CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL NO SUBSTANTIAL ISSUE DETERMINATION

Appeal No.:	A-1-EUR-21-0055
Applicant:	City of Eureka
Local Government:	City of Eureka
Local Decision:	Approval with Conditions
Location:	On a City-owned parcel along the east side of Hilfiker Lane (APN 019-271-004), north of the City's Wastewater Treatment Plant (WWTP) with associated water and electric utility line extensions from City- owned property to the west (APN 019-331-002) and a sewer extension to the WWTP to the south (APN 019- 271-005), near the mouth of the Elk River along Humboldt Bay, City of Eureka, Humboldt County.
Project Description:	Development by the Betty Kwan Chinn Homeless Foundation of a community housing facility involving (1) placing 12 residential trailers on the site to house up to 40 people, including an on-site manager, to help people who are struggling to secure housing develop rental history; and (2) installing underground utilities, driveway, area paving, fencing, and drainage swales, and other associated development.
Appellants:	(1) Ann White; (2) Jack Kinnear; (3) Janelle Egger
Staff Recommendation:	No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeals raise a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify; others may submit comments in writing. (14 CCR § 13117.) If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

On July 20, 2021, the City of Eureka approved a local CDP, spearheaded by the Betty Kwan Chinn Homeless Foundation, authorizing the development of a community housing facility for a limited authorization of up to approximately 30 years involving placing 12 residential trailers on City-owned property to house up to 40 people, including an on-site manager, to help people who are struggling to secure housing develop rental history. The project site is located on Hilfiker Lane immediately north of the City's wastewater treatment plant and the Elk River Wildlife Sanctuary and across the road from the California Coastal Trail (known locally as the Hikshari' Trail). The site is six acres in size and is currently vacant. All proposed development would be confined to an approximately 0.8-acre area on northwestern portion of the property.

The property was the subject of LCP Amendment No. LCP-1-EUR-20-0009-1-Part C certified by the Commission in October of 2020. The LCP amendment was projectdriven to accommodate the community housing project that is the subject of the appeal. The subject parcel has several coastal resource and hazard constraints. The parcel is subject to high flood risk, which is expected to worsen with projected sea level rise. Palustrine emergent wetlands cover a significant portion of the parcel so that the site can only accommodate a development footprint with limited 30-foot-wide buffers from the nearest environmentally sensitive wetland habitats. The parcel also has potential soil and groundwater contamination (related to its former use as a tank farm) that requires capping any portion of the parcel intended for residential use. Due to the numerous site constraints, the LCP amendment as certified by the Commission with suggested modifications limited the range of uses and term of use that could be permitted on the site to only those that could be accommodated within the small developable area of the parcel and only until such time as flood risks worsened by sea level rise would impact the site.

The Commission received three appeals of the City's approval from Ann White, Jack Kinnear, and Janelle Egger. The appeals raise contentions related to wetlands and water quality protection, visual resources, hazards, interference with public access and recreation, and inconsistencies with CEQA requirements. Staff recommends that all but one of the contentions raised by the appellants present valid grounds for appeal, but

none raise a substantial issue of conformance of the approved development with the policies and standards of the certified LCP or the public access and recreation policies of Chapter 3 of the Coastal Act.

Staff believes that there is a high degree of legal and factual support for the City's determination that the approved project as conditioned will not degrade adjacent wetlands or other types of ESHA, because the approved development footprint avoids all ESHA, and a site-specific reduced buffer analysis determined that the proposed 30-foot development setback will be adequate to protect the resources of the adjacent ESHA. The City's approval imposes several conditions to protect adjacent ESHA, including restrictions on landscaping and exterior lighting, nesting bird avoidance, and requirements to install fencing and draiange swales to separate the development area from adjacent wetlands and wetland buffer areas.

Staff further believes that the approved project as conditioned will minimize geologic and flood risks, not contribute to or be subject to erosion, and not require the construction of protective devices that would substantially alter natural landforms. Condition 11 specifies that the development is authorized only as a temporary use and only until 2050, which is the time period projected to avoid flood risk under the mediumhigh risk aversion sea level rise scenario and risk from 100-year flood events under a low-risk aversion scenario. In addition, Condition 8 requires the applicant to waive their rights to shoreline protection if the permitted development becomes threatened by erosion or other hazards in the future, and it requires the removal of all recoverable debris from the beach and bay if site flooding occurs sooner than projected. Furthermore, Condition 9 requires preparation and implementation of a Tsunami Evacuation Plan with procedures for the safe evacuation of all occupants in the event of a tsunami.

Finally, staff believes that the approved project as conditioned protects public access, because the development as approved will only minimally increase the demand for use of the nearby segment of the Coastal Trail and will provide off-street parking for the development to prevent displacement of existing public access parking for the trail.

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeals have been filed. The motion and resolution to carry out the staff recommendation is on page 5.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Regional Location Map

Exhibit 2 – Vicinity Map

Exhibit 3 – Aerial Photo

Exhibit 4 – Approved Project Description

Exhibit 5 – Approved Project Plans

Exhibit 6 – Wetland Delineation (SHN 2017, excerpts)

Exhibit 7 – Reduced Buffer Analysis

Exhibit 8 – Appeal by Ann White

Exhibit 9 – Appeal by Jack Kinnear

Exhibit 10 – Appeal by Janelle Egger

Exhibit 11 – Notice of Final Local Action

I. Motion and Resolution

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-EUR-21-0055 does not present a 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.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting "Yes" as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-1-EUR-21-0055 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 of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

II. Appeal Jurisdiction and Procedures

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Section 30603 states that an action taken by a local government on CDP application may be appealed to the Commission for certain kinds of developments. Pursuant to section 30603(a)(1), the City's approval is appealable to the Commission, because the approved development is located (1) between the sea and the first public road (Highway 101/Broadway) paralleling the sea, (2) within 100 feet of a wetland, and (3) within 300 feet of the mean high tideline.

Section 30603(b)(1) of the Coastal Act states:

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.

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. The term "substantial issue" is defined in section 13115 of the Commission's regulations as follows:

"When determining whether the appeal raises a substantial issue, the Commission may consider factors, including but not limited to:

- (1) the degree of factual and legal support for the local government's decision;
- (2) the extent and scope of the development as approved or denied by the local government;
- (3) the significance of the coastal resources affected by the decision;
- (4) the precedential value of the local government's decision for future interpretations of its LCP; and
- (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor."

If the Commission chooses not to hear an appeal, an appellant may seek judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

Commission staff has analyzed the administrative record for the approved project and subsequent amendment, including, but not limited to, the City's Final Local Action Notice for the approvals (Exhibit 11), the appellants' claims (Exhibits 8, 9, and 10), and the relevant requirements of the certified LCP. Staff is recommending that the Commission find that the appeals of the City's action raise no substantial issue with respect to the grounds on which each appeal was filed.

In this case, because staff is recommending that the appeals raise no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Generally, and at the discretion of the Chair, qualified persons will have three minutes per side to address whether the appeals raise a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellants, and persons who made their views known before the local government (or their representatives), and the local government. 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.

If the Commission determines that the appeals do not raise a substantial issue, the local government approval will stand. If the Commission determines that an appeal raises a substantial issue, the Commission would continue the *de novo* portion of the appeal hearing to a subsequent meeting.

III. Local Government Action

On July 20, 2021, the City of Eureka City Council conditionally approved CDP No. 21-0006 with 13 special conditions. The approved development (described in Exhibits 4 and 5) authorizes the development of a temporary community housing facility involving: (1) placing 12 residential trailers on the site to house up to 40 people, including an onsite manager, to help people who are struggling to secure housing develop rental history; and (2) installing underground utilities, driveway, area paving, fencing, and drainage swales between the wetland buffers and other development and associated improvements. The City granted its approval subject to 13 special conditions including. but not limited to, conditions related to (1) the unanticipated discovery of cultural resources; (2) "Best Management Practices" (BMPs) for construction, directional drilling, and erosion control; (3) measures to control runoff and protect water quality; (4) soil and groundwater management plan requirements to address any legacy contaminants encountered during construction; (5) avoidance of nesting birds; (6) restrictions on landscaping and exterior lighting; (7) waiver of rights to construct shoreline protection; (8) tsunami evacuation plan requirements; and (9) limiting the development authorization until the earlier of 2050 (which is the end of the projected time period for flood risk avoidance under the medium-high risk aversion sea level rise scenario combined with risk from 100-year flood events under a low-risk aversion scenario) or expiration of the lease for the site. The City's final action is attached as Exhibit 11.

IV. Filing of Appeals

The Coastal Commission's North Coast District Office received the City's Notice of Final Local Action on CDP No. 21-0006 on July 22, 2021 (Exhibit 11). The Commission received three appeals of the City's approval, including appeals from (1) Ann White on August 3rd (Exhibit 8), (2) Jack Kinnear on August 5th (Exhibit 9), and (3) Janelle Egger on August 5th (Exhibit 10). Each appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the City's Notice of Final Action. On August 17th, the City (applicant) submitted a signed waiver of the 49-working-day deadline for opening the Commission hearing on the appeal.

V. Summary of Appeal Contentions

Listed below is a summary of the combined contentions raised by the three appeals (in no particular order):

- 1. The approved development is inconsistent with the LCP policies and standards related to uses allowed in coastal wetlands, because the approved development will fill wetlands for a use not allowed under the LCP.
- The City's approval of the development as close as 30 feet from adjacent on-site wetlands violates the LCP policies and standards related to protection of adjacent ESHA, because noise and light pollution associated with the approved development

will significantly degrade the resources of the adjacent wetlands, which provide habitat for nesting birds and other wildlife.

- 3. The City's approval of the development as close as 30 feet from adjacent on-site wetlands violates the LCP policies and standards related to wetland and water quality protection, because (i) construction, paving, and installation of water and sewer hookups may release toxins associated with the site's former use; (ii) the addition of impervious surfaces (rooftops, paved parking lots, sidewalks) from the approved project will create more runoff into the adjacent wetlands, and (iii) pollutants such as oil and fluid leaks from vehicles and trash from human activities will compromise the water quality of the wetlands and adjacent coastal waters.
- 4. The development should be denied in the proposed location, and the property should instead be left as open space to protect habitat values.
- 5. The approved development is inconsistent with the LCP policies and standards related to visual resources protection because the approved trailers are incompatible with the character of the surrounding area, which includes the natural and recreational lands and waters of the Hikshari Coastal Trail and Humboldt Bay/Elk River estuary.
- 6. The approved development is inconsistent with the LCP hazards policies and standards because the development is vulnerable to geologic and flood risks from earthquakes, liquefaction, tsunami wave run-up, and tidal inundation under projected local relative sea-level rise scenarios.
- 7. The approved development is inconsistent with the public access policies of the Coastal Act and the LCP, because the approved development will intensify the use of and interfere with the enjoyment of the nearby Coastal Trail and its limited parking and amenities (e.g., picnic table, trash receptacle).
- 8. The City did not follow proper CEQA guidelines in its review of the project, because the City erroneously classified the project as an infill development project for which it improperly granted a CEQA exemption.

VI. Findings and Declarations for No Substantial Issue

A. Description of Approved Project

The development approved by the City (Exhibits 4 and 5) involves the development of a temporary community housing facility involving: (1) placement of 12 residential trailers on the site to house up to 40 people, including an on-site manager, to help people who are struggling to secure housing develop rental history; and (2) installation of underground utilities, a driveway, area paving, fencing, and drainage swales between the wetland buffers and other development and associated improvements. Pursuant to Condition 11 of the approved CDP, the development is approved for a limited authorization period ending either on January 1, 2050, or when the lease between the

City and its tenant/project proponent (the Betty Kwan Chinn Homeless Foundation) terminates, whichever is earlier.

B. Project Setting and Background

The project site is in the City of Eureka, Humboldt County, on City-owned property on the east side of Hilfiker Lane (APN 019-271-004) near the Elk River, just south of the river's mouth on Humboldt Bay. The parcel is immediately south of a temporary training center for the Humboldt Bay Fire Department and immediately north of the City's Wastewater Treatment Plant (WWTP) and the Elk River Wildlife Sanctuary. The California Coastal Trail (CCT; known locally as the Hikshari' Trail) is located across Hilfiker Lane to the west, along with a trailhead parking lot¹ and recently restored salt marsh habitat.² The Elk River is located to the west of the trail, with Humboldt Bay further west across the Elk River spit.³ The former Northwestern Pacific Railroad corridor is located directly to the east of the parcel, separating the parcel from a row of commercial properties that front Highway 101 (Broadway) to the east. See Exhibits 1-2 for maps of the project vicinity. Exhibit 3 is an aerial map of the project parcel and surrounding parcels.

The site is approximately six acres in size and is currently vacant with no public or private utilities serving the parcel and no improved driveways or sidewalks between the parcel and Hilfiker Lane. All proposed development would be confined to an approximately 0.8-acre area on northwestern portion of the property, except for utility line extensions, including the approved water and electric utility line extensions from City-owned property to the west of the site (APN 019-331-002) and an approved sewer line extension from the site to the City's (WWTP) to the immediate south (APN 019-271-005).

The subject property, locally known as the Crowley site, was formerly owned and operated as a bulk fuel storage facility by Crowley Marine Services from the 1950s until 1990.⁴ The tank farm and associated appurtenances were removed in 1999.

¹ The paved trailhead parking lot can accommodate 19 vehicles and is known as the Elk River Wildlife Area parking lot.

² The City restored 35,900 square feet of salt marsh from upland fill on the stretch of shoreline directly north of the Elk River Wildlife Area parking lot as mitigation for wetland fill resulting from the development of the Hikshari' Trail (CDP 1-11-037).

³ The Elk River Spit is a sand spit with a shoreline comprised of vegetated fore dune that has developed at the mouth of the Elk River on Humboldt Bay. While the subject parcel is currently west of the Elk River and Elk River spit, historical aerial photographs indicate the parcel was historically at the edge of Humboldt Bay, just north of the mouth of the Elk River. The construction of the jetties at the entrance to the bay (first completed in 1899) eroded the eastern shoreline of the bay across from the entrance creating a new spit at the mouth of the Elk River that grew in length by 6,000 feet from 1897 to 1954.

⁴ Although the bulk fuel storage containers were located on the subject parcel, the entire facility included other parcels to the north of the subject parcel.

The property was the subject of a recent LCP amendment approved by the Commission with suggested modifications on October 9, 2020.⁵ The LCP amendment was not project-specific but was project driven to accommodate the community housing project that is the subject of the appeal. The subject parcel has several coastal resource and hazard constraints. The parcel is located within the 100-year flood zone and tsunami inundation zone, and its high flood risk is expected to worsen in the coming decades with projected sea level rise. Extensive wetlands cover a significant portion of the parcel so that the site can only accommodate a development footprint with limited 30-foot-wide buffers from the nearest environmentally sensitive wetland habitats. The parcel also has potential soil and groundwater contamination that requires capping any portion of the parcel intended for residential use. The LCP amendment as certified by the Commission with suggested modifications limited the range of uses to be allowed on the site to those that could be accommodated within the small developable area of the parcel for a limited term before flood risks worsened by sea level rise can impact the site. Under LCP Amendment No. LCP-1-EUR-20-0009-1-Part C, the site was redesignated and rezoned from Public-Quasi-Public (PQP)/Coastal Dependent Industrial (MC) respectively, to its present land use designation of Mixed Use Limited (MUL) and zoning of Service Commercial with a Qualifying Combining District (CS-Q). The MUL designation allows limited-intensity, temporary residential, commercial, and public facility uses that can be developed consistent with LCP requirements on parcels with significant coastal resource and/or coastal hazard constraints). The Q combining district of the CS zoning of the site limits permitted uses to multi-family/multi-unit housing for up to 40 people, public utility and public service infrastructure, storage yards for commercial vehicles, temporary/seasonal uses such as Christmas tree lots, and wireless telecommunication facilities.

The LCP amendment raised environmental justice concerns related to affordable and transitional housing and adverse exposure to coastal hazards and soil and groundwater contamination. In its certification of the LCP amendment with suggested modifications, the Commission found that given (1) the critical need for affordable housing in Eureka and (2) that the LCP amendment as modified addressed exposure and risks from the coastal hazards and potential soil and groundwater contaminants present at the site, the LCP amendment as modified was consistent with the Commission's EJ Policy.⁶

C. Analysis of Contentions

For the reasons discussed below, the Commission finds that all but one of the contentions raised by the appellants present valid grounds for appeal, but none raise a

⁵ The findings for certification with suggested modifications is available at: <u>https://documents.coastal.ca.gov/reports/2020/10/F8a/f8a-10-2020-report.pdf</u>. The amendment became effective in January 2021, and the findings for effective certification are available at: <u>https://documents.coastal.ca.gov/reports/2021/1/W10b/w10b-1-2021-report.pdf</u>.

⁶ For a more extensive discussion of environmental justice issues as they relate to the project site and the project concept, see the adopted findings for LCP Amendment No. LCP-1-EUR-20-0009-1-Part C, approved with suggested modifications on October 9, 2020, accessible from the Commission's website: <u>https://documents.coastal.ca.gov/reports/2020/10/F8a/f8a-10-2020-report.pdf</u>

substantial issue of conformance of the approved development with the policies and standards of the certified LCP or the public access and recreation policies of Chapter 3 of the Coastal Act.

1) Valid Contentions

a. Contention Related to Allowed Uses in Wetlands

One of the contentions raised in Jack Kinnear's appeal is that the approved development is inconsistent with the LCP policies and standards related to uses allowed in coastal wetlands, because the approved development will fill wetlands for a use not allowed under the LCP.

Applicable LCP Policies

Land Use Plan (LUP) Policy 6.A.9 states (emphasis added):

<u>The City shall permit the diking, filling, or dredging of open coastal waters,</u> <u>wetlands, or estuaries only under the following conditions</u>:

- a. The diking, filling, or dredging is for a permitted use in that resource area;
- b. There is no feasible, less environmentally damaging alternative;
- c. Feasible mitigation measures have been provided to minimize adverse environmental effects;
- d. The functional capacity of the resource area is maintained or enhanced.

LUP Policy 6.A.14 states:

Consistent with all other applicable policies of this General Plan, the City shall limit development or uses within wetlands that are neither farmed nor grazed, or within estuaries, to the following:

- a. Port facilities.
- b. Energy facilities.
- c. Coastal-dependent industrial facilities, including commercial fishing facilities.
- d. Maintenance of existing or restoration of previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- e. Incidental public service purposes which temporarily impact the resources of the area, such as burying cables or pipes, inspection of piers, and maintenance of existing intake and outfall lines.
- f. Restoration projects.
- g. Nature study, aquaculture, or similar resource-dependent activities.
- *h.* New or expanded boating facilities in estuaries, consistent with the demand for such facilities.

i. Placement of structural piling for public recreational piers that provide public access and recreational opportunities.



Discussion:

Wetland delineations were prepared for the subject parcel in 2007,⁷ 2010,⁸ and 2017⁹ and Commission staff ecologist Dr. John Dixon reviewed the wetland delineations and visited the parcel on March 23, 2020. A summary of the delineation results and Dr. Dixon's analysis is provided below.

As described in the Adopted Findings for LCP Amendment No. LCP-1-EUR-20-0009-1-Part C. from the 1950s until the late 1990s, a bulk fuel storage tank farm occupied the currently vacant parcel.¹⁰ Based on subsurface investigations of the site, six to seven feet of fill was historically placed on the northwestern portion of the parcel (the approved development site) to accommodate this tank farm. The tank farm was also surrounded by a three- to four-foot-high berm, which directed storm water runoff to a system of drainage ditches and holding ponds located on the remainder of the parcel to the east and south. Stormwater runoff from the tank farm historically drained east, through a series of small surface ditches and a French drain system, to a large rectangular pond with a concrete berm on the eastern side of the subject site. Water then was pumped to another pond on the southern end of the site (between the former tank farm and WWTP) and eventually released to a surface ditch that discharged to the Elk River.

The wetland delineations prepared for the subject site indicate that the eastern and southern ponded areas continue to exist and delineate as three-parameter wetlands.

⁷ SHN Engineers & Geologists. (2007, January 30). Wetland Delineation for the Proposed Elk River Trail Improvement Project, Eureka, California. Prepared for the City of Eureka.

⁸ Mad River Biologists. (2010, August 27). Biological Resources Evaluation and Wetlands Verification/Delineation for the Humboldt Waste Management Authority Waste Digester Project. Prepared for Planwest Partners, Inc.

⁹ SHN Engineers & Geologists. (2017, November). Wetland and Other Waters Delineation Report for the Hilfiker Lane Site, APN 019-271-004, Eureka, California. Prepared for the City of Eureka.

¹⁰ The Commission issued a CDP waiver in 1998 (CDP 1-98-016-W) for the removal of the seventeen above-ground storage tanks and associated above-ground piping and fuel racks that comprised the tank farm.

These ponds are contained by upland berms (created by soil removed to form the ponds) and remain flooded throughout the year, supported mainly by groundwater. The 2007 and 2010 delineations also indicate that there are drainage ditches along the southern and eastern parcel boundaries, and significant freshwater wetlands on the southern and eastern portions of the parcel (in addition to the ponds) comprising a mix of emergent, scrub-shrub, and forested communities that range from seasonally to permanently flooded.¹¹ These freshwater wetlands are part of a larger wetland complex extending to the north, south, and east of the parcel.

The 2017 wetland delineation, which focused on the footprint of the former tank farm, indicates that the former tank farm area is covered with vegetation consisting of a mix of native and non-native species typical of disturbed industrial yards and is underlain by compacted fill composed of rock, gravel, chunks of fiberglass, and rusted iron. A number of pocket wetlands have formed in depressions in the former tank farm area, largely within the footprint of a former gravel road that was used to access the fuel tanks and bisects the parcel from north to south. The 2017 wetland delineation report identifies five man-made wetlands within the tank farm area.



To assist in the Commission's analysis of LCP Amendment No. LCP-1-EUR-20-0009-1-Part C to redesignate and rezone the property, Commission staff ecologist Dr. John

¹¹ According to the 2007 delineation, the forested wetland area is represented by a small stand of red alder (*Alnus rubra*) that transitions into scrub-shrub wetlands dominated by a mix of native willow (*Salix sitchensis, S. lucida, S. lasiolepis*), wax myrtle (*Myrica californica*) and cascara (*Rhamnus purshianus*) with scattered red alder. The understory of the forested and scrub-shrub wetlands and the adjacent freshwater emergent wetlands are characterized by a predominance of herbaceous hydrophytes such as slough sedge (*Carex obnupta*), common rush (*Juncus effuses*), pacific silverweed (*Potentilla anserina ssp. pacifica*), Himalaya berry (*Rubus discolor*), creeping bentgrass (*Agrostis stolonifera*), and buttercup (*Ranunculus repens*).

Dixon reviewed the wetland delineations for the project site and visited the parcel on March 23, 2020. Dr. Dixon noted that two of the identified wet areas in the 2017 wetland delineation report do not meet the Commission's definition of wetlands [Coastal Commission's regulations 14 CCR §13577(b)], because the seasonally ponded areas only have evidence of hydrology and not signs of hydric soils or any vegetation. Section 13577(b) of the Commission's regulations define wetlands in part as "land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate" (emphasis added). The cited definition is meant to capture such things as salt ponds that naturally have little or no vegetation but still are valuable habitat. The definition, however, does not include seasonal puddles such as those found on top of the historic fill placed to support the former tank farm where the lack of hydric soils and hydrophytes is not due to frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate (such as at the project site). Figure 2 from the 2017 SHN wetland delineation report is shown below (page 15) with arrows indicating the two areas determined not to be wetland due to lack hydric soils or hydrophytic vegetation.

The City's approval does not authorize development in any coastal wetlands as defined by section 13577(b) of the Commission's regulations and requires all new development to adhere to a minimum 30-foot setback of from wetlands on the site, as shown in the site plan portion of the image below (and also see Exhibit 5). The two largest wetlands identified in the 2017 wetland delineation map are seen in the site plan (see map below) as shaded areas in the center portion of the plan with 30-foot buffer areas are drawn around each with dashed lines.

In its approval of the proposed development, the City imposed Condition 1-b, which states in part that "No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to entering coastal waters or wetlands..." In addition, Condition 10 attached to the approved CDP requires that prior to commencement of construction, the permittee shall submit for the City's approval a set of final construction plans that are consistent with all CDP conditions and that substantially conform with the 90% plans dated March 5, 2021, which avoid encroachment of development into site wetlands. These conditions in combination with only authorizing development on the upland portion of the site that avoids all delineated verified wetlands ensures that the approved project, as conditioned by the City, will avoid any fill or uses in wetlands consistent with LUP policies 6.A.9 and 6.A.14.

Therefore, given the extensive investigations and analyses of the extent of wetlands present on the site that have been conducted, there is strong legal and factual support for the City's determination that the approved development, as conditioned, will not result in wetland fill for a use not allowed under the LCP, and the Commission finds that this contention does not raise a substantial issue of conformance of the project as approved with the policies and standards of the LCP.



b. Contention Related to Siting of Development Adjacent to ESHA

One of the contentions raised in Ann White's appeal is that the City's approval of the development as close as 30 feet from adjacent on-site wetlands violates the LCP policies and standards related to ESHA protection because noise and light pollution associated with the approved development will significantly degrade the resources of the adjacent wetland ESHA, which provide habitat for nesting birds and other wildlife.

Applicable LCP Policies:

LUP Policy 6.A.6 and Coastal Zoning Regulations (CZR) § 10-5.2942.3 state in part (emphasis added):

<u>The City declares the following to be environmentally sensitive habitat areas within</u> <u>the Coastal Zone</u>:

- (a) Rivers, creeks, sloughs, gulches and associated riparian habitats, including, but not limited to Eureka Slough, Fay Slough, Cut Off Slough, Freshwater Slough, Cooper Slough, Second Slough, Third Slough, Martin Slough, Ryan Slough, Swain Slough, and Elk River.
- (b) <u>Wetlands and estuaries, including that portion of Humboldt Bay within</u> <u>the City's jurisdiction, riparian areas</u>, and vegetated dunes.
- (c) Indian Island, Daby Island, and the Woodley Island wildlife area.

- (d) <u>Other unique habitat areas, such as waterbird rookeries, and habitat</u> for all rare or endangered species on state or federal lists.
- (e) Grazed or farmed wetlands (i.e., diked former tidelands)...

LUP Policy 6.A.7 and CZR § 10-5.2942.4 state in part:

Within the Coastal Zone, the City shall ensure that environmentally sensitive habitat areas are protected against any significant disruption of habitat values, and that only uses dependent on such resources shall be allowed within such areas. The City shall require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas.

LUP Policy 6.A.8:

Within the Coastal Zone, prior to the approval of a development, the City shall require that all development on lots or parcels designated Natural Resources on the Land Use Diagram or within 250 feet of such designation, or <u>development potentially</u> <u>affecting an environmentally sensitive habitat area</u>, shall be found to be in conformity with the applicable habitat protection policies of the General Plan. All development plans, drainage plans, and grading plans submitted as part of an application shall show the precise location of the habitat(s) potentially affected by the proposed project and the manner in which they will be protected, enhanced, or restored.

LUP Policy 6.A.19 and CZR § 10-5.2942.15 state (this requirement is also listed on the zoning map adopted for the application of the Q combining zone to the subject parcel, 019-271-004):

<u>The City shall require establishment of a buffer for permitted development adjacent</u> <u>to all environmentally sensitive areas. The minimum width of a buffer shall be 100</u> <u>feet, unless the applicant for the development demonstrates on the basis of site-</u> <u>specific information, the type and size of the proposed development, and/or</u> <u>proposed mitigation (such as planting of vegetation) that will achieve the purposes(s)</u> <u>of the buffer, that a smaller buffer will protect the resources of the habitat area</u>. As necessary to protect the environmentally sensitive area, the City may require a buffer greater than 100 feet. The buffer shall be measured horizontally from the edge of the environmental sensitive area nearest the proposed development to the edge of the development nearest to the environmentally sensitive area. Maps and supplemental information submitted as part of the application shall be used to specifically define these boundaries.

LCP Policy 6.A.20 states:

To protect urban wetlands against physical intrusion, the City shall require that wetland buffer areas incorporate attractively designed and strategically located barriers and informational signs.

LCP Policy 6.A.24 states:

Within the Coastal Zone where there is a question regarding the boundary, buffer requirements, location, or current status of an environmentally sensitive area identified pursuant to the policies of this General Plan or which is designated on Figure 6-1, the City shall require the applicant to provide the City with the following:

- (a) Base map delineating topographic lines, adjacent roads, location of dikes, levees, of flood control channels and tide gates, as applicable;
- (b) Vegetation map, including identification of species that may indicate the existence or non-existence of the sensitive environmental habitat area;
- (c) Soils map delineating hydric and non-hydric soils; and
- (d) Census of animal species that may indicate the existence or nonexistence of the sensitive environmental habitat area.

The City shall transmit the information provided by the applicant pursuant to this policy to the Department of Fish and Game for review and comment. Any comments and recommendations provided by the Department shall be immediately sent to the applicant for his or her response. The City shall make its decision concerning the boundary, location, or current status of the environmentally sensitive habitat area in question based on the substantial evidence in the record and shall adopt findings to support its actions.

Discussion:

As summarized above, LUP Policy 6.A.6 declares that among other habitats, wetlands constitute ESHA. Consistent with Coastal Act section 30240(b), LUP Policy 6.A.7 requires that development in areas adjacent to ESHA be sited and designed to prevent impacts that would significantly degrade such areas and be compatible with the continuance of such habitat areas. LUP Policy 6.A.19 specifically requires the establishment of a buffer for permitted development adjacent to all ESHA with a minimum buffer width of 100 feet, unless site and project-specific information demonstrates that a smaller buffer will protect the resources of the habitat area.

The development as approved by the City provides for a minimum 30-foot-wide development setbacks (buffers) from the nearest "pocket" wetlands on the subject lot. The pavement and structures associated with the approved development are further separated for the on-site wetlands by proposed drainage swales designed to treat stormwater runoff which are located outside of the 30-foot buffers. The approved development also has a limited 60 to 80-foot-wide buffer from the three-parameter estuarine wetlands associated with the Elk River estuary located across Hilfiker Lane to the west. The approved development footprint is separated from these western wetlands by a paved trail and an approximately 24-foot-wide roadway with raised elevation. The remaining wetlands of concern are the extensive freshwater wetlands located on the unfilled eastern and southern portions of the subject parcel (including emergent, scrub-shrub, and forested wetland communities as well as two ponds), over 100 feet from the potential development footprint.

The site-specific reduced-buffer analysis required by LUP Policy 6.A.19 was completed by the City's consultant, SHN Engineers & Geologists on April 24, 2020 (Exhibit 7) and focused on the proposed reduced buffer between the proposed development and the on-site wetlands. According to the completed analysis, the relatively small one-to-two parameter wetlands nearest to the approved development area are located on an existing fill prism, dominated by ruderal vegetation and significant bare (gravel) ground, and are limited in terms of hydrological retention. As such, the wetlands do not have a functional relationship with the larger wetlands on the unfilled eastern and southern portions of the site, which are over 100 feet away from the development footprint. The analysis finds that the pocket wetlands are unlikely to be utilized by sensitive species due to their disturbed nature. Biological surveys of the site (including the pocket wetlands) conducted in 2007 and 2010 [by SHN and Mad River Biologists (MRB), respectively] did not identify any special-status plant or wildlife species in these pocket wetlands. The biological reports indicate, however, that ground-nesting birds could use the gravel fill base in the footprint of the former tank farm for nesting, and northern redlegged frogs, a state-listed species of special concern, may utilize the seasonal wetlands and uplands in the area for foraging (the frogs would not be expected to use these areas for breeding owing to the overall high level of disturbance, low vegetative cover, and ephemeral hydrology). Both the SHN and MRB biological assessments indicate that potential impacts to nesting birds and red-legged frogs could be adequately mitigated through pre-construction surveys by a gualified biologist and avoidance/relocation measures.

The SHN analysis only focused on the onsite wetlands and not the wetlands across the road associated with Humboldt Bay and the Elk River estuary. The development as approved by the City will be ~60-80 feet from the bay/estuarine wetlands, which do not have a hydrological connection to the onsite wetlands. Given the separation of the approved development by the public road and conditions attached to the CDP as approved by the City, the City's findings conclude that the development, as sited and designed and as conditioned by the CDP, will protect the resources of the Humboldt Bay and Elk River estuary.

In its approval of the proposed development, the City imposed several conditions that incorporate the mitigation measures recommended by the biological consultants to protect adjacent ESHA, including, but not limited to, the following:

- Condition 1-f requires the boundaries of work areas during construction to be physically demarcated (such as with fencing or flagging) to ensure construction avoids encroachment into adjacent ESHA.
- Condition 3 requires that work avoid the bird nesting season, if feasible. If not feasible, then the site must be surveyed by a qualified biologist no more than 14 days prior to commencement of construction. If any active nest is detected, the biologist, in consultation with the California Department of Fish and Wildlife, shall flag the nest for avoidance and delay entry into the sensitive area until after the young have fledged, as determined by follow-up surveys conducted by a qualified biologist.

- Condition 5 imposes landscaping restrictions, including, but not limited to, a prohibition on the planting of any species listed as invasive or the use of rodenticides containing any anti-coagulant compounds.
- Condition 6 restricts exterior lighting to low-wattage, shielded, and downwardcast such that no light or glare shines into surrounding ESHA

These conditions will ensure that the approved project, as conditioned with its combination of 30-foot, 60-80-foot, and over 100-foot buffers will protect the resources of the adjacent wetland ESHA. As the reduced buffer analysis has determined that with the mitigation measures required by the City's approval the proposed buffer widths will be adequate to protect the resources of the adjacent wetland ESHA, there is a high degree of legal and factual support for the City's decision. Therefore, the Commission finds that this contention does not raise a substantial issue of conformance of the project as approved with the policies and standards of the LCP.

c. Contentions Related to Water Quality Protection

Another contention in Ann White's appeal is that the City's approval of the development as close as 30 feet from adjacent on-site wetlands violates the LCP policies and standards related to wetland and water quality protection, because (i) the addition of impervious surfaces (rooftops, paved parking lots, sidewalks) from the approved project will create more runoff into the adjacent wetlands, (ii) pollutants such as oil and fluid leaks from vehicles and trash from human activities will compromise the water quality of the wetlands and adjacent coastal waters, and (iii) construction, paving, installation of water and sewer hookups may release toxins associated with the site's former use could further compromise water quality.

Applicable LCP Policies:

LUP Policy 6.A.1 states:

The City shall maintain, enhance, and, where feasible, restore valuable aquatic resources, with special protection given to areas and species of special biological or economic significance. The City shall require that uses of the marine environment are carried out in the 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.

LUP Policy 6.A.3 states:

The City shall maintain and, where feasible, restore biological productivity and the quality of coastal waters, streams, wetlands, and estuaries appropriate to maintain optimum populations of aquatic organisms and for the protection of human health through, among other means, minimizing adverse effects of wastewater and stormwater discharges and entrainment, controlling the quantity and quality of runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging wastewater reclamation, maintaining natural

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

The Implementation Plan map (zoning map) for parcel 019-271-004 applies a Qualified (Q) combining district to the subject parcel, which lists the following allowed uses and limitations, in relevant part (emphasis added):

Principally Permitted Uses:

- Emergency shelters pursuant to Article 2.5.
- <u>Multi-family/multi-unit single-story residential uses permitted under</u> <u>permitted uses in the RM Districts, for not more than 40 individual</u> <u>persons</u>.
- Public utility and public service infrastructure.
- Temporary/seasonal uses, such as Christmas Tree lots.
- Towers and other support structures, commercial satellite dishes, antennas, and equipment buildings necessary for the specific facility subject to the provisions of Article 31 (Wireless Telecommunication Facilities).
- Wireless telecommunication facilities ...

Life safety and natural hazard limitations on the permitted uses include, but are not limited to, the following:

- ...
- <u>Prior to commencement of construction of any use that involves ground</u> <u>disturbance, a soil and groundwater management plan shall be prepared</u> <u>for construction activities to manage soil and groundwater handling and</u> <u>disposal and evaluate worker protection. Any future residential use of the</u> <u>site shall be designed to prevent future residents from coming into contact</u> <u>with and experiencing any adverse impacts caused by potential</u> <u>subsurface contamination such as by capping of the development</u> <u>footprint</u>.

•••

Discussion:

The development as approved by the City is sited 30 feet from pocket wetlands, 60-80 feet from the Elk River salt marsh habitat across Hilfiker Lane to the west, and 100 feet or more from the extensive emergent wetlands on the unfilled eastern and southern portions of the subject parcel. Pollutant-laden stormwater runoff from the development site has the potential to negatively affect the water quality and hydrology of the onsite wetlands and nearby Elk River and Humboldt Bay waters inconsistent with the above-cited LCP policies (which are similar to sections 30230 and 30231 of the Coastal Act). In addition, construction of the authorized development and post-construction use of the site could mobilize and spread potential contaminated soil and/or groundwater that might exist as a result of the past uses of the site and surrounding lands, threatening

the quality and biological productivity of nearby wetlands and waters. When the redesignation/rezoning of the site was approved by the Commission with suggested modifications in October 2020, the City and the Commission recognized that the site had significant coastal resource and coastal hazard constraints that necessitated the application of the Q (Qualified) combining zone, which limits the allowable uses of the site and requires such uses to comply with the limitations for the site listed on the certified zoning map. One of the limitations required under the site's Q combining zone is the requirement that a soil and groundwater management plan be prepared for any uses that involve ground disturbance.

There are a number of soil and groundwater contamination risks that affect the site, as detailed in a Phase I and a limited Phase II Environmental Site Assessment (ESA) completed for the property by SHN in 2019.¹² These include the presence of a former railroad corridor, the presence of uncharacterized fill, the historic use of the site as a bulk fuel terminal, and the presence of upgradient petroleum hydrocarbon and fuel oxygenate plumes that might have originated from off-site sources.¹³ The ESA recommends capping the site for any future residential use to protect residents from impacts from subsurface contamination, and the development approved by the City includes an asphaltic cap and above-grade housing units consistent with the ESA recommendations. This recommendation was considered by the City and the Commission at the time the LCP Amendment that redesignated and rezoned the site was adopted and certified. At that time, the North Coast Regional Water Quality Control Board (Regional Board) staff commented that it had reviewed the Phase I and II ESA and the anticipated housing development proposal. The Regional Board staff commented that the City's proposal to install an asphaltic cap and above-grade housing units is compatible with the site given potential contamination concerns.

The City's approval includes conditions to address the water quality risks discussed above. To address the stormwater runoff concern, Condition 7 requires the preparation and submittal of a Post-Construction Stormwater Management Plan for the City's approval prior to issuance of any building permits. The required plan must demonstrate

¹² Since ceasing operation as a fuel storage facility, the Crowley Site has been the subject of several environmental studies commencing with a 1992 Phase I ESA, followed by numerous subsurface investigations that ultimately identified the need for remediation. Corrective actions and monitoring activities were completed culminating with a 2005 Regional Water Quality Control Board determination of "No Further Action" required. The identified contamination was remediated to the satisfaction of the Regional Board without subjecting the parcel to any required controls, such as property-use restrictions, activity and use limitations, institutional controls, and/or engineering controls. However, the recent Phase I and a limited Phase II ESA attest that a number of soil and groundwater contamination risks continue to affect the parcel.

¹³ Regarding upgradient contamination plumes, the ESA states: "several agency-listed sites have experienced unauthorized hazardous materials releases; these sites are situated within a ¼ mile of the subject property in presumed upgradient and cross gradient locations. To date, none of these agencylisted sites is known to have impacted the subject property from a hazardous materials perspective. However, there is the potential for groundwater at the subject site to be impacted by the metals and petroleum hydrocarbon groundwater plumes associated with these upgradient and cross-gradient sites due to the proximity of these properties to the subject site, the documented COCs in groundwater, and the associated groundwater plumes."

that site runoff will be directed to a new vegetated swale to be designed to retain, infiltrate, and treat stormwater runoff onsite. Site runoff will flow to the east, away from the Elk River/Humboldt Bay, and will only reach the Elk River after passing through stormwater management features and existing wetlands on the eastern and southern portions of the parcel. The plan must also include plans for the continual operation, inspection, and maintenance of the onsite swale to ensure proper functioning for the life of the authorized development. The permittee is required to undertake development in accordance with the approved final plan.

As recommended by the ESA, the development approved by the City includes installation of an asphaltic cap below the area approved for the above-grade housing units. In addition, to address any risk of mobilization of residual contamination on the site, and consistent with the Q combining zone requirements, Condition 4 requires preparation and submittal of a Soil and Groundwater Management Plan for the City's approval prior to commencement of construction. The plan must demonstrate that any soil or groundwater contamination encountered during construction will be identified, contained, characterized, and properly disposed of at a permitted facility. The permittee is required to undertake development in accordance with the approved final plan.

Other conditions attached to the approved permit to protect water quality include the following:

- Condition 1 requires several measures and Best Management Practices to be implemented during construction, such as (a) restricting ground-disturbing activities to dry weather periods only; (b) requiring covering and containment of stockpiles, excavated soils, and other construction materials and debris; (c) confining concrete washouts on paved surfaces and in contained areas at least 50 feet away from drainage courses and storm drain inlets; and (d) requiring hazardous materials management equipment to be immediately on-hand; and
- Condition 2 requires preparation and submittal of a Directional Drilling Plan that demonstrates that (1) risk of frac-out (inadvertent release of drilling fluid during subsurface boring to connect the permitted facility to the WWTP to the south) will be minimized through the use of specific drilling procedures for frac-out prevention, detection, and response measures; (2) any accidental spills will be quickly cleaned up; and (3) spent drilling fluid will be fully contained and disposed of properly. The permittee is required to undertake development in accordance with the approved final plan.

Therefore, there is a high degree of legal and factual support for the City's determination that the approved development will protect water quality, and the Commission finds that this contention does not raise a substantial issue of conformance of the project as approved with the policies and standards of the LCP.

d. Contentions Related to Denial of the Project to Protect Habitat Values

The White appeal asserts that the development should be denied in the proposed location, and the property should instead be left as open space to protect habitat values.

Applicable LCP Policies

See LCP policies and standards cited above, including, but not limited to, LUP Policy 6.A.6 and CZR § 10-5.2942.3; LUP Policy 6.A.7 and CZR § 10-5.2942.4; and LUP Policy 6.A.8.

Discussion:

As previously discussed, the subject property has been the subject of a project-driven LCP amendment certified by the Commission with suggested modifications in October of last year. The LCP amendment as certified limits the range and term of uses to be allowed on the site to only those that can be accommodated within the small developable area of the parcel in a manner that minimizes flood risks and protects habitat values. As discussed above, the approved development as conditioned satisfies the strict limitations of the zoning for the site by avoiding development in wetlands, adequately setting new development back from delineated wetlands, and incorporates various mitigation measures to protect the resources of the adjacent wetland ESHA. Therefore, there is a high degree of legal and factual support for the City's determination that the approved development will protect surrounding habitats, including the habitats associated with Humboldt Bay and the Elk River. Therefore, the Commission finds that this contention does not raise a substantial issue of conformance of the project as approved with the policies and standards of the LCP.

e. Contentions Related to Visual Resources Protection

Both the White and Kinnear appeals raise the contention that the approved development is inconsistent with the LCP policies and standards related to visual resources protection, because the approved trailers are incompatible with the character of the surrounding area, which includes the natural and recreational lands and waters of the Hikshari Coastal Trail and Humboldt Bay/Elk River estuary.

Applicable LCP Policies:

LUP Policy 5.B.1:

The City shall provide public open space and shoreline access throughout the Coastal Zone, particularly along the waterfront First Street, through all of the following: ...

(d) Consider and protect the scenic and visual qualities of coastal areas that are visible from scenic public vista points and waterfront walkways.

Discussion:

As discussed above in Finding VI-B, The California Coastal Trail (CCT; known locally as the Hikshari' Trail) is located across Hilfiker Lane to the west of the development site, along with a trailhead parking lot and recently restored salt marsh habitat. The approved development will be visible from Hilfiker Lane (a public road) and from the CCT and the wildlife area parking lot. As the development site is located inland from Hilfiker Road and the CCT, the approved development will not block views to the Elk River estuary or

Humboldt Bay. In addition, in its findings for approval of the proposed development as conditioned, the City noted the following with respect to the project's consistency with the above-cited policy:

The proposed project will be visible from the trail, but will not impact the visual gualities of the area. The area is at an urban/rural interface between urban Eureka and the Elk River Wildlife Area and has a mixed urban/rural character with extensive wetlands and associated vegetation interspersed with public facilities and fill pads of former industrial developments. The subject parcel is immediately surrounded by a road, a fire training facility, the City's WWTP, and commercial strip development along Broadway. Only a small portion (13%) of the parcel is proposed to be developed, with the remaining land retained in extensive vegetation open space. The portion of the parcel to be developed differs from the remainder of the parcel in that it was previously filled and accommodated a bulk fuel tank farm for over four decades (from the 1950s until 1999), and, as a result, is covered in ruderal vegetation typical of disturbed industrial yards. Given the mixed urban/rural character of the area, the limited potential development footprint, in a filled and disturbed area, the proposed development will not degrade the visual quality of the area is consistent with Policy 5.B.1.

Therefore, given: (1) the siting of the development inland of the CCT and Hilfiker Lane in the opposite direction of the scenic views afforded from these public vantage points of the Elk River estuary and Humboldt Bay; (2) the retention of all but 13% of the subject parcel as vegetated open space; and (3) the varied mix of public infrastructure and other development that already exists in the surrounding area, there is a high degree of legal and factual support for the City's determination that the approved development will protect visual resources, and the Commission finds that this contention does not raise a substantial issue of conformance of the project as approved with the policies and standards of the LCP.

f. Contentions Related to Hazards

The Ann White appeal raises the contention that the approved development is inconsistent with the LCP hazards policies and standards, because the development is vulnerable to geologic and flood risks from earthquakes, liquefaction, tsunami wave runup, and tidal inundation under projected local relative sea-level rise scenarios.

Applicable LCP Policies:

LCP Policy 7.B.2 states:

The City shall ensure that development on or near the shoreline of Elk River, Humboldt Bay, and Eureka Slough neither contributes significantly to, nor is subject to, high risk of damage from shoreline erosion over the life span of the development.

LCP Policy 7.B.3 states in applicable part:

...Permitted development shall not require the construction of protective devices that would substantially alter natural landforms.

LCP Policy 7.B.4 states:

For all high density residential and other high occupancy development located in areas of significant liquefaction potential, the City shall, at the time project application, require a geology and soils report prepared by a registered geologist, professional civil engineer with expertise in soil mechanics or foundation engineering, or by a certified engineering geologist, and shall consider, describe, and analyze the following:

- (a) Geologic conditions, including soil, sediment, and rock types and characteristics in addition to structural features, such as bedding, joint and faults;
- (b) Evidence of past or potential liquefaction conditions, and the implications of such conditions for the proposed development;
- (c) Potential effects of seismic forces resulting from a maximum credible earthquake;
- (d) Any other factors that might affect the development.

The report shall also detail mitigation measures for any potential impacts and outline alternative solutions. The report shall express a professional opinion as to whether the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the life-span of the project.

LCP Policy 7.B.5 states:

For all development proposed within areas subject to significant shoreline erosion, and which is otherwise consistent with the policies of this General Plan, the City shall, prior to project approval, require a geology and soils report prepared by a registered geologist, professional civil engineer with expertise in soil mechanics or foundation engineering, or by a certified engineering geologist, and shall consider, describe, and analyze the following:

- (a) Site topography, extending the surveying work beyond the site as needed to depict unusual conditions that might affect the site;
- (b) Historic, current, and foreseeable shoreline erosion, including investigation of recorded land surveys and tax assessment records in addition to the use of historic maps and photographs where available and feasible changes in shore configuration and sand transport;
- (c) Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joint and faults;
- (d) Impact of construction activity on the stability of the site adjacent area;

- (e) Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction;
- (f) Effects of marine erosion on shoreline areas;
- (g) Potential effects of seismic forces resulting from a maximum credible earthquake;
- (h) Any other factors that might affect slope stability.

The report shall evaluate the off-site impacts of development and the additional impacts that might occur due to the proposed development. The report shall also detail mitigation measures for any potential impacts and outline alternative solutions. The report shall express a professional opinion as to whether the project can be designed so that it will neither be subject to nor contribute to significant onsite or offsite geologic instability throughout the life-span of the project.

The Implementation Plan map (zoning map) for parcel 019-271-004 applies a Qualified (Q) combining district to the subject parcel, which lists the following limitations for the property, in relevant part (emphasis added):

Life safety and natural hazard limitations on the permitted uses include, but are not limited to, the following:

- All structures will comply with the Flood Hazard Area Regulations contained in the Eureka Municipal Code and shall be designed to minimize flood risk over the anticipated life of the development taking into account current best available science (at the time of application for development) on projected sea level rise, including minimizing impacts to the development itself and impacts of the development on the surrounding <u>area</u>.
- <u>Structures will be designed and constructed to allow relocation or removal</u> <u>and permitted for a limited term taking into account increasing flood</u> <u>hazard risk with predicted sea level rise</u>.
- <u>Prior to commencement of any use, including future uses, the</u> <u>owner/manager of each use will develop a Tsunami Evacuation Plan, and</u> <u>implement and enforce the Tsunami Evacuation Plan for the life of the</u> <u>use</u>. The Tsunami Evacuation Plan must be approved by the City of Eureka, and a copy of the approved Tsunami Evacuation Plan, and any new or updated Evacuation Plans must be provided to any and all tenants and employees on the site of the use, and to the Development Services Department.

...

Discussion:

As previously discussed, the northwestern portion of the parcel was previously filled and used as a bulk fuel storage facility. Subsurface investigations were conducted in 2012

(for an unrelated project that was never constructed),¹⁴ indicating that the site is underlain by 6 to 7 feet of uncontrolled fill material overlying 5 to 13 feet of native baymargin sediment. The bay-margin deposits, in turn, overlie denser Hookton Formation sediments that occur at depths ranging from 12 to 20 feet below ground surface.

The subject site is vulnerable to several geologic and flood hazards. Strong ground shaking is anticipated during the anticipated life of the proposed development, which at most is approximately 30 years based on the condition of the trailers to be converted into the approved housing units and the requirements of Condition 11 of the CDP which limits the authorization period of the development to no later than January 1, 2050 (see Condition 11). An active segment of the Little Salmon fault zone is located approximately 1.5 miles to the southwest of the subject parcel, and there are several other local sources capable of producing strong seismic shaking at the parcel, including, but not limited to, faults within the Cascadia Subduction Zone (CSZ). According to the 2012 geotechnical investigation report, the site has a moderate to high potential for liquefaction and other seismically-induced ground failures during long-duration strong around shaking associated with a CSZ event. The report indicates that the risks associated with liquefaction can be reduced through appropriate foundation design. In addition, the site is located within a mapped tsunami inundation area¹⁵ and is at risk of tsunami inundation from waves generated from a variety of local and distant sources. Based on available inundation modeling, the subject parcel would not be inundated by smaller, more frequent tsunamis,¹⁶ but would be inundated by more infrequent and extreme events, such as a CSZ event.¹⁷ In the Humboldt Bay area, the time window between tsunami generation and local inundation could be on the order of only minutes due to proximity to the CSZ, a local source for tsunami waves. Finally, the property is a low-lying, relatively flat parcel within the FEMA-mapped 100-year floodplain with a base flood elevation of 10 feet (NAVD88). The parcel is located approximately 70 feet west of the confluence of the Elk River and Humboldt Bay near an unfortified stretch of shoreline. The site has been ranked as highly vulnerable in the "Humboldt Bay Shoreline Inventory, Mapping, and Sea Level Rise Vulnerability Assessment" prepared for the California Coastal Conservancy (2013).¹⁸

¹⁴ The investigation was conducted for a proposed food waste digester project that was never built. SHN Consulting Engineers & Geologists, Inc. (2012, June). Geologic hazard evaluation and geotechnical engineering report for proposed food waste digester project on a portion of the "Crowley Property," Hilfiker Lane, Eureka, California (APNs 019-271-004 and 019-331-002). Prepared for Humboldt Waste Management Authority.

¹⁵ The projected inundation area represents the maximum considered tsunami runup from several extreme, infrequent, and realistic tsunami sources. A 975-year average return period tsunami model (with a 5% probability of exceedance in 50 years) was used as a basis for the maximum inundation extent for inundation mapping in conjunction with data from an earlier 2009 mapping effort.

¹⁶ Such as during a 475-year average return period event (with a 10% probability of exceedance in 50 years) or smaller event.

¹⁷ A CSZ event has an approximately-515-year average return period. Evidence suggests the last major subduction zone quake occurred on January 27, 1700.

¹⁸ Available at: <u>https://scc.ca.gov/webmaster/ftp/pdf/humboldt-bay-shoreline.pdf</u>

As cited above, the LCP requires that new development minimize geologic and flood risks, not contribute to or be subject to erosion, and not require the construction of protective devices that would substantially alter natural landforms. For high density residential and other high occupancy development in areas subject to liquefaction potential, a geology and soils report prepared by a qualified professional is required in support of proposed development, to detail mitigation measures for any potential impacts, and to confirm that the development can be designed to neither be subject to nor contribute to onsite or offsite geologic instability throughout the project lifespan. The Q Combining District applied to the site by LCP Amendment No. LCP-1-EUR-20-0009-1-Part C also requires that permitted structures on the subject site comply with the City's flood hazard area regulations and that they be designed to minimize flood risk taking into account sea-level rise over the project design life. Structures must be designed and constructed to allow for relocation or removal and shall be permitted limited-term, taking into account increasing flood hazard risk with predicted sea level rise.

As mentioned, a geologic hazard evaluation and geotechnical engineering report was completed in 2012 by SHN for an unrelated project that was never constructed. The report evaluated geologic and flood hazards associated with the site, including slope stability, seismic hazards (ground shaking, surface fault rupture, and seismically induced ground deformation), flooding, and tsunami hazards. The report concludes that the subject site can support development, provided several recommendations are followed. To mitigate the identified hazards, the report recommends in part (1) that the site layout avoid structures with significant loads to be located over former tank footprints in the southern part of the property, (2) building and tanks be designed to withstand strong seismic shaking according to state building code requirements, (3) fill, compaction, and drainage requirements.

In response to these recommendations, plans were developed for the proposed project by the City's Public Works Department (Exhibit 5) and by Silver Creek Industries, Inc. (trailer specifications). As recommended, the site plan layout avoids siting structures with significant loads in the southern part of the property and provides specifications for base material, backfill, compaction, and other construction and foundation details. Condition 10 of the approved CDP requires that prior to commencement of construction, the permittee is required to submit for the City Development Services/Building Department approval a set of final construction plans that substantially conform with the proposed 90% plans and which have been reviewed and certified by a registered civil engineer as being consistent with all applicable local and state code regulations for construction, utilities, manufactured home requirements, and floodplain development.

With respect to minimizing flood risk, the City's approval as conditioned requires conformance with the City's floodplain regulations. These regulations require in part that (1) development be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; (2) construction shall utilize flood resistant materials as well as electrical, heating, ventilation, plumbing and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the

components during conditions of flooding; and (3) the lowest floor be sited at or above the base flood elevation.

In addition, the City's approval also acknowledges the site's vulnerability to flooding that may be exacerbated due to rising sea levels in the coming decades, and as such, Condition 8 requires the applicant to waive their rights to shoreline protection. Specifically, Condition 8 specifies that by acceptance of the CDP, the permittee acknowledges that the site may be subject to the identified geologic and flood hazards, which will worsen with future sea level rise, and as new development there is no entitlement to a shoreline protective device in the future in the event that the permitted development becomes threatened by erosion or other hazards. The condition requires that the permitted development be removed from the site in the future if any government agency orders the site not to be used due to any of the identified hazards. The use of trailers as the approved housing units will ensure that the permitted development can be easily removed from the site in conformance with this requirement and with the limitations of the Q Combining District regulations that apply to the site. Condition 8 also requires that in the event portions of the development fall to the bay or tidal wetlands before removal, the condition requires the permittee to remove all recoverable debris from the beach and bay and lawfully dispose of the material at an approved disposal site.

Furthermore, Condition 11 limits the term of development authorization to only the time projected to be safe from SLR-related flood levels, which is through 2049. The development as approved by the City will be located at an elevation that ranges from approximately 9 to 11 feet (NAVD88). The current mean monthly maximum water (MMMW) elevation on Humboldt Bay is 7.74 feet, as measured at NOAA's North Spit Tide Gage), and the average annual king tide elevation is 8.8 feet. Extreme tides (100-year events) and abnormally high king tides and/or storm surges can reach up to two feet above MMMW. Without the protection of the intervening trail and road that separate the subject parcel from the Elk River, and which are at 10.82 and 11.23 feet in elevation, respectively, the filled northwestern portion of the parcel would be vulnerable to yearly tidal inundation (MAMW) from the west with just 0.2 feet of sea level rise, and monthly inundation (MMMW) with just 1.26 feet of sea level rise.

Thus, Condition 11 specifies that the development is authorized only as a temporary use and only until January 1, 2050, which is the time period projected to avoid flood risk under the medium-high risk aversion sea level rise scenario and risk from 100-year flood events under a low-risk aversion scenario (the condition specifies that the development authorization shall end sooner if the lease expires earlier than January 1, 2050). At least six months prior to the expiration date of the permit, the applicant is required to submit a CDP application to either remove the authorized development or extend the length of time the development is authorized and modify its siting and design as needed to ensure consistency with the LCP requirements for minimizing flood risk. The condition specifies that the future CDP application should be supported by an updated flood hazard analysis based on the best available science and most recent SLR information at the time of the application.

Finally, as cited above, the certified Q combining zone district applied to the parcel has site-specific requirements for the subject property, including, but not limited to, a requirement that a Tsunami Evacuation Plan be prepared, approved by the City, and be provided to all tenants and employees on the subject site. The City's approval includes Condition 9, which requires submittal of a Tsunami Evacuation Plan prior to issuance of any building permits. The plan is required to be implemented and enforced for the life of the development and shall demonstrate that procedures will be in place for the safe evacuation of all occupants in the event of a tsunami. Contents of the required plan shall include in part an evacuation route map, evacuation procedures, hazard notification procedures, training and maintenance procedures, and provisions for designation of personnel/occupants responsible for evacuation plan implementation.

Therefore, there is a high degree of legal and factual support for the City's determination that the approved development will minimize geologic and flood risks, not contribute to or be subject to erosion, and not require the construction of protective devices that would substantially alter natural landforms. Therefore, the Commission finds that this contention does not raise a substantial issue of conformance of the project as approved with the policies and standards of the LCP.

g. Contentions Related to Public Access and Recreation

The Kinnear appeal raises the contention that the approved development is inconsistent with the public access policies of the Coastal Act and the LCP, because the approved development will intensify the use of and interfere with the enjoyment of the nearby coastal trail and its limited parking and amenities (e.g., picnic table, trash receptacle).

Applicable Coastal Act Policies:

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 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 requires that development not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Section 30214 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 these sections, the approving authority must consider whether public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

Applicable LCP Policies:

LUP Policy 5.B.4 states:

The City of Eureka shall protect and enhance the public's rights of access to and along the shoreline, consistent with protecting environmentally sensitive habitats, by:

• • •

1. Allowing only such development as will not interfere with the public's right of access to the sea, where such right was acquired through use or legislative authorization.

LUP Policy 5.B.10 states:

To the maximum extent feasible, the City shall ensure universal public access to the waterfront, including support facilities.

Discussion:

As discussed above in Finding VI-B, The California Coastal Trail (CCT; known locally as the Hikshari' Trail) is located across Hilfiker Lane to the west, along with a trailhead parking lot and recently restored salt marsh habitat. The paved trailhead parking lot can accommodate 19 vehicles and is known as the Elk River Wildlife Area parking lot. The approved development will be visible from Hilfiker Lane, a public road, and from the CCT and the wildlife area parking lot.

The proposed development as approved by the City will not directly interfere with existing public access, as no public access exists at the project site, and the development will be located inland of the nearby trail and public parking area described above. Given the proposed use is limited to housing for 40 individuals and is targeted at people who already live in the area, any increase in demand for public access from future residents will be minimal and will be readily accommodated by the existing facilities.

In addition, the approved development will not create overflow parking demand that would interfere with use of the existing trailhead parking lot across Hilfiker Lane. The project as approved by the City includes adequate space for off-street parking to serve the proposed use, as required by the certified IP. In commercial zone districts, one space is required for each dwelling unit (which is defined in the IP in part to mean one or more rooms and a single kitchen). As each of the seven proposed residential structures includes one kitchen, seven off-street parking spaces are required. The approved project includes ten off-street spaces, which includes additional spaces for two case workers and for Betty Chinn (applicant's agent). Thus, the project as approved by the City provides off-street parking adequate to meet anticipated parking demand.

Therefore, there is a high degree of legal and factual support for the City's determination that the approved development is consistent with the public access and recreation policies of the Coastal Act and the certified LCP. Therefore, the Commission finds that this contention does not raise a substantial issue of conformance of the project as approved with the public access policies of the Coastal Act and the certified LCP.

2) Invalid Contentions

The appeal by Janelle Egger contends that the City did not follow proper California Environmental Quality Act (CEQA) guidelines in its review of the project, because the City erroneously classified the project as an infill development project for which it improperly granted a CEQA exemption. The alleged deficiencies of the City's CEQA review are not a valid basis for an appeal to the Commission. As discussed previously, section 30603(b)(1) states that the grounds for an appeal 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 of Chapter 3 of the Coastal Act.

Though the appellant's contentions fail to assert that the approved project is inconsistent with the certified LCP, the approved CDP includes conditions requiring fulfillment of mitigation measures specified to protect wetlands and water quality, and to minimize geologic and flood hazard risks. The measures were required by the City as enforceable CDP conditions to ensure that the proposed development will avoid significant effects on the environment.

3) Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable, such as in this case) conformance. The Commission has in the past and, pursuant to section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are "substantial": (1) the degree of factual and legal support for the local government's decision; (2) the extent and scope of the development as approved or denied by the County; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the County's decision for future interpretations of its LCP; and, (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors considered together support a conclusion that the appeals do not raise a substantial issue as to the City-approved project's consistency with the LCP or the public access and recreation policies of the Coastal Act. As discussed in the City's findings for approval, there is factual and legal evidence in the record to support the City's approval of CDP No. 21-0006. There have been extensive investigations and analyses of the extent of wetlands present on the site, subsurface soil conditions, geologic and flood hazards, and biological studies to support the City's decision that the approved development will protect water quality and the resources of adjacent ESHA, will minimize geologic and flood risks, and will not interfere with existing public access along the nearby trail. The appeals do not provide contrary facts or analysis that undermines the City's approval of the project. As the City thoroughly addressed the coastal resource concerns, the Commission assigns more weight to this factor in the substantial issue analysis.

As to project scope, the approved development is limited to a community housing project of up to 40 people on a single property, and thus the extent and scope of the project are relatively small in scale, particularly as the conditions of the approved permit limit the authorization of the development to a temporary period. When combined with the first factor, this second factor weighs against finding substantial issue.

The third factor (the significance of coastal resources affected) also supports a finding of no substantial issue. As conditioned by the City, the project will not adversely affect Humboldt Bay or the Elk River estuary, and it will be sited and designed in such a way as to protect other important resources, including onsite wetlands. No significant coastal resources are threatened by the City-approved project.

Fourth, the City's decision should not set an adverse precedent for future interpretations of the City's LCP given the unique development approved and the specific limitations of the certified zoning requirements that apply only to the subject property.

Finally, the project does raise issues of regional or statewide significance, including the protection of coastal wetlands, the use of the Coastal Trail, the protection of scenic views, sea-level rise vulnerability, and affordable housing. As discussed above, the City imposed conditions addressing the resource protection and vulnerability issues, and the City's approval furthers important statewide objectives related to affordable housing.

Therefore, especially given the high degree of factual and legal support for the City's decision and conditions of approval, consideration of the five factors together support a conclusion that the City's approval of a CDP for this project does not raise a substantial issue of Coastal Act and LCP conformance. For the reasons stated above, the Commission finds that Appeal Number A-1-EUR-21-0055 does not present a substantial issue with respect to the grounds on which the appeals have been filed under section 30603 of the Coastal Act.

Appendix A – Substantive File Documents

- 1. Local Record for City of Eureka CDP File No. CDP No. 21-0006
- 2. Adopted Findings for LCP Amendment No. LCP-1-EUR-20-0009-1-Part C