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# F8a

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## STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

**Appeal No.:** A-1-ARC-22-0010

**Applicant:** City of Arcata

**Local Government:** City of Arcata

**Local Decision:** Approval with Conditions

**Location:** Along an approximately 1-mile-long stretch of Old Arcata Road from approximately 600 feet south of Buttermilk Lane to Jacoby Creek Road in the Bayside neighborhood of the City of Arcata.

**Project Description:** Old Arcata Road Rehabilitation and Pedestrian and Bicycle Improvements Project, including, but not limited to, repaving, bicycle and pedestrian improvements, drainage improvements, and a portion of a new roundabout at the intersection of Old Arcata Road and Jacoby Creek Road.

**Appellants:** (1) Bayside Cares; (2) Marc Delany

**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 3 minutes total per side (although the Chair has the discretion to modify these time limits). Please plan your testimony accordingly. Only the applicant, appellants, 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.) The Commission will accept the appeal for a full de novo review unless it determines that the appeal raises no substantial issue. Otherwise, the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

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## **SUMMARY OF STAFF RECOMMENDATION**

The City of Arcata approved a CDP for the City of Arcata to construct various improvements to an approximately 6,000-foot-long stretch of an existing local roadway in the Bayside neighborhood near the southeastern boundary of the City. The approved project, known as the Old Arcata Road Rehabilitation and Pedestrian and Bicycle Improvements Project, involves repaving Old Arcata Road, enhancing bicycle lanes on both sides of the roadway alignment, improving and extending an existing shared use walkway along the west side of Old Arcata Road, improving sidewalks, crosswalks, and speed humps throughout the project area, drainage improvements, and developing a new roundabout at the intersection of Old Arcata Road and Jacoby Creek Road. The purpose of the new roundabout is to improve traffic flow and user safety.

The coastal zone boundary is coincident with the inland edge of the Old Arcata Road right-of-way, and portions of the project extend outside of the coastal zone. In addition, the southern portion of the project that extends outside of the City limits was separately permitted by Humboldt County and is the subject of a separate appeal filed as Appeal No. A-1-HUM-22-0026.

The Commission received two separate appeals of the City's approval – from Bayside Cares and Marc Delany – each of which raises different contentions. A principal contention raised is that the approved development is inconsistent with LCP policies and standards that protect coastal wetlands, because the City lacked fundamental information about how the project would be sited and designed to prevent impacts that would significantly degrade adjacent wetland areas, particularly with respect to the project's potential to increase the delivery of polluted stormwater runoff to adjacent wetlands.

Staff recommends that none of the contentions raise a substantial issue as to the approved project's consistency with the certified LCP. Specifically, there is a high

degree of factual and legal support for the City's findings that the approved project will have no direct impacts to wetlands in the coastal zone, and conditions of the approved CDP require implementation of various mitigation measures to protect adjacent wetlands, waters, and coastal resources, as required by the LCP. These include the various requirements listed in the adopted Mitigation Monitoring and Reporting Program, such as erosion and runoff control measures, sensitive species surveys, and incorporation of native plants in the project landscaping as recommended by CDFW. Because the extent and scope of the project is limited to an existing developed roadway and immediately adjacent right-of-way in addition to the protective mitigation measures integrated into the project, there will be no significant coastal resources impacted by the project, and the City's decision should not set an adverse precedent for future interpretations of the City's LCP. Staff therefore recommends these factors weigh against finding substantial issue and recommends that the Commission, after public hearing, determine that the appeal contentions do not raise a substantial LCP conformance issue.

The motion to adopt the staff recommendation of No Substantial Issue is found on [Page 5](#).

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION.....</b>	<b>5</b>
<b>II. FINDINGS &amp; DECLARATIONS FOR NO SUBSTANTIAL ISSUE .....</b>	<b>5</b>
A. PROJECT DESCRIPTION .....	5
B. PROJECT LOCATION AND ENVIRONMENTAL SETTING .....	6
C. LOCAL GOVERNMENT ACTION .....	6
D. FILING OF APPEAL .....	6
E. APPEAL JURISDICTION AND PROCEDURES .....	7
F. SUMMARY OF APPEAL CONTENTIONS.....	9
G. SUBSTANTIAL ISSUE DETERMINATION.....	9
1. Analysis of Contentions .....	9
2. Conclusion.....	17

## EXHIBITS

- Exhibit 1 – Location Maps
- Exhibit 2 – Jurisdictional Boundary Map
- Exhibit 3 – Project Description
- Exhibit 4 – Project Plans with Wetlands
- Exhibit 5 – Mitigation Monitoring and Reporting Program (MMRP)
- Exhibit 6 – California Department of Fish and Wildlife Comments
- Exhibit 7 – Bayside Cares Appeal
- Exhibit 8 – Marc Delany Appeal
- Exhibit 9 – Final Local Action Notice and Findings for Approval

## I. Motion and Resolution

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeals were filed. A finding of no substantial issue would mean that the Commission would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision stands and is thus final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in the recommended no substantial issue finding. If the motion fails, then the Commission will have instead found a substantial issue and will instead take jurisdiction over the subject CDP application, resulting in a future hearing and action. The motion passes only by an affirmative vote of a majority of the Commissioners present.

### **Motion:**

I move that the Commission determine that Appeal Number A-1-ARC-22-0010 **raises no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a **yes** vote.

### **Resolution:**

The Commission finds that Appeal No. A-1-ARC-22-0010 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 of the approved development with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

## II. Findings & Declarations for No Substantial Issue

### **A. Project Description**

The approved project, known as the Old Arcata Road Rehabilitation and Pedestrian and Bicycle Improvements Project, authorizes various improvements to an approximately 6,000-foot-long stretch of an existing local roadway in the Bayside neighborhood of the City of Arcata (Exhibits 1-4). The approved improvements include, but are not limited to, repaving Old Arcata Road, enhancing bicycle lanes on both sides of the roadway alignment, improving and extending an existing shared use walkway along the west side of Old Arcata Road, improving sidewalks, crosswalks, and speed humps throughout the project area, drainage improvements, and developing a new roundabout at the intersection of Old Arcata Road and Jacoby Creek Road (only the northern portion of the approved roundabout is within the City limits and the subject of the City's approved CDP). The stated purpose of the new roundabout is to improve traffic flow and user safety. Crosswalks, signage, lighting and paved walkways would be integrated into the roundabout. Additionally, the center of the roundabout would be mounded and landscaped.

Utility improvements would include storm drain, sanitary sewer, and water infrastructure improvements, including new and upgraded storm drain catch basins, storm drain piping, and storm drain junction boxes that extend the length of the project area. To convey stormwater runoff, shallow swales would be installed. Furthermore, existing sanitary sewer laterals and water service connections located in the public right of way would be replaced and/or updated if found to be defective upon inspection.

### **B. Project Location and Environmental Setting**

The project site is located on the southeastern edge of the city along Old Arcata Road, extending from approximately 600 feet south of Buttermilk Lane to Jacoby Creek Road. The coastal zone boundary is coincident with the inland edge of the Old Arcata Road right-of-way, and portions of the project extend outside of the coastal zone (including improvements along Hyland Street within the City). In addition, the southern portion of the project that extends outside of the City limits was separately permitted by Humboldt County, including (1) portions of the roundabout at Jacoby Creek Road and an approximately 300-foot-long stretch of the project area south of Jacoby Creek Road (the County CDP approved for this portion of the project was also appealed – see Appeal No. A-1-HUM-22-0026), and (2) an approximately 340-foot-long stretch of the project that extends inland of coastal zone boundary eastward along Jacoby Creek Road. [See Exhibit 2, Jurisdictional Boundary Map.]

The project corridor is primarily bound by private residences, including medium-high density residential and low-density residential housing. The Jacoby Creek Elementary School (a public charter school serving grades TK through 8) and Mistwood Education Center (a small private school serving grades TK through 9) are located along the project corridor, as are a few commercial uses, a U.S. Post Office, and the Bayside Grange (Mistwood, the post office, and the grange facility are outside of the coastal zone). The area between Highway 101 and Old Arcata Road includes Agricultural-Exclusive farmed wetlands within the City of Arcata and natural resources lands within the Gannon Slough and Jacoby Creek watershed.

### **C. Local Government Action**

On February 16, 2022, the City of Arcata City Council approved Coastal Development Permit (CDP) No. 201-024-CDP with conditions for the above-described project. The City granted its approval for the CDP subject to conditions related to hours of construction, dust control, and adherence to the various mitigation requirements and schedule listed in the final Mitigation Monitoring and Reporting Program adopted for the project. The Commission's North Coast District Office received the City's Notice of Final Local Action on 201-024-CDP on February 24, 2022 (Exhibit 9).

### **D. Filing of Appeal**

On March 8, 2022, the Commission received an appeal of the City's approval of the road improvement project from Bayside Cares (Exhibit 7). On March 10, 2022, the Commission received a second appeal of the City's approval from Marc Delany (Exhibit

8). Both appeals were filed in a timely manner, within 10 working days of receipt by the Commission of the City's Notice of Final Action (Exhibit 9). On March 17<sup>th</sup>, the applicant, City of Arcata, submitted a signed copy of a waiver of the 49-working-day deadline for opening the Commission hearing on the appeal.

### **E. 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 a CDP application may be appealed to the Commission for certain kinds of developments. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for approvals of CDPs by counties, approvals of development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission.

Pursuant to section 30603(a)(1), the City's approval is appealable to the Commission, because the development is within 100 feet of a wetland and also because the development constitutes a major public works project.

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.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49 working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline. Here, the applicant has waived the 49-working day deadline. The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination. The term "substantial issue" is defined in section 13115 of the Commission's regulations:

“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.”

At this stage, the Commission may only consider issues brought up by the appeals.

Commission staff has analyzed the City’s record for the approved project, including, but not limited to, the City’s Final Local Action Notice for the approval (Exhibit 9) and the appellants’ claims (Exhibits 7 and 8). 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 the appeals were filed.

In this case, because the 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 appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant, and persons who opposed the application 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, following testimony and a public hearing, the Commission determines that the appeals do not raise a substantial issue, then the first step is the only step, and the local government approval will stand. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal. The Commission would continue the de novo portion of the appeal hearing to a subsequent meeting. There is no legal specific deadline for the Commission to act on the de novo phase of an appeal.



## **F. Summary of Appeal Contentions**

Listed below is a summary of the combined contentions raised by the two appeals (in no particular order). See Exhibits 7 and 8 for the full appeal documents.

- 1) The development approved by the City is inconsistent with the Local Coastal Program (LCP) Implementation Plan (IP) standards that protect wetlands, because the City lacked fundamental information about how the project may affect adjacent wetlands and how increased runoff from adjacent private properties with failing septic systems may affect wetlands.
- 2) The City failed to consult with the California Department of Fish and Wildlife (CDFW) prior to approval of the development.
- 3) The development approved by the City failed to adequately notify the public as required by the LCP.
- 4) The City acted on a project with inaccurate information, description, and location.

For the reasons discussed below, the Commission finds that only contentions 1 and 2 above present valid grounds for appeal, and neither of these contentions raise a substantial issue of conformance of the approved development with the policies and standards of the City's certified LCP. The other two contentions do not raise a substantial issue with respect to legitimate appeal grounds.

## **G. Substantial Issue Determination**

### **1. Analysis of Contentions**

#### **Valid Contentions**

##### **a. Contention Related to Protection of Wetlands and Water Quality**

The principal contention raised in the Bayside Cares appeal is that the approved development is inconsistent with LCP policies and standards that protect coastal wetlands, because the City lacked fundamental information about how the project would be sited and designed to prevent impacts that would significantly degrade adjacent wetland areas, particularly with respect to the project's potential to increase the delivery of polluted stormwater runoff to adjacent wetlands.

#### Applicable LCP Policies

Land Use Plan (LUP) Policy Section III-6 states (emphasis added):

To protect riparian habitats and to minimize erosion runoff, and interference with surface water flow, the City shall establish Riparian Buffer Areas along all streams within the Coastal Zone. The City shall add a new section, Riparian Buffer Areas, to Article 4 of the City's Coastal Land Use and Development Guide. This new section will formalize the City commitment to protection of riparian habitat by

defining and identifying such habitat and by applying the following regulations within the buffer areas.

- a. New development and redevelopments shall maintain or restore a natural vegetation buffer strip along all designated streams. This buffer strip shall be subject to the following definitions:

Distinct Riparian Vegetation – 100 feet from the outer edge of the existing riparian corridor: all of Jacoby Creek. Existing riparian corridor includes those areas adjacent to the creek that are presently dominated by trees and other vegetation characteristic of streamside vegetation.

Channeled Creeks – 25 feet from the center line of the creek: all of Grotzman Creek, lower Beith Creek, all of Campbell Creek, and Jolly Giant Creek above Butcher's Slough, and Janes Creek above McDaniel Slough;

Sloughs – 25 feet from the outer edge of the slough area, McDaniel Slough, Gannon Slough and Butcher Slough.

- b. Indigenous vegetation shall be retained in the buffer areas.
- c. Fencing that crosses a stream channel, that acts as a barrier to anadromous fish, or acts as a collector for debris shall not be permitted.
- d. Where opportunities arise, the city shall require fencing along channels to prevent further bank erosion by livestock.

LUP Policy Section IV-3 states (emphasis added):

The City shall adopt a Coastal Wetlands Map showing the location of wetlands, riparian corridors and uplands within the Coastal Zone. All development within the areas identified on the map as wetland or riparian corridor shall require compliance with the Coastal Wetlands Development Standards of the Coastal Land Use Development Guide.

The City shall establish a Wetlands Buffer Area to protect the areas shown as wetlands on the Coastal Wetlands Map. All development within the buffer areas shall comply with the Wetlands Buffer Area Development Standards of the Coastal Land Use and Development Guide.

The City shall designate and zone all areas shown as wetlands or riparian corridor on the Coastal Wetlands Map as either Coastal Agriculture Exclusive, Coastal Natural Resource Protection, or Coastal Public Facility.

LUP Policy Section IV-4 states (emphasis added):

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

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

Land Use and Development Guide (LUDG) Section 1-0409.3 states, in applicable part, (emphasis added):

Uses and activities in the area identified as wetlands or riparian corridor as shown on the adopted Coastal Wetlands Map shall be limited to the following:

- a. The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provision of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

...

LUDG Section 1-0410.4 states (emphasis added):

The City shall request the California Department of Fish and Game to review development plans proposed within coastal wetland buffer areas, and to recommend, within ten (10) days of the request, measures to mitigate disturbance of habitats.

LUDG Section 1-0410.6 states (emphasis added):

- a. Permitted Development. Development may be permitted in a Coastal Wetland Buffer Area provided that:

- (1) It complies with the Required Findings listed in Section 1-0410.7; and

- (2) It complies with the Required Mitigations listed in Section 1-0410.8, and
- (3) It maintains the Required Wetland Setback from the boundary of the wetland as prescribed in Section 1-0410.6(b).
- b. Required Wetland Setback. The setback shall be between 50 feet and 100 feet from the boundary of the wetland as shown on the certified Coastal Wetlands Map, depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wetland habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland.
- c. Uses Permitted in Required Wetland Setback Areas:
  - (1) Required Wetland Setback areas shall be used as open space areas. Paths, fences, landscaping and similar uses which have beneficial effect or no significant adverse effect on the wetland shall be allowed.
  - (2) Structures including residences, garages, commercial or industrial buildings, greenhouses, etc. shall not be allowed in a Required Wetland Setback area, except as prescribed in Section 1-0410.6(c)(4) and (5) below.
  - (3) Parking areas, driveways, outdoor storage areas, and other paved, graveled or oiled areas or similar areas shall not be allowed in a Required Wetland Setback area.
  - (4) Certain agricultural uses shall be permitted in Required Wetland Setback areas as prescribed in Section 1-0409.4.
  - (5) All uses permitted in wetlands as prescribed in Section 1-0409.3 shall be permitted in Required Wetland Setback area, subject to the same requirements as prescribed in Section 1-0409.
- d. Reduction of Required Wetland Setback: Setbacks of less than the distance specified above may be permitted only when:
  - (1) The applicant for the proposed development demonstrates, to the satisfaction of the City, that a setback of less than the distance specified above will not result in significant adverse impacts to the wetland habitat and will be compatible with the continuance of such habitats.
  - (2) Any such reduction in development setback may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland habitat values.

LUDG Section 1-0410.7 states (emphasis added):

Development within Coastal Wetland Buffer Areas shall be permitted only if the following findings are made:

- a. Development will be sited and designed to prevent impacts which would significantly degrade wetland habitat areas, and shall be compatible with the continuance of such habitat areas; and
- b. The quality of coastal waters, streams, wetlands, estuaries, and lakes shall be maintained, and where feasible, restored.

LUDG Section 1-0410.8 states (emphasis added):

All development permitted within wetland buffer areas shall be required to include the following mitigation measures:

1. The release rate of stormwater runoff to adjacent wetlands shall not exceed the natural rate of stormwater runoff for a 50-year storm of 10-minute duration;
2. Stormwater outfalls, culverts, gutters, and the like, shall be dissipated, and where feasible, screened;
3. Areas disturbed during construction, grading, etc., within the Required Wetland Setback area shall be restored to original contours and sufficiently and promptly replanted vegetation naturally occurring in the immediate areas;
4. Development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).

### Discussion

As discussed above, the proposed project involves improvements to an existing roadway with relatively minor expansions to the existing road prism to increase roadway access for bicyclists and pedestrians. Coastal wetlands were delineated in and around the project area, in some cases less than 100 feet away from authorized roadway improvements. However, according to approved project plans and the City's findings for approval of the CDP, the project will not involve filling of wetlands in the coastal zone, and conditions of the CDP require implementation of mitigation measures to protect water quality and adjacent wetlands during construction.

Wetland studies prepared for the project in January 2019 by GHD identified Palustrine Emergent Persistent 3-Parameter wetlands and 1-Parameter Willow Series wetlands within the road median ditch area that parallels Old Arcata Road on the northern end of the project (Exhibit 4). In addition, authorized roadway improvements are located within

100 feet of Beith Creek and Jacoby Creek. Furthermore, the Bayside Cares appeal includes a letter written by Botanical Consultant Kyle Wear explaining that the wetland ditch and area where the new roundabout is proposed drain into a storm drain that is ultimately connected (over 1,200 feet downstream) to wetland areas associated with Gannon Slough west of Old Arcata Road (and thus, the appeal contends, this hydrological connectivity between the project site and the downstream wetlands will lead to wetland degradation from polluted stormwater runoff associated with the roadway improvements).

According to the City's findings for approval of the CDP:

The project does not physically impact coastal wetlands. No coastal wetlands will be filled as a result of this project. The project does not physically impact any wetland delineated on the City's most recent Coastal Wetlands Map. The project is in compliance with the coastal wetlands development standards of the Coastal Land Use and Development Guide. The wetland buffer for this project is set at the default maximum of 100 feet in the absence of a project-specific reduced buffer determination prepared by a qualified professional. There are identified wetlands and wetland creek protection zones within the identified environmental buffer area of 100 feet. However, the "minor modification of existing, serviceable structures" is an allowed use/activity in an identified Environmental Buffer Area per section 1-0228 (d) and 1-0228.5 (b)(1). The IER prepared for the project analyzed the effects of the project on Biological Resources, including wetlands. A Natural Environmental study was prepared for the project. It was determined the project would not significantly impact existing coastal wetlands direct removal, filling, hydrological interruption, or by other means...

The City's findings are substantiated by the Environmental Impact Report (EIR) evaluation prepared for the project, finalized in January 2022, which includes an analysis of the effects of the project on wetlands and other biological resources. The EIR discusses temporary and permanent impacts to wetlands outside of the coastal zone, including several small lengths of three-parameter wetland ditches, totaling approximately 0.06 acres, along Jacoby Creek Road. Mitigation Measures (MM) BIO-3, BIO-4, AES-1, and HWQ-1 have been incorporated into the project to prevent impacts that would significantly degrade adjacent wetlands and streams. MM BIO-3 requires that the City avoid or minimize impacts to wetlands/waters to the greatest extent feasible in the final design plans, to clearly identify areas where wetlands are to be filled (outside the coastal zone) in construction documents, and to install ESA exclusion fencing prior to construction to protect juxtaposed wetlands. MM BIO-4 requires that the City compensate for wetland impacts (for wetlands outside of the coastal zone anticipated to be impacted) through restoration, rehabilitation, and/or creation of wetland at a ratio of no less than 1:1.2 and to the satisfaction of the City and permitting agencies. Additionally, BIO-4 requires that a Wetlands Mitigation and Monitoring Plan be prepared in coordination with jurisdictional permitting agencies and implemented by the City. The EIR states that the one-parameter wetlands that occur within the project area would not

be disturbed by the project, and therefore, no impact would occur. MM AES-1 requires in part that “The City shall restore or revegetate staging areas disturbed by construction activities, including restoring pre-project topographic features and reseeded with species comparable to those removed or disturbed during construction.” MM HWQ-1 requires that in instances where excavation occurs within the vicinity of stream channels, flowing ditches, or coastal waters, erosion and sediment control measures shall be implemented, including installation and maintenance of silt-fencing and development of erosion control plans to prevent inadvertent sediment delivery. The preparation of a Stormwater Pollution Prevention Plan (SWPPP) is also required under the Mitigation Monitoring and Reporting Program (MMRP), as are several other mitigation measures requiring surveys and protection for sensitive species of birds and frogs that may occur in the construction vicinity (MM BIO-1, 2, 5, and 6) and for proper handling and management of hazardous material and contaminated soils that may be encountered (MM HAZ-1 and HAZ-2).

The final local action by the City of Arcata (Resolution No. 212-44) (Exhibit 9) includes two conditions of approval intended to minimize impacts on water quality, waters, and wetlands within or near the project footprint. General permit condition 2 requires that the City adhere to the mitigation tasks and schedule as outlined in the adopted MMRP (Exhibit 5). General permit condition 4 requires dust control measures to be implemented during construction, including (1) cover trucks hauling soil, sand, and other loose material; (2) pave, water or apply non-toxic soil stabilizers on unpaved access roads and parking areas; (3) sweep paved access roads and parking areas daily; and (4) water all active construction areas twice per day and use erosion control measure to prevent water runoff containing silt and debris from entering the storm drain system.

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 protect coastal wetlands consistent with the LCP. In addition, the extent and scope of development involved in the City’s action is fairly limited, as it involves safety improvements to an existing roadway without roadway expansion or capacity increase.

**b. Contention Related to Consultation with CDFW**

Applicable LCP Policies

LUDG Section 1-0410.4 states (emphasis added):

The City shall request the California Department of Fish and Game to review development plans proposed within coastal wetland buffer areas, and to recommend, within ten (10) days of the request, measures to mitigate disturbance of habitats.

Discussion

A second contention raised under the Bayside Cares appeal is that the City failed to properly consult with the California Department of Fish and Wildlife (CDFW), as

required by the LCP. However, CDFW submitted comments on the Draft EIR (DEIR) on August 31, 2021. The comments from CDFW recommend incorporation of native landscaping in all landscaped areas where possible (Comment Letter 17, Final EIR, Exhibit 6). As a result of these comments, the adopted FEIR specifies that “The City will incorporate native plant species in all landscape areas as practicable as possible.”

Therefore, there is legal and factual support for the City’s determination that it did properly consult with CDFW as required by the LCP on proposed development plans proposed within coastal wetland buffer areas, and the recommendations provided by CDFW were incorporated into the project as recommended.

## **Invalid Contentions**

### **a. Contention Related to Public Noticing**

#### Applicable LCP Policies

LUDG Section 1-0408.2 states, in applicable part, (emphasis added):

Unless development is categorically excluded from the requirement to obtain a Coastal Development Permit, a public hearing shall be held for all developments within the Coastal Zone.

...

#### (b) Notice of Hearings.

(1) General Procedures. Notice of the public hearing on an action for a Coastal Development Permit shall be given by:

- i. Publication once in a newspaper of general circulation printed and published in the City at least ten (10) days prior to the hearing;
- ii. Notice to the occupants of each residential unit within 100 feet of the perimeter of the parcel on which the development is proposed in an envelope stamped “Important Public Hearing Notice”, and notice to all property owners within 300 feet of said parcel in an envelope with the same stamp;
- iii. Notice to each applicant;
- iv. Notice to the California Coastal Commission;
- v. Notice to all persons requesting notifications;
- vi. Notice and such other means as the Coning Administrator, Planning Commission or City Council may deem advisable;



- vii. Notice posted in three (3) conspicuous places, easily read by the public and as close as possible to the site of the proposed development. Such notice shall contain a general description of the nature of the proposed project, and shall be posted at least ten (10) days prior to the hearing.

...

### Discussion

The appeal by Marc Delany contends that the City did not adequately notify the public as required by LUDG Section 1-0408.2(b). 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. The appellant's contention raises issues with noticing and does not relate to any LCP consistency issue. Although this contention is not valid grounds for an appeal under section 30603(b)(1) of Coastal Act, according to evidence in the local record, the City appears to have followed proper noticing procedures for the CDP as required by LUDG sec. 1-0408.2 cited above. This contention does not raise a substantial issue with respect to legitimate appeal grounds.

#### **b. Contention Related to Inaccurate Project Information, Description, and Location**

The appeal by Marc Delany contends that the City acted on a project with inaccurate information, description, and location. 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. The appellant's contention does not assert that the approved project is inconsistent with the standards of the certified LCP, nor does it provide contrary facts to substantiate the contention that the City acted on a project with inaccurate information, description, and location. Therefore, this is not valid grounds for an appeal under section 30603(b)(1) of Coastal Act and does not raise a substantial issue of LCP conformance.

### **2. 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 City; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the City'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. 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 201-024-CDP. There have been extensive investigations and analyses of the extent of wetlands present in the project area to support the City's decision that the approved development will protect water quality and the adjacent wetlands and will minimize impacts. The appeals do not provide contrary facts or analyses that undermine the City's findings. The approved project will not result in direct impacts to coastal wetlands, and conditions imposed on the CDP require numerous measures to be implemented to protect adjacent wetlands, waters, and coastal resources. These include the various requirements listed in the adopted MMRP (Exhibit 5), among other measures, such as preparation and implementation of a SWPPP and incorporation of native plants into the project where feasible, as recommended by CDFW. Therefore, there is a high degree of factual and legal support for 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 one-mile road improvement, involving safety improvements to an existing roadway without roadway expansion or capacity increase. Thus, the extent and scope of the project are relatively small in scale. When combined with the first factor, this second factor also weighs against finding substantial issue.

The third factor (the significance of coastal resources affected) also supports a finding of no substantial issue. As previously noted, the project does not involve any wetland fill impacts within the coastal zone, and as conditioned by the City, the project will not adversely affect adjacent wetlands, streams or Humboldt Bay.

Fourth, the City's decision should not set an adverse precedent for future interpretations of the City's LCP given the extensive legal and factual support for the City's decision, as discussed above.

Finally, while the project does raise issues of regional or statewide significance (protection of wetlands), as previously discussed, the approved project as conditioned will not impact wetlands and includes various measures to protect adjacent wetland resources.

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 does not raise a substantial issue of LCP conformance. For the reasons stated above, the Commission finds that Appeal Number A-1-ARC-22-0010 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, and the Commission declines to take jurisdiction over the CDP application for this project.