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# F12a

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## STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

**Appeal No.:** A-1-MEN-22-0016

**Applicant:** California Department of Transportation (Caltrans)

**Local Government:** County of Mendocino

**Local Decision:** Approval with Conditions

**Location:** Along Highway 1 near its intersection with Navarro Ridge Road (County Road 518), between postmiles 42.35 and 42.45, approximately 1 mile south of Albion, Mendocino County.

**Project Description:** Improve approximately 0.1-mile of Highway 1 by relocating a drainage system, repairing failed roadway embankments, and widening the roadway travel lanes to 12 feet and paved shoulders to 4 feet.

**Appellants:** Albion Bridge Stewards and Co-Appellants Maria Hansen, Miguel Elac, Jim Heid, Bill Heil, Arlene Reiss, Warren De Smidt, Annemarie Weibel, Ali Van Zee, and Jacob Patterson

**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.) 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 County of Mendocino approved a CDP for Caltrans to construct repairs and safety improvements to an existing 0.1-mile stretch of Highway 1 near its intersection with Navarro Ridge Road, approximately 1 mile south of Albion. The approved project, known as the Navarro Drainage Project, involves slightly realigning an existing highway drainage system, repairing small sections of failed roadway embankments, minor widening of the roadway travel lanes from 11.5 feet to 12 feet, and widening paved shoulders to 4 feet. This project is immediately adjacent to a separate Caltrans project (known as the Navarro Ridge Safety Project) that was also appealed to the Commission, and which will be heard at a future hearing as appeal number A-1-MEN-22-0014. The two projects are not functionally dependent on each another.

The appeal received from the Albion Bridge Stewards and multiple co-appellants raises three main contentions, which concern the protection of visual resources, ESHA, wetland and riparian habitats and a contention that the project as approved failed to include a new public accessway required by the LCP. Staff recommends that none of the contentions raise a substantial issue as to the approved project's consistency with the certified LCP. As approved and conditioned by the County, the project will not result in significant degradation of wetland habitats associated with the road drainage system, and the project siting and location outside of the public accessway designations of the LCP support the County's finding of consistency with the public access policies of the LCP and the Coastal Act. As the project is limited to a 0.1-mile road repair and improvement project, the extent and scope of the project are small in scale. The new culvert downdrain and associated energy dissipator will be only minimally visible (if at all) from public viewpoints, and the permit conditions require disturbed areas to be fully revegetated. There is a high degree of legal and factual support for the County's decision that the approved project as conditioned will protect visual resources, is an allowable use within the wetland habitat associated with the drainage areas, and will be implemented with appropriate best management practices to prevent significant degradation of surrounding wetland habitats. Staff therefore recommends that the Commission, after public hearing, determine that the appeal contentions do not raise a substantial issue of LCP conformance.

The motion to adopt the staff recommendation of No Substantial Issue is found on Page 4.

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[Appendix B](#): Applicable excerpts from LCP related to Visual Resources

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## EXHIBITS

[Exhibit 1](#) – Project Vicinity Map

[Exhibit 2](#) – Project Location Map

[Exhibit 3](#) – Project Description

[Exhibit 4](#) – Project Plans

[Exhibit 5](#) – Photos of Project Site

[Exhibit 6](#) – Mendocino County Final Action Notice

[Exhibit 7](#) – Mendocino County Staff Report

[Exhibit 8](#) – Appeal Filed

## 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-MEN-22-0016 **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-MEN-22-0016 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

#### Approved Project

The approved project known as the Navarro Drainage Project is described in the County staff report as follows, in part:

“The project would upgrade and repair approximately 0.1 miles of State Route (SR) 1 by relocating the drainage system that passes under the roadway to the natural channel, repairing failed roadway embankment side-slopes and the embankment adjacent to an existing private driveway, improving the roadway geometry and increase the roadway travel lanes to 12 feet wide each and increasing paved shoulders to 4 feet wide within the project limits.

The existing culvert would be removed, and a new 36-inch diameter Alternative Pipe Culvert (APC) would be installed connecting to a drainage inlet set at the back of an 8-foot bench and extending to a daylight point on the reconstructed fill

slope connecting to a 36-inch down-drain with a 36-inch anchor assembly. The culvert inlet would remain in the same place and the outlet would be relocated approximately 30 feet to the south for better alignment with the natural channel requiring approximately 30 feet of the existing channel to be filled. A 28-foot by 9-foot rock energy dissipater would be installed at the outlet....

The roadway embankment side-slopes and the embankment of a private driveway would be repaired and revegetated. Roadway embankment would incorporate geosynthetic reinforced embankment and require approximately 200 CY of import borrow.... A 12-inch Corrugated Steel Pipe (CSP) and drain inlet would be removed and the existing ditch would be regraded near the removed inlet so that the runoff is directed towards the new embankment slope and down to the rock slope protection (RSP). This path will be lined with rock to prevent erosion. A 170-foot section of barbed wire (3-Strand Wire and Wire Mesh, Metal Post) right of way fencing in the erosion area would be reconstructed. Displaced RSP within the proposed temporary construction easement that had been previously placed along the bank of the stream channel to buttress the roadway embankment side-slopes and the embankment of a private driveway would be removed. Construction of the new roadway shoulders would include excavation of existing material and placement of a new pavement structural section.

Pacific Gas and Electric company (PG&E) and American Telephone and Telegraph Company (AT&T) have existing utilities within the project limits which will be permanently relocated from the west side of SR1 to the east side of SR1. Three tree stumps are to be removed on State right-of-way, two tree stumps are to be removed on Temporary Construction Easement (TCE) and three wax myrtle trees would be removed within the permanent drainage easement....

...

Additional items within the project scope include improvement of superelevation, restriping, installation of edgeline and centerline rumble strips, and dike replacement.”

The full project description is provided as Exhibit 3 and the project plans are provided as Exhibit 4.

#### Adjacent Project Also Appealed

In addition to the project that is the subject of this appeal, Caltrans has proposed a separate project known as the Navarro Ridge Safety Project (County CDP no. CDP\_2019-0024). The Navarro Ridge Safety Project was approved by the County at the same Coastal Permit Administrator hearing as the Navarro Drainage Project and was also later appealed to the Commission. The two projects are separate and not functionally dependent on each other. The Commission will consider the appeal of the Navarro Ridge Safety Project at a later hearing as appeal number A-1-MEN-22-0014.

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

The project is located completely within the coastal zone along a tenth of a mile stretch of Highway 1 near its intersection with Navarro Ridge Road (County Road 518), between postmiles 42.35 and 42.45, approximately one mile south of the town of Albion and immediately north of the Navarro River in Mendocino County. Project location maps are provided as Exhibits 1 and 2. The highway in this area is a two-lane road with approximately 11.5-foot vehicular lanes and very narrow paved shoulders. To the west of the highway is a vegetated blufftop with a few residential homes visible towards the bluff edge and their associated paved private driveways connecting up to the highway with expansive views of the ocean in the distance. To the east is a vegetated hillside as well as Navarro Ridge Road. Photos of the project site are provided as Exhibit 4.

## **C. Local Government Action**

On November 17, 2021, the Mendocino County Coastal Permit Administrator (CPA) approved Coastal Development Permit (CDP) No. CDP\_2019-0034 with conditions. The CDP authorized the project as described above. The County granted its approval for the CDP subject to eleven (11) conditions including, but not limited to, conditions related to procedures for an inadvertent discovery of archaeological resources, debris disposal, and requirements to follow all proposed best management practices to protect biological resources including implementation of a Revegetation Plan in certain biologically sensitive areas. On November 29, 2021, the County CPA's action was appealed to the Mendocino County Board of Supervisors (BOS) and on April 5, 2022, the BOS voted to deny the appeal and uphold the CPA's decision. The County's Notice of Final Action is attached as Exhibit 6.

## **D. Filing of Appeal**

On April 11, 2022 the Commission received the County's Notice of Final Action (Exhibit 6), and on April 25, 2022 the Commission received an appeal of the County's approval of the drainage project from the Albion Bridge Stewards and Co-Appellants Maria Hansen, Miguel Elac, Jim Heid, Bill Heil, Arlene Reiss, Warren De Smidt, Annemarie Weibel, Ali Van Zee, and Jacob Patterson (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. On May 3, 2022, the applicant, Caltrans, 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**

Pursuant to section 30603(a), this approval is appealable to the Commission, because the approved development is (a) located between the sea and the first public road (Highway 1), (b) located within 100 feet of a wetland, (c) located in an area designed Highly Scenic under the LCP and therefore in a sensitive coastal resource area, and (d) 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 County's record for the approved project, including, but not limited to the County's Notice of Final Action for the approval (Exhibit 6), the County's staff report (Exhibit 7), and the appellants' 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 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 appellants, 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 (in no particular order). The full appeal document is included as Exhibit 8.

1. The project is inconsistent with the visual resources protection policies of the LCP, specifically the height limit, visual compatibility and subordination requirements for Highway 1 and designated Highly Scenic Areas, and the Albion community compatibility standards.
2. The project is inconsistent with the ESHA, wetland, and riparian habitat protection policies of the certified LCP because the project will result in significant degradation of ESHA, the development is not an allowable use in wetlands or riparian habitat, and the project is not the least environmentally damaging feasible alternative.
3. The project is inconsistent with the public access policies of the LCP and the Coastal Act, because it should have included the lateral and vertical public accessways designated in Map 19 of the certified Land Use Plan and required by certain public access policies.
4. The CDP application should not have been acted upon because it had been pending incomplete for more than a year, and the IP requires such long-pending applications to be deemed withdrawn.
5. Caltrans and the County failed to adequately notice all interested parties of the public hearing, inconsistent with public noticing requirements of the LCP.

For the reasons discussed below, the Commission finds that only the first three contentions above present valid grounds for appeal and none raise a substantial issue of conformance of the approved development with the policies and standards of the County's LCP or with the public access policies of the Coastal Act.



## **G. Substantial Issue Determination**

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

#### **Valid Contentions**

##### **a. Contention Regarding Visual Resources**

The appeal contends that the project is inconsistent with the visual resources protection policies of the LCP, specifically the height limit, visual compatibility and subordination requirements for Highway 1 and designated Highly Scenic Areas, and the Albion community compatibility standards.

#### **Applicable LCP Policies**

See [Appendix B](#).

#### **Discussion**

Everything within view to the east and a portion of the lands west of the project are designated Highly Scenic under the LCP, as shown on LCP Map 19 (included as page 5 of Appendix D). The LCP's Highly Scenic Area development criteria require protection of coastal views from public areas (including highways), height limits on development, and a requirement that new development be subordinate to the natural setting and minimize reflective surfaces.

Regarding the allegation that the project is inconsistent with the height limit of 18 feet set by Section 20.504.015(C)(2), the proposed roadway improvements would be constructed well below the height maximums for Highly Scenic Areas. The project includes replacing an existing 170-foot section of short, see-through, barbed-wire fence along the boundary of the highway right of way in-kind and well below the height limit. The existing utility lines are buried and will remain buried after being relocated to the eastern side of the road in order to accommodate the project. No other project elements come close to the height limit, as the main project elements are replacing and realigning a culvert below the roadway that will connect to a new drain pipe angled downward and following the slope of the road embankment, and widening the flat, paved section of roadway and shoulders within the project limits.

Regarding the allegation that the project is inconsistent with the scenic highway requirements of LUP Policy 3.5-1, which requires in part that State Highway 1 in rural areas of the Mendocino County coastal zone remain a scenic two-lane road, views be protected, landform alteration be minimized, and development be visually compatible with and subordinate to the character of its setting, the project will maintain the character of Highway 1 in this area as a scenic two-lane road. The existing vehicular lanes are approximately 11.5-12 feet, and therefore the slight widening of the lanes to a consistent 12 feet and adding 4-foot paved shoulders throughout the short project reach (approximately 528 feet) will not be a significant visual change. In addition, the presence

of an existing paved turn lane and connected paved side roads (including driveways) within the project limits will largely obscure the visual change that will result from the new wider paved shoulders. As noted by the County in its findings for approval: "...this corridor provides public views of scenic vistas on a narrow roadway with steep drops to the west, which may contribute to the unsafe conditions of this section of roadway. The proposed project would increase the safety of this highly scenic public area." The slightly wider roadway will improve safety while maintaining the scenic vistas referenced in the County's staff report.

Besides the increased paved surface areas, the other visual elements of the project are the new downdrain pipe, new rock energy dissipator, replaced fence, and temporary vegetation removal. After the project is constructed, the new culvert downdrain may be slightly visible from certain vantage points on the private properties on the western side of the road but will be only minimally visible (if at all) from public viewpoints as it will be angled downward from the western bank of the roadway prism into the drainage gully. In addition to being minimally visible due to their location within a drainage gully below the highway, the downdrain and associated 20-foot by 9-foot rock energy dissipator will be at least somewhat obscured by the revegetation of the site after construction. The County included two conditions of approval to ensure that the disturbed areas are revegetated as proposed by the applicant:

Condition 10: "Any disturbed soil after construction shall be scarified and seeded with California native seed mix that is regionally appropriate to the area. Disturbed soil is defined as cut, fill, and/or compaction to existing grade."

Condition 11: "Project implementation shall be consistent with the recommended mitigations, BMPs, and avoidance and minimization measures outlined in Sections 1.2, 1.3, and 3.5 of the *ESHA Assessment*, July 2019 (Exhibit A), Section 1.4 of the *Natural Environment Study*, July 2017 (Exhibit B), and Sections 4 through 8 of the *Revegetation Plan* (Exhibit C) intended to protect ESHA."

Therefore, there will be minor, temporary visual impacts in the time it takes for disturbed areas to revegetate at the project site, but there will be no significant visual resource impacts as a result of the drainage modifications or the vegetation removal required to construct the project. Finally, as mentioned above, the existing short and see-through fencing along the boundary between the highway right of way and the private residential property to the west will be replaced in kind and therefore will not result in a visual change, and the existing utility lines are buried and will remain buried after being relocated to the eastern side of the road in order to accommodate the project.

The appeal also alleges that the project is inconsistent with Albion community compatibility standard of LUP Policy 3.5-2, which is implemented by IP Section 20.504.020. However, Section 20.504.020 states that it applies to certain communities and service centers designated as CRV or CFV and the project is not located within or

adjacent to areas of Albion zoned CRV or CFV. Therefore, this policy is not applicable to the project.

Therefore, there is a high degree of legal and factual support for the County's decision that the approved development will protect visual resources. In addition, the extent and scope of development involved in the County's action is fairly limited, as it involves minor repairs and improvements to an existing roadway without capacity increase for motor vehicles.

#### **b. Contention Regarding ESHAs, Wetlands, and Riparian Habitat**

The appeal contends the project will result in significant degradation of ESHA, the development is not an allowable use in wetlands or riparian habitat, and the project is not the least environmentally damaging feasible alternative.

#### Applicable LCP Policies

See [Appendix C](#).

#### Discussion

As described in Finding II-A, a central component of the project involves replacing a culvert that runs underneath the highway at this location, realigning its outlet approximately 30 feet to the south to align better with the drainage's existing downstream channel and to minimize the risk of continued erosion, and some grading and filling around the outlet of the culvert to restore the roadway and adjacent driveway fill prisms that have been damaged as a result of the existing culvert alignment. The existing design and alignment of the culvert have resulted in erosion and downcutting of the drainage channel over time, which has also destabilized the highway and the private residential driveway at this location, as the waters currently flow straight out of the existing culvert and hit the residential driveway embankment in front of the outlet. Relocating the outlet to the south will allow the waters to flow straight into the drainage channel, rather than having to turn after hitting the driveway embankment, and adding a downdrain and rock energy dissipator will reduce the potential for future erosion within the channel.

The County's staff report has extensive findings regarding the project's consistency with the various biological resource policies of the LCP, including, in part, as follows:

“Caltrans submitted several resource studies evaluating the project's potential to affect habitats and natural resources, potential measures to limit the project's impacts on these resources, as well as the project's consistency with the Environmentally Sensitive Habitat Area (ESHA) standards in County Code. The following documents supplied the information contained in this analysis:

1. *Natural Environment Study*, July 2019
2. *ESHA Assessment*, July 2019

3. *Navarro Drainage Report of [ESHA] Compliance*, November 12, 2020
4. *Revegetation Plan for the Navarro Drainage Project*, May 2020, revised February 2021

Studies were conducted within the project area and within a 100-foot buffer around the project. The following ESHAs were identified (see also attached *ESHA Map*): [...]"

Section 20.496 of the IP includes standards for development that is proposed within 100-foot ESHA buffers. As part of its application submittal, Caltrans prepared an ESHA Assessment, Reduced Buffer Analysis, and ESHA Report of Compliance. Based on the various biological resource surveys completed and the corresponding reports listed above, four ESHAs were identified within the project footprint and 100-foot buffer area. These ESHAs are shown on the below map (Figure 1), which was included as an exhibit to the County staff report. The various documents describe ESHA in the project vicinity as follows:

1. ESHA 1 is a 0.029-acre (1,263 square foot, or "SF") three-parameter wetland with an associated Small-fruited Bulrush Alliance and is connected to a small perennial stream that flows south to join Navarro Drainage at the inlet of the culvert.
2. ESHA 2 is a small drainage approximately 54 feet long by 2 feet wide, or approximately 0.002 acres (108 SF). Work would impact approximately 30 square feet of this ESHA.
3. ESHA 3 is the main drainage called "Navarro Drainage," and approximately 642 linear feet of the drainage occurs within the biological study area of the project. The drainage is approximately 3 feet wide for a total of 0.044 acres and has a deeply incised channel.
4. ESHA 4 is a small drainage along the east side of the northern gravel pullout on the east side of the highway, which may be used as a staging area. The drainage is approximately 200 feet long and 2 feet wide, or approximately 0.009 acres.



Figure 1: Map of ESHAs within the project footprint and 100-foot buffer area

According to the County’s findings for approval, the approved construction activities would occur immediately adjacent to ESHAs 1 and 4, but no impacts to these ESHAs are expected. Avoidance and minimization measures proposed by the applicant and reinforced by Condition 11 of the County approval include utilization of High Visibility Fencing (or “HVF”) to prevent encroachment into the ESHA, post construction revegetation, and implementation of the various other standard best management practices (or “BMPs”) prescribed in Section 1.3 of the ESHA Assessment. Some limited impacts would occur to ESHAs 2 and 3, but these areas will be restored to a natural condition with implementation of the Revegetation Plan required by Condition 11, which specifies that impacted ESHA vegetation must be replaced and 100% of the baseline number of trees and shrubs cut and/or removed must be alive at the end of monitoring year 5. Approximately 15 linear feet of ESHA 2 would be impacted, and approximately 105 linear feet of ESHA 3 would be impacted. These minor impacts are associated with construction around the culvert inlet, moving the culvert outlet to the south (to align more closely with the natural drainage configuration), rerouting the existing stream at the outlet, and placing rock slope protection as an energy dissipator at the outlet, all of which are expected to reduce erosion impacts on ESHA over the life of the project. The

County's findings conclude that the project as conditioned to achieve successful revegetation of disturbed areas will ensure that ESHAs 2 and 3 are not significantly degraded over the long-term.

Regarding the allegation that the project is not an allowable use within the ESHAs that will be directly impacted, the County staff report included the following findings of consistency with the use restrictions:

"MCC Section 20.496 specifies the types of development that can occur within certain ESHA types. The proposed project would require work within "other waters" and immediately adjacent to a wetland. MCC Section 20.496 permits "pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible" within riparian and wetland ESHA. The proposed roadway and drainage repairs are within or adjacent to the existing roadway, and the ESHA Assessment asserts that no less environmentally damaging alternative route is feasible. As a result, the project is consistent with the limited development allowances within or adjacent to wetland and "other water" ESHAs."

The appeal also alleges that there are other less environmentally damaging feasible alternatives and specifically suggests that Navarro Drainage should be "daylighted and restored" at this location by placing the highway crossing on a trestle or bridge over the drainage. Although the local record does not include a specific evaluation of this alternative, it is clear that developing a bridge at this location would be a far greater scale of a project with significantly greater impacts than the proposed replacement of an existing culvert. Further, this is a relatively small drainage with no tidal influence, marine resources, or clear LCP policy directive to require daylighting the portion of the drainage that intersects with the two-lane highway. The County staff report also states:

"The Reduced Buffer Analysis addresses the MCC requirements for development permitted within buffer areas (MCC Section 20.496.020(A)(4)), concluding that the proposed work is compatible with the continuance of the habitat by maintaining its functional capacity. Specifically, the report states that the project would result in an "overall improvement" of the drainage feature by realigning it with its natural channel. Additionally, the report concludes that the work would be conducted within or adjacent to the existing roadway, making the proposed alternative the least environmentally damaging option. The proposed project would not interfere with the hydrologic processes or biological diversity upon completion of the proposed construction."

As mentioned above, the applicant proposes and Conditions 10 and 11 of the CDP reinforce the implementation of various standard avoidance and minimization measures proposed by the applicant to protect ESHA from significant degradation. The County staff report states that they referred the project and supporting documentation to the California Department of Fish and Wildlife (CDFW) for review and concurrence and that CDFW recommended the revegetation plan be revised to have a 100% revegetation

success standard, after which Caltrans submitted a revised Revegetation Plan consistent with CDFW's recommendation.

Therefore, there is a high degree of legal and factual support for the County's decision that the approved project as conditioned with protect wetlands, riparian habitat, and ESHA. Therefore, this contention does not raise a substantial issue of LCP conformity.

### **c. Contention Regarding Public Access**

The appellants content that the project is inconsistent with the public access policies of the LCP and the Coastal Act because it should have included the lateral and vertical public accessways designated in Map 19 of the LCP and required by certain public access policies.

#### Applicable LCP and Coastal Act Policies

See [Appendix D](#).

#### Discussion

As shown in LCP Map 19 (included as page 5 of Appendix D), the LCP proposes a vertical segment of the California Coastal Trail within the project area from the highway to the bluff edge, between APNs 123-300-04 and 123-300-03, and lateral access along the bluff edge, rather than along Highway 1. These proposed public accessways in the certified LCP are not within the Caltrans-owned right of way. Section 20.528.040 of the IP describes the procedures for conveyance of title when a public access easement is required, and subpart A specifies that the landowner shall record in the official records of the County Recorder of Mendocino County an offer to dedicate an easement as a condition of project approval. As Caltrans is not the landowner where the LCP proposes accessways, this LCP provision is not applicable to the project, and the appeal offers no evidence as to how Caltrans would have the authority to dedicate an easement over those lands.

Further, the approved project does include certain public access improvements, including the expansion of narrow paved shoulders to four-foot shoulders (as directed by the LCP), which will provide safer access for cyclists along this segment of Highway 1. Caltrans also designed the project to include an eight-foot horizontal "bench" within the proposed new western roadway embankment slope in order to provide space for the potential future development of a lateral segment of the California Coastal Trail along the Highway.

Finding 7 of the County staff report states "Pursuant to MCC Section 20.532.095(B), the proposed development would not diminish public access to Mendocino County coastal areas and conforms to the goals and policies of the Coastal Element of the General Plan..."

Therefore, as there is a high degree of legal and factual support for the County's decision that the approved project as conditioned will protect public access, this contention does not raise a substantial issue of LCP conformity.

### **Invalid Contentions**

#### **a. Contention Regarding Application Completeness**

The appeal contends that the CDP application should not have been acted upon because it had been pending incomplete for more than a year, and the IP requires such long-pending applications to be deemed withdrawn.

#### **Applicable LCP Policies**

See [Appendix E](#).

#### **Discussion**

Section 30603(b)(1) of the Coastal Act 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 but rather relates to the permit process. Therefore, this contention is not a valid ground for appeal under section 30603(b)(1) of the Coastal Act and does not raise a substantial issue of LCP conformance. Regardless, based on a letter from the County to Caltrans included in the local record, the application was deemed complete on June 9, 2021, prior to the CPA's approval of the permit on November 17, 2021.

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

The appeal contends that Caltrans and the County failed to adequately notice all interested parties of the public hearing, inconsistent with public noticing requirements of the LCP.

#### **Applicable LCP Policies**

See [Appendix F](#).

#### **Discussion**

Section 30603(b)(1) of the Coastal Act 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 but rather relates to the permit



process. Therefore, this contention is not a valid ground for appeal and does not raise a substantial issue of LCP conformance.

Although this contention is not valid grounds for an appeal under section 30603(b)(1) of the Coastal Act, according to evidence in the local record, although the County did err in its noticing, the County substantially complied with the noticing requirements of the LCP and notified at least all adjacent landowners within 300 feet of the physical improvements of the project<sup>1</sup> and all interested parties that had submitted a written request to the County to be notified.

## **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 to, 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. The investigations and analyses of the potential for the project to impact ESHA support the County’s decision that the approved development as conditioned will not result in significant degradation of ESHA, is an allowable use within the affected ESHA, and is the least environmentally damaging feasible alternative, and the appeal does not provide contrary facts or analyses that undermine the County findings. In addition, the project siting and location outside of the private properties subject to the vertical and lateral public accessway designations of the LCP support the County’s finding of consistency with the public access policies of the LCP and Coastal Act referenced in the appeal. Therefore, there is a high degree of factual and legal support for the County’s approval of the project. As the County thoroughly addressed the relevant coastal

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<sup>1</sup> Although the County erred by notifying adjacent landowners based off the location of the physical improvements of the project rather than based off the full exterior boundaries of the parcels upon which Caltrans has obtained approval to conduct work, according to the local record, at least nine surrounding landowners were properly noticed. There were five surrounding landowners who inadvertently were not notified.

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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 0.1-mile road repair and improvement project, involving relocating an erosive drainage feature to align better with its downstream channel and improving safety and multimodal access along an existing roadway without increasing capacity for motor vehicles. 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. While the project location is designated Highly Scenic under the LCP, the project involves limited widening of existing paved roadway surface areas, the new culvert down drain and associated energy dissipator will be only minimally visible (if at all) from public viewpoints, and the permit conditions require disturbed areas to be fully revegetated.

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

Finally, while the project does raise issues of regional or statewide significance (protection of visual resources, ESHA, and public access), as previously discussed, the approved project as conditioned will continue to protect the visual resources of the site, is an allowable use within the impacted ESHAs, includes measures to prevent significant degradation of the ESHAs, and will improve public access at this location.

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-MEN-22-0016 does not present a substantial issue with respect to the grounds on which the appeal was filed under section 30603 of the Coastal Act, and the Commission declines to take jurisdiction over the CDP application for this project.