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STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal No.: A-1-HUM-22-0026

Applicant: City of Arcata

Local Government: County of Humboldt

Local Decision: Approval with Conditions

Location: At and around the intersection of Old Arcata Road and Jacoby Creek Road in unincorporated Bayside, Humboldt County.

Project Description: Construct an approximately 530-foot-long segment of the Old Arcata Road Improvement Project, including, but not limited to, repaving, bicycle and pedestrian improvements, drainage improvements, and a portion of a new roundabout.

Appellant: Bayside Cares

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 appeal raises 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.) If the Commission determines that the appeal does raise a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then 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.

SUMMARY OF STAFF RECOMMENDATION

The County of Humboldt approved a CDP for the City of Arcata to construct an approximately 530-foot-long segment of the Old Arcata Road Rehabilitation and Pedestrian and Bicycle Improvements Project in the Bayside neighborhood at the southeastern boundary of the City of Arcata. The approved project includes repaving, enhancing bicycle lanes on both sides of the roadway alignment, improving sidewalks, crosswalks, and speed humps throughout the project area, drainage improvements, and developing a portion of the 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 majority of the Old Arcata Road improvement Project is within the City of Arcata limits and was separately permitted by the City and is the subject of a separate appeal filed as Appeal No. A-1-ARC-22-0010.

The Commission received an appeal from Bayside Cares, which raises four separate contentions. A principal contention raised is that the approved development is inconsistent with LCP policies and standards that protect community character and historic resources, especially with respect to the approved roundabout in the relatively rural setting of the surrounding area. Another contention raised is that the approved development is inconsistent with LCP policies and standards that protect coastal wetlands, because the County 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 County's findings that the approved project protects visual resources and is compatible with the character of the surrounding area. Similarly, there is a high degree of factual and legal support for the County's findings that the approved project includes measures to protect water quality during construction and has been designed to not result in a significant increase in the potential for delivery of stormwater runoff to downstream wetland areas. 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 County's decision should not set an adverse precedent for future interpretations of the County'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](#).

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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 – Historic Resources Map
- Exhibit 8 – Bayside Cares 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 appeal was 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-HUM-22-0026 **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-HUM-22-0026 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). Most of the project is within the boundary of the City of Arcata, and a separate CDP was issued by the City (that CDP also was appealed and is the subject of Appeal No. A-1-ARC-22-0010). However, an approximately 530-foot-long portion of the project crosses the City boundary into unincorporated Humboldt County, and development within this limited portion of the project area was permitted by the County and is the subject of this appeal. Portions of the project also extend inland of the coastal zone, including improvements along lower Jacoby Creek Road. [See Exhibit 2, Jurisdictional Boundary Map.]

The approved development within the coastal zone outside of the City limits includes 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 (the northern portion of the approved roundabout is within the City limits and the subject of the City's approved CDP, and the easternmost portion of the approved roundabout and associated improvements along Jacoby Creek Road are outside of the coastal zone). 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 at and around the intersection of Old Arcata Road and Jacoby Creek Road in unincorporated Bayside, Humboldt County, immediately south of the City limits (Exhibit 1). 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 Jacoby Creek Road). As noted above, the majority of the project is within the City limits of Arcata and was approved under a City-issued CDP that was separately appealed (A-1-ARC-22-0010).

The project area is bound by private residences, the Mistwood Education Center (a small private school serving grades TK through 9), and a U.S. Post Office (Mistwood and the post office are both 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 May 27, 2022, the County of Humboldt Planning Commission approved Coastal Development Permit (CDP) No. PLN-2022-17654 with conditions for the above-described project. The County granted its approval for the CDP subject to five conditions, including, but not limited to, conditions requiring the planting of a hedgerow between the road improvements and the Mistwood Education Center and conditions to protect the inadvertent discovery of cultural resources. The Commission's North Coast District Office received the County's Notice of Final Local Action on PLN-2022-17654 on May 31, 2022 (Exhibit 9).

D. Filing of Appeal

On June 7, 2022, the Commission received an appeal of the City's approval of the road improvement project from Bayside Cares (Exhibit 8). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit 9). On June 17th, 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 County's approval is appealable to the Commission, 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. Here, the applicant has waived the 49-working day deadline. The Coastal Act and the Commission's implementing regulations are structured such that an appeal is reviewed by the Commission unless it finds that the appeal does not raise a substantial issue, 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 contentions in the appeal.

Commission staff has analyzed the County’s record for the approved project, including, but not limited to, the County’s Final Local Action Notice for the approval (Exhibit 9) and the appellant’s claims (Exhibit 8). Staff is recommending that the Commission find that the appeal of the County’s action raises no substantial issue with respect to the grounds on which the appeal was filed.

In this case, because the staff is recommending that the appeal raises 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 appeal does 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 contentions raised by the appeal. See Exhibit 8 for the full appeal documents.

- 1) The development approved by the County will adversely impact historic resources and by extension is inconsistent with the visual resources protection policies of the LCP, because the approved development is not in conformity with the character of the surrounding historic area.
- 2) The development approved by the County is inconsistent with the LCP policies and standards that protect coastal wetlands, because the construction of the portion of the project outside of the coastal zone along Jacoby Creek Road will involve the filling of roadside wetlands, which in turn will exacerbate the delivery of polluted roadside runoff into connected downstream coastal wetlands. Moreover, the County failed to consult with the California Department of Fish and Wildlife (CDFW) on the wetland issues as required by the LCP.
- 3) The development approved by the County, in particular the roundabout, will be hazardous to public safety, because (a) it will lead to conflicts between motorists vs. bicyclists and pedestrians, (b) it will lead to conflicts with motorist ingress/egress of nearby private driveways, and (c) the roundabout is too small to accommodating oversized vehicles and therefore will create traffic back-up situations and emergency vehicle delay.
- 4) The County CDP should be invalidated due to an illegal conflict of interest with a member of the City's Traffic Safety Committee who advised the City Council in its decision to approve the project and also worked as a project manager employed by the consulting firm awarded the City contract to develop the project plans.

For the reasons discussed below, the Commission finds that only contentions 1 through 3 above present valid grounds for appeal, and none of these contentions raise a substantial issue of conformance of the approved development with the policies and standards of the County's certified LCP. The other contention does 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 Historic and Visual Resources

A primary contention of the appeal is that the development approved by the County will adversely impact historic resources and by extension is inconsistent with the visual resources protection policies of the LCP, because the approved development is not in conformity with the character of the surrounding historic area.

Applicable LCP Policies

HBAP Policy 3.18 and 3.29 include section 30244 of the Coastal Act as an enforceable policy. Section 30244 states as follows:

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

HBAP Policy 3.40 includes Coastal Act section 30251 as an enforceable policy, which states the following in applicable part (emphasis added):

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Discussion

The intersection of Old Arcata Road and Jacoby Creek Road where the new roundabout is proposed is bound by private residences, the Mistwood Education Center, and a U.S. Post Office. There also are a number of historic structures nearby, including residences, an old schoolhouse, Temperance Hall and Bayside Community Hall, which are in the direct vicinity of the proposed roundabout (Exhibit 7).

The appeal alleges that the new development will adversely affect archaeological or paleontological resources identified by the State Historic Preservation Officer, and there are no mitigation measures proposed to protect known cultural resources in the project area, in violation the LCP.

During the course of the project development and permitting, the City conducted tribal consultation with local tribes, including the Wiyot Tribe, the Bear River Band of the Rohnerville Rancheria, and the Blue Lake Rancheria. According to the CEQA document prepared for the project, the three tribes responded to the City's 2021 consultation request, noting that tribal cultural resources had not been identified in the Area of Potential Effect. The tribes recommended a tribal monitor be present during archaeological testing and data recovery in locations known to be sensitive. The City integrated the tribes' request into the project. The City also included mitigation measure MM CR-1 in the Final EIR, which requires the following:

The City shall develop a MOU with consulting tribes to that will include: (1) When and where tribal and or archaeological monitors will be needed. (2) Potential Preconstruction guided investigation needs that would occur prior to construction. (3) Inadvertent discovery protocols and plans. The MOU shall be developed prior to construction and implemented throughout the duration of project construction.

In addition, to protect cultural resources that may be inadvertently discovered during the course of construction, the County imposed a condition on the CDP requiring the following:

“If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist as well as the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.”

With respect to historic resources, the Final EIR prepared for the project discusses several reasons why the proposed project as sited and designed will have a less than significant impact on historic resources. First, all project activities will be confined to the existing public right of way, with no encroachment onto any private parcels. Second, the FEIR notes that “the Project will not entail removal of any physical feature of any historical resource or potential historical resource considered character defining or necessary for the resource to convey its historical significance.” Third, the project will have no effect on views of Arcata Bay or the forested foothills. These features contribute to the rural character of the project corridor and surrounding vicinity and will not be affected by the project. Although the proposed roundabout and other improvements will affect the visual character of the area to some degree, the Final EIR adopted for the project concludes in part the following:

...With respect to the three historical resources in the APE near the proposed roundabout, several changes to the historic setting have already occurred at this location. In 1946, the historic Old Arcata Road/Jacoby Creek Road intersection was reconfigured, and Old Arcata Road realigned into a modern, sweeping curve through Bayside Corners. The Project, therefore, is not proposing to replace the original, historic intersection, but rather a modern intersection reflecting modern highway design and engineering that does not contribute to the significance of the three historical resources. Other aspects of the setting at the intersection have also changed included the loss of many late 19th and early 20th century buildings, and the construction of many newer buildings within the past 30 years. Even with construction of the proposed roundabout, Bayside Corners will still largely maintain its rural feeling and setting. In addition to the roundabout, the other Project components near the roundabout such as sidewalks, streetlights, and crosswalks are modest in scale and do not alter the setting of any of the historical resources to any significant degree...

In addition, the FEIR notes that the proposed roundabout includes the smallest feasible footprint, and the revegetation of the roundabout’s center island will soften the visual effect of the hardscaped feature. Plantings will be consistent with other City roundabouts and public right of ways, and, as recommended by CDFW, landscaping will use native plants to the maximum extent possible. Several other roundabouts occur along Old Arcata Road north and south of the subject site, including approximately 1 mile north of the project area at the intersection of Samoa Boulevard and Buttermilk

Lane, 1.5 miles north of the project area at the intersection of Samoa Boulevard and Union Street, and approximately 3 miles south of the project area at the intersection of Indianola Cutoff and Myrtle Avenue. The FEIR includes mitigation measure MM AES-1 to minimize temporary impacts associated with construction by minimizing the size of staging areas and construction zones and restoring disturbed areas to pre-construction conditions.

Finally, with respect to proposed new lighting, which could change the nighttime visual character, the FEIR notes:

...Lighting would be designed to meet City standards, which limit maximum wattage/lumens and require shielding to protect wildlife and nighttime views, including views of the night sky. Specific dark sky compliant design elements that would be applied to Project lighting include: fixture types, cut off angles, shields, lamp arm extensions, and pole heights. Specific design preferences include directing light downward and away from other properties, avoiding brightly illuminated vertical surfaces where feasible, such as walls and lamp poles, and directing lighting away from sensitive habitat areas. With the implementation of these design strategies, the potential effect of project operation on day and nighttime views would be less than significant.

Condition 1 of the County approved CDP requires the project to be conducted in accordance with the project description and plans, including all proposed mitigation measures in the final EIR and MMRP. Condition 4 of the CDP requires planting a vegetative screen between the road improvements and the Mistwood Educational Center, which will soften the visual impact and buffer the school from traffic and road related noise and fumes.

Therefore, there is a high degree of legal and factual support for the County's determination that the proposed development as conditioned will be sited and designed to protect cultural resources and public views and to be visually compatible with the character of the surrounding area.

b. Contention Related to Protection of Wetlands and Water Quality

A second contention raised in the appeal is that the development approved by the County is inconsistent with the LCP policies and standards that protect coastal wetlands, because the construction of the portion of the project outside of the coastal zone along Jacoby Creek Road will involve the filling of roadside wetlands, which in turn will exacerbate the delivery of polluted roadside runoff into connected downstream coastal wetlands. Moreover, the appeal contends that the County failed to consult with the CDFW on the wetland issues as required by the LCP.

Applicable LCP Policies:

Humboldt Bay Area Plan (HBAP) Policy 3.30 includes sections 30233 and 30240 of the Coastal Act as enforceable LCP policies. Coastal Act sec. 30233 states, in applicable part, the following (emphasis added):

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetlands or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

HBAP Policy 3.30 *** 30607.1 states the following (emphasis added):

Where any dike and fill development is permitted in wetlands in conformity with this division, mitigation measures shall include, at a minimum, either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided, however, that if no appropriate restoration site is available, an in-lieu fee sufficient to provide an area of equivalent productive value or surface areas shall be dedicated to an appropriate public agency, or such replacement site shall be purchased before the dike or fill development may proceed. Such mitigation measures shall not be required for temporary or short-term fill or diking; provided that a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time.

HBAP Policy 3.30 (B)(1)(a) identifies wetlands, sloughs, and riparian habitats among the list of habitats considered "environmentally sensitive habitats." In addition, sec. (b) states, in applicable part, (emphasis added):

...

The review of these sensitive habitat areas and the identification of appropriate land uses and/or mitigation measures shall be in cooperation with the Department of Fish and Game.

HBAP Policy 3.30 (B)(6) states, in applicable part, the following (emphasis added):

- a. No land use or development shall be permitted in areas adjacent to coastal wetlands, called Wetland Buffer Areas, which degrade the wetland or detract from the natural resource value. Wetland Buffer Areas shall be defined as:
 - (1) The area between a wetland and the nearest paved road, or the 40 foot contour line (as determined from the 7.5' USGS contour maps), whichever is the shortest distance, or,
 - (2) 250 feet from the wetland, where the nearest paved road or 40 foot contour exceed this distance, or

- (3) Transitional Agricultural lands designated Agriculture Exclusive shall be excluded from the wetland buffer.

...

- f. All new development within the wetland buffer shall include the following mitigation measures:
 - (1) Not more than 25% of the lot surface shall be effectively impervious.
 - (2) The release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.
 - (3) Storm water outfalls, culverts, gutters, and the like shall be dissipated.
 - (4) Septic systems or alternative waste disposal systems must meet standards of the Humboldt-Del Norte Health Department and the Regional Water Quality Control Board.
 - (5) Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area.
 - (6) Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, 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).
- g. The County shall request the Department of Fish and Game to review plans for development within 200 feet of the boundary of the wetland.

HBAP Policy 3.30 (B)(7) states (emphasis added):

Road construction within watersheds containing wetlands, as identified on the sensitive habitat maps, other than for timber harvest purposes (road construction controls for this activity are currently regulated by the California Department of Forestry in Timber Harvest Plans), shall employ suitable techniques and measures necessary to prevent erosion and minimize surface runoff. This shall include, but is not limited to:

- a. Limiting soil exposure time and disturbed area;
- b. Minimizing uninterrupted slope length through surface roughening and serrated slopes;
- c. Temporary slope stabilization if grading operations occur during wet weather months (October through May) including, mulches, nettings, chemical and natural binders, riprap, etc.;

- d. Immediate vegetative plantings of disturbed slopes at finished grades;
- e. Control of runoff through controlled water and drainage systems with dissipated discharges and receiving stream bank protection;
- f. Diversion of runoff away from graded areas and areas traveled during project development;
- g. Temporary and permanent sediment control through use of dikes, filter berms, and sediment basins.

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. The development approved by the County includes a portion of a new roundabout, enhanced crosswalks, a separated 6-foot walkway, street lights, and other improvements within the public right of way.

Wetland studies prepared for the project in January 2019 by GHD identified Palustrine Emergent wetlands along the eastern edge of Jacoby Creek Road, outside of the Coastal Zone. These inland roadside wetlands, which will be filled as part of the inland road improvements (i.e., replaced with a subsurface storm drainage pipe and surfaced with gravel or pavement), are described as “commonly used for parking and highly impacted by ongoing roadside use.” Where the nearby new roundabout is proposed, stormwater runoff from the roadway will 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.

According to the County’s findings for approval of the CDP:

The City of Arcata certified a final EIR for this project (SCH#2021010176). All potential significant impacts can be mitigated to less than significant levels with the incorporated Mitigation Monitoring and Reporting Program...

The EIR includes mitigation measures for potential significant impacts to Aesthetics, Biology, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Transportation and Tribal Resources. With implementation of these mitigation measures there are no significant and unavoidable impacts from the proposed project...

The County’s findings are substantiated by the 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 found that there would be no significant impact on the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would result in substantial erosion or siltation on- or off-site. Additionally, the EIR states the project includes facilities to control and convey runoff from paved areas. Runoff from the roundabout and roadway areas adjacent to the Mistwood Education Center and Bayside Hall would be directed to new

drainage inlets and underground piping. The drainage would then be conveyed through a network of existing underground piping that extends south along Old Arcata Road and continue to discharge to an open channel on the west side of Old Arcata Road, consistent with existing conditions. Moreover, the EIR found that the changes in impervious surface would be small, in scale and the quantity of post-project stormwater runoff is not expected to be significantly different than pre-project stormwater runoff.

The EIR identified various mitigation measures to be implemented as part of the project to ensure project impacts are less than significant (Exhibit 5). 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 in construction documents and reviewed by the City prior to issuing for bid, and to install ESA exclusion fencing prior to construction to protect juxtaposed wetlands. MM BIO-4 requires that the City compensate for wetland impacts 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 direct loss of wetlands 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 County's findings also are substantiated through the City's documented consultation with CDFW regarding the wetlands and the project area and proposed wetland protection measures (Exhibit 6).

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

c. Contention Related to Public Access and Safety

The third primary contention raised in the appeal is the development approved by the County, in particular the roundabout, will be hazardous to public safety, because (a) it will lead to conflicts between motorists vs. bicyclists and pedestrians, (b) it will lead to conflicts with motorist ingress/egress of nearby private driveways, and (c) the roundabout is too small to accommodating oversized vehicles and therefore will create traffic back-up situations and emergency vehicle delay.

Applicable LCP Policies

HBAP Policy 3.50 incorporates the public access policies of the Coastal Act as enforceable LUP policies, including section 30210, which states (emphasis added):

In carrying out the requirement of Section 2 of Article XV of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

HBAP Chapter 3 Introduction states, in applicable part, (emphasis added):

...

In addition, the Coastal Act requires that all development be subject to standards designed to protect natural and cultural resources, as well as to protect public safety.

...

Discussion

The appeal includes letters provided by a traffic engineer from Smith Engineering & Management disputing the need for the roundabout for safety purposes, discussing the potential ineffectiveness of the roundabout at reducing speeds, identifying potential problems with the design with respect to through access by oversized vehicles and bicycle safety considerations, and other issues.

The stated purpose of the project is to improve motorized and non-motorized transportation and public safety within the Bayside neighborhood and to improve public safety at the intersection of Old Arcata Road and Jacoby Creek Road. Crosswalks, signage, lighting and paved walkways would be integrated into the roundabout for public safety purposes. In addition, according to the CEQA document, the project is designed in accordance with the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design. The Final EIR adopted for the project evaluates several alternatives to the approved project, including, but not limited to: (1) a larger roundabout footprint than proposed; (2) a smaller roundabout footprint than proposed; (3) an all-way stop; (4) a traffic signal; (5) the “no project” alternative, and various other alternatives. Stated objectives of the project include, in part: (a) to improve intersection safety at the

intersection of Old Arcata and Jacoby Creek Roads, and (b) to decrease speed, calm traffic, improve traffic operations, and increase safety at the intersection of Jacoby Creek and Old Arcata Road, an area identified by the Bayside community as unsafe particularly for pedestrians and bicyclists due to speeding vehicles and an uncontrolled intersection. Through these objectives and with the goal of avoiding significant unmitigated environmental impacts, the City of Arcata adopted the FEIR with the proposed project to be implemented as described with mitigation measures identified in the final MMRP (Exhibit 5).

The proposed project was designed as an improvement project to ensure safe and multimodal transportation. The proposed lanes are standard widths, which can accommodate emergency vehicles. Mitigation Measure TR-1 requires that the City and its contractors have ready at all times the means necessary to accommodate access by emergency vehicles, as well as to notify emergency responders in advance of construction activities. Ingress and egress for adjacent properties are set away from the circular part of the roundabout, similar to the existing ingress/egress. The roundabout is intended to have a calming effect on traffic and City engineers have confirmed the ingress/egress will continue to be feasible and designed for public safety. In addition, the City maintains that the design is specifically intended to accommodate pedestrian and bicycle access in conjunction with the vehicular roundabout and that design specifically meets ADA standards. As stated in the EIR, the proposed project is designed in accordance with the American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets, 7th Edition (2018). In addition, the project would be designed in accordance with other specific applicable standards, including the 2014 California Manual on Uniform Traffic Control Devices (CA MUTCD 2020); the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design; and portions of the 2019 California Building Code and Caltrans Highway Design Manual, 7th Edition (2020)).

Further, the project site is not located between the first public road and the sea. The site is at the inland edge of the coastal zone boundary, and, as discussed, portions of the project extend inland of the coastal zone boundary. The roundabout would not interfere with the public's right to access the sea and would in turn improve traffic flow over Old Arcata Road. Old Arcata Road connects the communities of Bayside and Sunnybrae to Samoa Boulevard, a commonly used coastal access road. Additionally, Old Arcata Road is an alternative route to the Highway 101 corridor between Eureka and Arcata, and traffic flow improvement along this route is increasingly necessary as the Highway 101 corridor is threatened by sea level rise.

Therefore, there is a high degree of legal and factual support for the County's determination that the approved development as conditioned is consistent with the public access policies of the certified LCP.

Invalid Contentions

a. Contention Related to Illegal Conflict of Interest

A final contention is that the County CDP should be invalidated due to a conflict of interest by a member of the City's Traffic Safety Committee who advised the City Council in its decision to approve the project and also worked as a project manager employed by the consulting firm awarded the City contract to develop the project plans.

Discussion

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 fourth appeal contention does not assert that the project is not consistent with standards of the LCP or the Coastal Act's public access policies, as it concerns the process by which the project was approved. As discussed above, there is factual and legal support for the County's decision to approve the project as consistent with LCP standards relating to wetlands, archaeological and historic resources, and public safety. This contention does not raise a substantial issue with respect to legitimate appeal grounds.

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 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 appeal does not raise a substantial issue as to the County-approved project's consistency with the LCP. There is factual and legal evidence in the record to support the County's approval of PLN-2022-17654. Although there are no wetlands present in the Coastal Zone of this portion of the project, there have been extensive investigations and analyses of the extent of wetlands present in the project area to support the County'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 analysis that undermines the County's findings. The record supports that the approved project will not result in impacts to coastal wetlands. Therefore, there is a high degree of factual and legal support for the County's approval of the project.

As to project scope, the approved development is limited to the public right of way, 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 the project will not adversely affect adjacent wetlands, streams or Humboldt Bay.

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

Finally, the project does not raise a Coastal Act issue of statewide importance. The Coastal Act does not specifically address the protection of historic structures, and the project is designed and conditioned to minimize impacts to visual resources, including community character. Section 30244 of the Coastal Act requires reasonable mitigation measures where development would adversely impact paleontological or archaeological resources. The CDP conditions require measures to protect cultural resources that may be inadvertently discovered during construction. Also, the proposed project involves relatively minor improvements to an existing roadway for public safety purposes, the proposed roundabout includes the smallest feasible footprint, and the revegetation of the roundabout's center island will soften the visual effect of the hardscaped feature. Therefore, the contention, in this instance, only raises local issues, and not those of statewide significance.

Therefore, especially given the high degree of factual and legal support for the County's decision and conditions of approval, consideration of the five factors together support a conclusion that the County'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-HUM-22-0026 does not present a substantial issue with respect to the grounds on which the appeals were filed under section 30603 of the Coastal Act, and the Commission declines to take jurisdiction over the CDP application for this project.