the soil.

3) Gravel and concrete:

- Benches will be anchored on concrete posts. Concrete posts will be anchored in gravel.
- Approximately 18" of compacted gravel will be placed on top of the second layer of geotextile fabric.
- Approximately 50 ft.<sup>2</sup> of concrete will be poured on grade in order to install a base for the podium and storage box. Post holes will be dug into imported compacted fill that will not interface with native soil.

4) Finished grade and runoff:

- The site is predominantly flat, and there will be no change in drainage or slope. Water will continue to drain to the southeastern vegetated area that is adjacent to the site.

Staging, Stockpiling, and Disposal

Staging for the proposed project will occur along the existing adjacent trail and viewing platform area, and will require minimal space because all tools will be hand-operated. Any construction debris or spoils will be disposed of at the City Corporation yard, or other appropriate waste disposal facility.

Lighting

No permanent lighting is to be installed as part of this project. Temporary, removable, solar ground-level lighting may be placed during nighttime programs in order to light visitors down the path to from the interpretive center to the campfire circle. Lighting will be removed the same evening after the program concludes.

Treated Wood

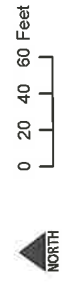
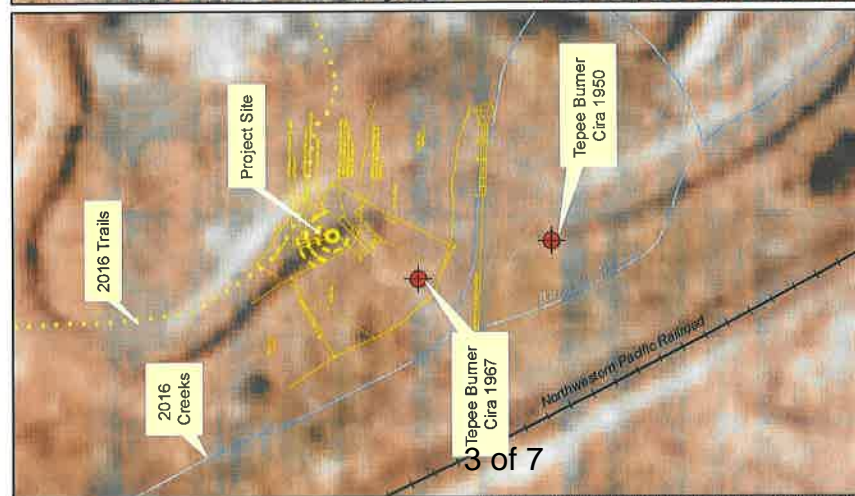
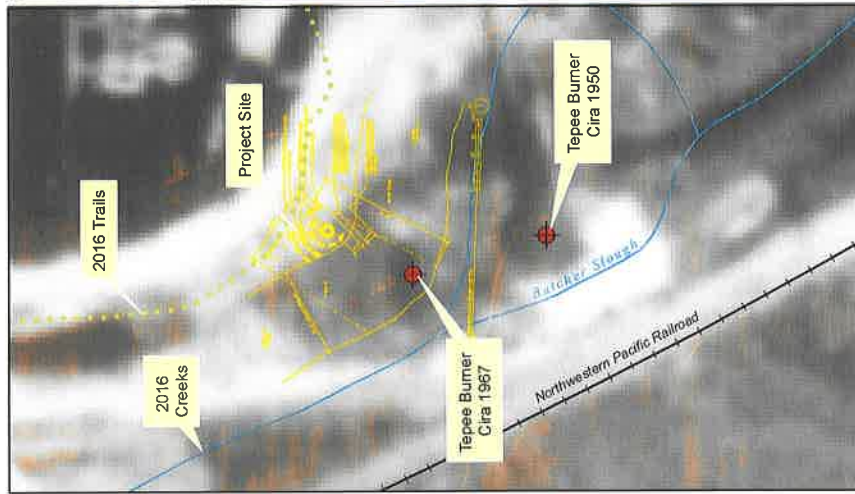
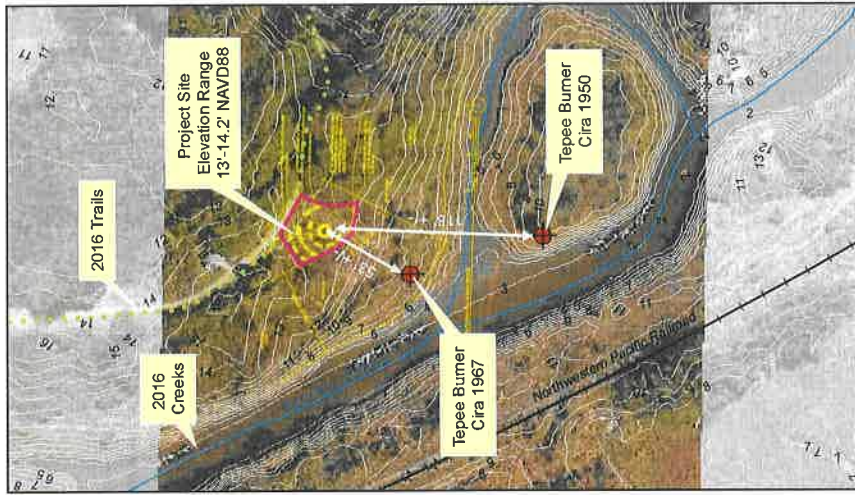
No pressure-treated wood will be used in the building of the outdoor amphitheater. Benches will be affixed with concrete bases to keep wood from rotting.

The City of Arcata is requesting your professional opinion as to whether the construction methodology and final site configuration for the amphitheater are sufficient to meet site remediation requirements to prevent transport of or exposure to dioxin should it be present on the site.

Sincerely,



Mark Andre  
Director, Environmental Services  
City of Arcata



## Arcata Marsh & Wildlife Sanctuary Amphitheater - Historical Imagery



September 8, 2016

City of Arcata  
Environmental Services Department  
736 F Street  
Arcata, California 95521

Subject: Review of the City's Proposal for the Marsh Amphitheater Project

Dear Mr. Andre:

I have reviewed the documents you provided describing the proposed Marsh Amphitheater project. The project consists of the installation of benches, a contained campfire ring, a small podium, and a storage box with fittings for a removable projection screen. The project is to be located approximately 180 feet northwest of the existing Arcata Marsh Interpretive Center.

The California Coastal Commission has reviewed the project and have indicated that they have concerns about potential dioxin-impacted soils resulting from the previous use of the area as a lumber mill with conical burners used to dispose of wood waste. The City has revised their proposal to eliminate any excavation into site soils. The revised proposal includes the following items:

- Soils within the project area will be wetted prior to any activities that could mobilize dust.
- The existing vegetation will be mowed close to the ground.
- There will be no removal of existing shrubs or trees.
- A layer of geotextile fabric will be installed over the project area.
- Approximately 8 inches of clean soil will be spread on top of the geotextile fabric. The soil will be compacted after placement.
- A second layer of geotextile fabric will be installed on top of the 8 inches of compacted soil.
- Approximately 18 inches of gravel will be placed on top of the second layer of geotextile fabric. The gravel will be compacted after placement.
- Concrete will be poured where needed on top of the compacted gravel. Any postholes needed for the project will be excavated into the compacted gravel and will not penetrate the top layer of geotextile fabric. Concrete will be poured around posts at the surface.
- The project will be accomplished using hand tools only and there will be no vehicular disturbance.

Based on the above project description there will be minimal exposure to potentially dioxin-impacted soil. Any exposure would likely be no greater than the current use of existing trails in the vicinity. The completion of the project will eliminate contact with potentially dioxin-impacted soil within the project area.

If you have any questions about this letter please do not hesitate to contact the undersigned at 707 498-0793.

Sincerely,

**Freshwater Environmental Services**



*Stan Thiesen*

Stan Thiesen, P.G  
Geologist



April 13, 2016

Robert Merrill, North Coast District Manager  
California Coastal Commission  
1385 Eighth Street, #130  
Arcata, CA 95521

Re: City of Arcata's Proposed Immaterial Amendment to CDP 1-92-127

Dear Mr. Merrill,

I am writing this letter on behalf of Humboldt Baykeeper, which was launched in 2004 with a mission to safeguard coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community through education, scientific research, and enforcement of laws to fight pollution.

Humboldt Baykeeper objects to the City of Arcata's request for an Immaterial Amendment to CDP 1-92-127 to build an outdoor amphitheater at the Arcata Marsh Wildlife Sanctuary to benefit Humboldt County youth, school groups, the general public and out of town visitors. We are not opposed to the project per se, indeed we support it – but not before soil samples are analyzed for dioxins, the known toxic contaminants left behind by the former mills that once occupied the project area.

The proposed project is in very close proximity to (and possibly on the exact site of) the teepee burner that is visible in 1970 aerial photos. Dioxins have been detected at very high levels at the nearby Little Lake Industries property along Butcher's Slough just upstream from the project site. Humboldt Baykeeper disagrees that the project is unlikely to be of concern in the absence of soil sampling to determine the extent and concentration of contamination, in particular from dioxins from the former mill that operated during the era when pentachlorophenol was commonly used.

Dioxins are extremely toxic, very long-lasting compounds that can cause reproductive damage and cancer. These compounds bind to sediments, slowly moving through the Bay on tides. Dioxins in Humboldt Bay bioaccumulate in fish and shellfish, becoming more concentrated as they move up the food chain, potentially harming humans and wildlife alike. Humboldt Bay was designated as impaired by dioxins under Section 303(d) of the Clean Water Act in 2006.

1385 Eighth Street, Suite 228, Arcata, CA 95521  
(707) 825-1020  
[www.humboldtbaykeeper.org](http://www.humboldtbaykeeper.org)





Humboldt Baykeeper advocates for appropriate review and investigation of potential dioxin contamination in projects that have the potential to impact human health and/or the environment.

In the Humboldt Bay area, dioxin hotspots remain from lumber mills that used the wood preservative pentachlorophenol (“penta”) from the 1950s through the 1980s, when it was banned except for use on power poles. Primary sources are the dip tanks and surrounding areas where lumber was treated and stored, as well as areas where used wood treatment chemicals were disposed of illegally. Secondary sources are “teepee burners” where treated wood waste was burned.

While using hand tools rather than heavy equipment is less likely to mobilize contaminated soil into the adjacent wetlands and streams, the increase in use of the area by the public –particularly children, who are more inclined to be in close contact with the ground – poses a potential risk of exposure to contaminated soil.

Since the City’s Community Development Department granted an exemption from CEQA, and instead relies on outdated CEQA documents from the early 1990s, the proposed project has not been adequately reviewed by agencies responsible for assessing potential impacts of public exposure to contamination at the site.

Adding this project as an immaterial amendment to a CDP from 1992 is inappropriate since the potential impacts of increasing public use of a likely contaminated site have not been adequately analyze. Until the site is sampled for soil contamination by dioxins and other constituents known to be found in former lumber mill sites, we respectfully request that the immaterial amendment be denied to provide the opportunity for appropriate agency and public review and comment.

We appreciate the opportunity to comment on the proposed Immaterial Amendment, and we hope to work with your staff and the City in the near future to address our concerns so that the project can move forward as soon as possible.

Please do not hesitate to contact me for more information about our concerns.

Sincerely,

\_\_\_\_s/\_\_\_\_\_  
Jennifer Kalt, Director  
[jkalt@humboldtbykeeper.org](mailto:jkalt@humboldtbykeeper.org)  
(707) 499-3678