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# F9a

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**STAFF REPORT: APPEAL  
SUBSTANTIAL ISSUE DETERMINATION ONLY**

**Appeal No.:** A-1-MEN-22-0014

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

**Local Government:** County of Mendocino

**Local Decision:** Approval with Conditions

**Location:** Along an approximately 0.52-mile-long segment of Highway 1 near Navarro Point, between post miles 41.78 and 42.3, between Albion and the Navarro River, Mendocino County.

**Project Description:** Navarro Ridge Safety Project, including, but not limited to, increasing roadway travel lanes from approximately 11.5 to 12 feet and paved shoulders to 4 feet, installing a Midwest Guardrail System, replacing drainage facilities, and removing roadside trees.

**Appellants:** Albion Bridge Stewards and Co-Appellants Maria Hansen, Miguel Elac, Jim Heid, Bill Heil, Arlene Reiss, Warren DeSmidt, Annemarie Weibel, Ali van Zee, Janet Eklund, Tom Wodetzki, 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 appeals raise a substantial issue. Generally, and at the discretion of the

Chair, testimony is limited to 3 minutes total per side (although the Chair has the discretion to modify these time limits). Please plan your testimony accordingly. Only the applicant, appellants, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify; others may submit comments in writing (14 CCR § 13117.) The Commission will accept the appeal for a full de novo review unless it determines that the appeal raises no substantial issue. Otherwise, the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

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### **SUMMARY OF STAFF RECOMMENDATION**

The County of Mendocino approved a CDP for Caltrans to construct safety and drainage system improvements to an existing approximately 0.52-mile stretch of Highway 1 near Navarro Point, between Albion and the Navarro River. The approved project, known as the Navarro Ridge Safety Project, primarily involves increasing roadway travel lanes from approximately 11.5 to 12 feet and paved shoulders to 4 feet, installing a Midwest Guardrail System, replacing drainage facilities, and removing roadside trees. The primary purpose of the project is to alleviate a higher than statewide average rate of run-off-road collisions along this highway segment.

The appeal received from the Albion Bridge Stewards and multiple co-appellants raises several contentions, which primarily concern geologic hazards, tree removal, and the protection of visual resources, ESHA, and public access, as well as a number of procedural concerns. Staff recommends that none of the contentions raise a substantial issue as to the approved project's consistency with the certified LCP. The extent and scope of the project are relatively limited in scale, as the approved development is limited to an approximately 0.52-mile road safety improvement and drainage rehabilitation project, primarily involving limited widening of existing paved roadway surfaces, which will not increase capacity for motor vehicles but will provide improved safer access for cyclists, and replacements of existing drainage systems associated with the highway. While the project location is a designated Highly Scenic Area, as mentioned the project involves limited widening of existing paved roadway surface areas, the new drainage system features will be minimally visible from public viewpoints, the amount of grading has been minimized, and the permit conditions require disturbed areas to be replanted. The highway currently runs along the Navarro Ridge hillslope in this area and the project requires cutting further into the hillslope on the east side of the highway as well as the placement of some fill on the blufftop on the west side of the highway. The proposed height of the cut slopes on the east side of the highway varies throughout the project stretch based on location specific factors, with an average proposed height of approximately 13.3 feet and a maximum proposed height of 55 feet. Although the grading will modify the Navarro Ridge hillslope, as the existing highway currently cuts across the hillside, the landform has previously been altered for highway construction and, as the proposed slope incline will be similar to existing

conditions, after it has been revegetated the hillslope will appear similar overall to existing conditions and continue to blend with the natural setting. Therefore, the project as conditioned will achieve its safety objectives by adjusting the existing roadway prism without significantly altering the appearance of a natural landform, will substantially conform with the existing character of the highway in this area, and will maintain this stretch of highway as a scenic two-lane road.

Overall, there is a high degree of legal and factual support for the County's decision that 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 minimize adverse environmental effects, will improve public access at this location, and will be safe from geologic hazards. 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 6.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION</b> .....	<b>6</b>
<b>II. FINDINGS &amp; DECLARATIONS FOR NO SUBSTANTIAL ISSUE</b> .....	<b>6</b>
A. PROJECT DESCRIPTION .....	6
B. PROJECT LOCATION AND ENVIRONMENTAL SETTING .....	8
C. LOCAL GOVERNMENT ACTION .....	9
D. FILING OF APPEAL .....	9
E. APPEAL JURISDICTION AND PROCEDURES .....	10
F. SUMMARY OF APPEAL CONTENTIONS .....	11
G. SUBSTANTIAL ISSUE DETERMINATION.....	12
1. Analysis of Contentions .....	12
2. Conclusion.....	34

### **APPENDICES**

[Appendix A: Substantive File Documents](#)

[Appendix B: Excerpts from the Mendocino County LCP Related to Land Division Contention](#)

[Appendix C: Excerpts from the Mendocino County LCP Related to Application Completeness Contention](#)

[Appendix D: Excerpts from the Mendocino County LCP Related to Visual Resources Contention](#)

[Appendix E: Excerpts from the Mendocino County LCP Related to ESHA Contention](#)

[Appendix F: Excerpts from the Mendocino County LCP Related to Geologic Hazards Contention](#)

[Appendix G: Excerpts from the Mendocino County LCP and Coastal Act Related to Public Access Contention](#)

[Appendix H: Excerpts from the Mendocino County LCP Related to Tree Removal Contention](#)

[Appendix I: Excerpts from the Mendocino County LCP Related to Highway Capacity Contention](#)

[Appendix J: Excerpts from the Mendocino County LCP Related to Conditions of Approval Contention](#)

[Appendix K: Excerpts from the Mendocino County LCP Related to Public Noticing Contention](#)

[Appendix L: Excerpts from the Mendocino County LCP Related to CEQA Contention](#)

### **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 – Excerpts from Visual Impact Assessment](#)

[Exhibit 7 – ESHA Maps](#)

[Exhibit 8 – Mendocino County Final Action Notice](#)

[Exhibit 9 – Mendocino County Staff Report](#)

[Exhibit 10 – 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 found a substantial issue and will take jurisdiction over the subject CDP application; however, the de novo portion of the hearing will be held at a future date. 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-22-0014 **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-22-0014 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 Ridge Safety Project is described in the County staff report as follows, in part:

“...The project proposes to widen the existing lanes to 12 feet each, widen the existing shoulders in both directions to 4 feet, install a Midwest Guardrail System (MGS) treated with light-brown stain, improve the superelevation, reestablish the drainage facilities and 6-foot box culvert for wildlife passage, replace the centerline rumble strip, and remove up to 75 trees.

The trees are proposed for removal to accommodate road widening. Of the 75 trees proposed for removal, approximately 45 are alive (12 Bishop pines, 32 Monterey pines, and 1 Douglas fir), approximately 15 are dead standing trees (most likely Monterey pines), and approximately 15 are stumps.

Grading activities include extending the “cut bank” on the east side of SR1 to provide adequate space for the road widening. 14,075 cubic yards of material would be removed, and 3,858 cubic yards of the removed material would provide fill for the shoulder extension on the west side of the road. The remaining 10,217 cubic yards of excess material would be hauled off site to an approved disposal site.

Staging areas have been identified on the north end of the project within existing pullouts on the west and east side of SR1 at approximately PM 42.4.

Proposed temporary Best Management Practices (BMPs) to be implemented during construction include silt fencing, fiber rolls, temporary high-visibility fencing (THVF), street sweeping, stabilizing construction entrances and exits, temporary gravel bag berms, and concrete washouts.

The total disturbed area would be 4.73 acres. Impervious areas would be increased from 1.68 acres (existing roadway) to 2.16 acres, representing a net increase of 0.48 acres.

Environmentally Sensitive Habitat Areas would be bounded by THVF to indicate areas that are off-limits to the contractor.

Traffic control measures would keep a minimum of 12 feet of paved roadway open for public traffic. Bicyclists would be accommodated through the work zone. The estimated maximum delay during one-way reversing traffic control would be 10 minutes. Access to side roads (including access to Navarro Point Preserve parking lot) and to residences would be maintained at all times.

The proposed widening requires the existing drainage inlets be removed and the existing 18-inch culverts to be replaced with 24-inch culverts and extended beyond the width of the new roadway. All proposed culverts and down-drains were evaluated by the Caltrans Final Drainage Report to confirm that they have the necessary capacity to handle runoff from 10-year and 100-year storm events. The table below provides more specific detail about the drainage improvements proposed for the project.

<b>MILE</b>	<b>EXISTING FACILITY</b>	<b>PROPOSED ACTIVITY</b>
41.79	8' x 6' x 35.6' box culvert	<ul style="list-style-type: none"> <li>• Extend culvert 10.5' west and 5.5' east</li> <li>• Install cable railing</li> <li>• Replace wingwalls on west side</li> </ul>
41.83	Two 12" plastic pipes	<ul style="list-style-type: none"> <li>• Replace existing DIs</li> <li>• Place RSP with RSP fabric at outlet</li> </ul>
41.84	18" culvert with "Y" slot drain across eastside driveway	<ul style="list-style-type: none"> <li>• Replace slot drain with two DIs</li> <li>• Install 24" culvert across driveway</li> <li>• Install 24" x 79.1' APC across State Route 1</li> </ul>

MILE	EXISTING FACILITY	PROPOSED ACTIVITY
		<ul style="list-style-type: none"> <li>Place RSP with RSP fabric at outlet</li> </ul>
41.95	18" x 36.7' reinforced concrete pipe	<ul style="list-style-type: none"> <li>Replace with 24" x 52.4' APC</li> <li>Install DI</li> <li>Install 24" AFES</li> </ul>
41.98	18" x 37.5' reinforced concrete pipe	<ul style="list-style-type: none"> <li>Replace with 24" x 50.9' APC</li> <li>Install DI</li> <li>Install 24" AFES</li> </ul>
42.02	24" x 32.1' corrugated metal pipe	<ul style="list-style-type: none"> <li>Replace with 24" x 43.7' APC</li> <li>Install DI</li> <li>Install 24" AFES</li> </ul>
42.11	18" x 34' and 18" x 33.4' down-drain	<ul style="list-style-type: none"> <li>Replace with 24" x 66.4' APC and 15' down-drain</li> <li>Remove headwall</li> <li>Install DI</li> <li>Line gully with RSP</li> </ul>
42.26	18" x 38.4' corrugated metal pipe	<ul style="list-style-type: none"> <li>Replace with 24" x 45.2' APC</li> <li>Replace DI</li> <li>Install 24" AFES</li> <li>Place RSP</li> </ul>

Table Abbreviations

*APC: alternative pipe culvert*

*AFES: alternative flared end section*

*DI: drainage inlet*

*RSP: rock slope protection"*

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 (Navarro Ridge Safety Project), Caltrans proposed a separate project known as the Navarro Drainage Project (County CDP no. CDP\_2019-0034). The Navarro Drainage Project was approved by the County at the same Coastal Permit Administrator (CPA) hearing as the Navarro Ridge Safety Project and was also later appealed to the Commission. The two projects are separate and not functionally dependent on each other. The Commission considered the appeal of the Navarro Drainage Project at its December 16, 2022 hearing as appeal number A-1-MEN-22-0016 and found that the appeal did not present a substantial issue with respect to the grounds on which the appeal was filed under Section 30603 of the Coastal Act.

**B. Project Location and Environmental Setting**

The project site is located entirely within the coastal zone along Highway 1, south of Albion and north of the Navarro River (Exhibits 1 and 2). The project would occur



between highway post miles (PMs) 41.78 and 42.3 (with staging at PM 42.4) within Caltrans' highway right-of-way as well as within a few temporary construction easements.

The highway in this area is a two-lane road with approximately 11.5-foot vehicular lanes and very narrow, almost nonexistent, paved shoulders. Lands surrounding the project are designated (LUP Map 19, provided as page 5 of Appendix G) "Highly Scenic" under the County's certified Local Coastal Program (LCP) where a number of policies and standards to protect visual resources apply, and lands west of the highway are also within a designated (LUP Map 19) "Tree Removal Area" where the LCP generally encourages the removal of trees currently blocking views to and along the coast. The zoning is Remote Residential to the west of the highway (one dwelling unit per 40-acre parcel) and Rural Residential to the east of the highway (one dwelling unit per 5- to 10-acre parcel). The project area runs along the western side of Navarro Ridge and is just north of the Navarro River. Parcels southwest of the project area consist of a public access area known as the Navarro Point Preserve, which is owned and managed by the Mendocino Land Trust. The area surrounding the project site is largely undeveloped except for a few residential homes visible towards the bluff edge at the northern end of the project stretch and a few side roads that intersect with the highway. Photos of the project site are provided as Exhibit 5.

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

On November 17, 2021, the Mendocino County Coastal Permit Administrator (CPA) approved Coastal Development Permit (CDP) no. CDP\_2019-0024 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 an Onsite 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 8.

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

On April 11, 2022, the Commission received the County's Notice of Final Action (Exhibit 8), and on April 25, 2022, the Commission received an appeal of the County's approval from the Albion Bridge Stewards and co-appellants Maria Hansen, Miguel Elac, Jim Heid, Bill Heil, Arlene Reiss, Warren DeSmidt, Annemarie Weibel, Ali van Zee, Janet Eklund, Tom Wodetzki, and Jacob Patterson (Exhibit 10). 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 designated 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 appeal.

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 8), the

County's staff report (Exhibit 9), and the appellants' claims (Exhibit 10). 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. In this case, the Commission would continue the de novo portion of the appeal hearing to a subsequent meeting.

#### **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 10.

1. Caltrans failed to obtain a CDP for the parcel boundary adjustments associated with the project and also failed to obtain a Conditional Use Permit for the development proposed on various parcels outside of their right-of-way.
2. The CDP application was incomplete and had been pending incomplete for more than a year (and therefore should not have been acted on because the IP requires such long-pending applications to be deemed withdrawn), was internally inconsistent and variously inaccurate, and Caltrans did not satisfy all of the general CDP application requirements of IP section 20.532.025(A).
3. The project is inconsistent with the visual resources protection policies of the LCP because the project (1) is out of character with and insubordinate to its setting, (2) does not minimize natural landform alteration, (3) does not include measures to assure that the site will be successfully revegetated, (4) is inconsistent with the Albion community compatibility standards, and (5) did not include grading plans or a visual impact analysis of the proposed grading access roads.
4. The project is inconsistent with the ESHA protection policies of the certified LCP because (1) application information was out of date and incomplete, (2) measures to protect adjacent ESHA are inadequate, (3) the development is not a use allowed in wetland or riparian areas, (4) impacts to wetland and riparian

habitats will not be adequately mitigated as required by LUP policies 3.1-4 and 3.1-10; and (5) the project is not the least environmentally damaging feasible alternative.

5. The application did not include adequate geologic hazard information, required by LUP policies 3.4-1 and 3.4-9, and as such the County's findings fail to establish that the project will be stable, will not contribute to bluff erosion, and will preserve the bluff.
6. The project is inconsistent with the public access policies of the LCP and Coastal Act because it fails to include a new lateral California Coastal Trail segment, turnout, or any other new public access facilities or services; obstructs public access during and post-construction, including with impermissible drainage facilities and by taking new right-of-way that should be devoted to public access; and the County's findings for approval contain inaccurate information concerning public access impacts and does not adequately analyze the impacts of the proposed traffic controls during construction.
7. The County's findings do not support the allowance of tree removal or address past unpermitted tree removal by Caltrans within the project area.
8. LUP policy 3.8-1 requires that highway capacity, including safety considerations, be used to demonstrate project need, and this data was not included in the application.
9. The conditions of approval for various reasons are all "void" and do not bring the project into compliance with the LCP and the Coastal Act.
10. Caltrans and the County failed to adequately notice all interested parties of the public hearing, inconsistent with public noticing requirements of the LCP.
11. The project does not qualify for the CEQA categorical exemption under which Caltrans filed the project.

For the reasons discussed below, the Commission finds that only contentions 1-9 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 Land Division**

The appeal contends that Caltrans failed to obtain a CDP for the parcel boundary adjustments associated with the project and also failed to obtain a Conditional Use Permit for the development proposed on various parcels outside of their right-of-way.

#### **Applicable LCP Policies**

See Appendix B.

### Discussion

As is common practice for Caltrans on state highway construction projects, construction of the proposed project necessitates the acquisition of additional areas of permanent highway right-of-way immediately adjacent to the existing highway right-of-way as well as temporary construction easements (TCEs) from adjacent property owners. As a result of the acquisition of additional rights-of-way, the boundaries of the affected lots were slightly adjusted.

Whether or not the acquisition of right-of-way requires a CDP is guided by the LCP's definition of development (IP section 20.308.035 (D)), which reflects the Coastal Act's definition of development and states, in applicable part:

“‘Development’ means on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511)....”

The acquisition of land by the state for state highway right-of-way is generally exempt from the Subdivision Map Act and therefore is not a “subdivision pursuant to the Subdivision Map Act” and does not meet this aspect of the definition of development. The County's findings regarding this contention in the staff report for the local appeal hearing state, in part:

“No supporting or factual evidence has been provided to demonstrate an illegal land division has occurred. The appeal solely bases concerns on sections of the Local Coastal Program that apply when a division of land is being processed and considered. The Subdivision Map Act, specifically section 66428(a)(2) of California Government Code, exempts from map requirements “*land conveyed to or from a governmental agency [or] public entity . . . for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an*”

*easement, or a license.*” Pursuant to that section, the division of property through eminent domain and the conveyance of condemned property to the public entity is not a division that requires a map. A recent Court of Appeal decision, *Save Mt. Diablo v. Contra Costa County*, No. A142357 (First Dist., October 7, 2015), provides guidance concerning the concept of a “division” of land under Subdivision Map Act, clarifying that condemnation of portions of a parcel do not result in subdivision of the remaining private areas. As a result of the specific exemption in the Subdivision Map Act for land conveyed to a governmental agency or public entity, the actions by Caltrans in regards to condemnation for the various properties is not an illegal land division. Since the actions are not considered a land division, the provisions of the Local Coastal Program (LCP) cited in the appeal are inapplicable.”

Although lot line adjustments can constitute development necessitating a CDP under other components of the definition of development, none are applicable here. The adjustments in this case do not result in a change in the density or intensity of land use but instead allow for the limited widening of an existing roadway for necessary safety purposes without increasing the number of lanes or creating or altering any land use that would cause an increase in motor vehicular traffic volume on the existing roadway. The majority of the work would occur within Caltrans’ right-of-way, which is currently developed with an existing two-lane highway. The proposed project would not change the current land uses or cause any changes that would conflict with zoning adjacent to the roadway.

The appeal also contends that Caltrans failed to obtain a Conditional Use Permit for the development proposed on various parcels outside of their right-of-way. As discussed above, the majority of the work would occur within the highway right-of-way, but regardless, as a state agency, Caltrans is not subject to local use regulations and was not required to obtain a Conditional Use Permit but did obtain the required local CDP (i.e., County CDP\_2019-0024) approval for all development associated with the proposed project.

Therefore, there is a high degree of legal and factual support for the County’s decision, and this contention does not raise a substantial issue of LCP conformity.

**b. Contention Regarding Application Completeness, Consistency, and Accuracy**

The appeal contends the CDP application was incomplete and had been pending incomplete for more than a year (and therefore should not have been acted on because the IP requires such long-pending applications to be deemed withdrawn), was internally inconsistent and variously inaccurate, and Caltrans did not satisfy all of the general CDP application requirements of IP section 20.532.025(A).

Applicable LCP Policies

See Appendix C.

Discussion

Section 20.532.025(A) of the LCP's Implementation Plan (IP) states that each CDP application shall include:

“A description of the proposed development, including maps, plans, and other relevant data of the project site and vicinity in sufficient detail to determine whether the project complies with the requirements of these regulations. Sufficient information concerning the existing use of land and water on or in the vicinity of the site of the proposed project, insofar as the applicant can reasonably ascertain for the vicinity surrounding the project site, should also be provided.”

The local record indicates that the application was deemed complete on June 9, 2021, prior to the Coastal Permit Administrator's (CPA) approval of the permit on November 17, 2021. The staff report for the County's Coastal Permit Administrator (CPA) hearing includes a project description summary, and a more detailed project description written by Caltrans and dated October 2021 was included as an attachment to the County's November 2021 staff report. Maps, plans, and other relevant data and information were included in the local record transmitted to the Commission by the County in response to this appeal filing. It is not uncommon for project plans to be refined and further developed by applicants during the application processing period, as in this case. The project plans considered at the time that the County initially acted on the application were of sufficient detail to determine project compliance with the LCP requirements.

As the appeal raises no specific examples of application errors or inconsistencies, and there is a clear final project description, there is a high degree of legal and factual basis for the County's approval.

**c. Contention Regarding Visual Resources Impacts**

The appeal contends the project is inconsistent with the visual resources protection policies of the LCP because the project (1) is out of character with and insubordinate to its setting, (2) does not minimize natural landform alteration, (3) does not include measures to assure that the site will be successfully revegetated, (4) is inconsistent with the Albion community compatibility standards, and (5) did not include grading plans or a visual impact analysis of the proposed grading access roads.

Applicable LCP Policies

See Appendix D.

Discussion

The visual components of the project include approximately 1,000 linear feet of new guardrail; road widening and associated grading along the approximately 0.52-mile

stretch of roadway; some partially visible components of the roadway drainage systems; and vegetation removal, including tree removal.

As described in Section B, above, lands surrounding the project are designated “Highly Scenic” in the certified LCP (LUP Map 19, provided in Appendix G). Projects within mapped Highly Scenic Areas are subject to the development criteria prescribed in section 20.504.015(C) of the IP. The development criteria require projects protect coastal views from public areas (including highways), generally limit new development to less than 18 feet above natural grade, and require new development be subordinate to the natural setting and minimize reflective surfaces. Subsection 6 of section 20.504.015(C) of the IP further requires that visual impacts of development on hillsides be minimized by requiring grading or construction to follow the natural contours; re-siting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; and designing structures to fit hillside sites rather than altering landforms to accommodate buildings designed for level sites. The project must also conform to LCP standards that require State Highway 1 in rural areas of the County’s coastal zone remain a scenic two-lane road, including siting and designing development to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.

#### New Guardrail

The installation of Midwest Guardrail System (MGS) will be a new visual feature of the site, as there is no existing guardrail within this specific stretch of highway. However, the guardrail will be relatively short in stature (approximately 32 inches tall), visually permeable, and stained, consistent with current standard guardrail seen elsewhere on Highway 1 in Mendocino County, including other scenic areas. The County’s staff report states:

“The proposed MGS would be treated with a light brown stain in order to reduce glare and for the improvement to better blend with the natural surroundings. As a result, the project would be consistent with the development criteria for Highly Scenic Areas in MCC Section 20.504.015(C).”

Thus, the new guardrail as proposed conforms with the LCP requirements for highly scenic areas that new development minimize reflective surfaces and materials and colors be selected to blend in hue and brightness with their surroundings (LUP Policy 3.5-3/IP Section 20.504.015(C)).

#### Road Widening and Associated Grading

Regarding the increase in paved surface areas, 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 this limited project reach (approximately 0.52 mile) will be a slight visual change as the scale of the roadway within the project area will increase. However, the increase will not have



substantial adverse effects on the visual quality of the project area and the County's findings note:

"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 improve the safety of this highly scenic public area."

Further, LUP policy 3.8-6 states, in part:

"It shall be a goal of the Transportation Section to achieve, where possible and consistent with other objectives of The Coastal Act and plan policies for Highway 1, a road bed with a vehicle lane width of 16 feet including the shoulder to achieve a 32 foot paved roadway (12-foot vehicle lane and 4-foot paved shoulder)...."

Therefore, the LCP generally encourages 12-foot vehicle lanes and 4-foot paved shoulders on Highway 1, as is proposed here. Overall, the 12-foot lanes and 4-foot shoulders will comport with other stretches of Highway 1 in Mendocino County, including in scenic and rural areas, and will not be a significant visual change.

As mentioned above, the LCP generally requires that grading or construction follow the natural contours on hillsides and minimize the alteration of natural landforms. The existing highway within the subject project area is located in a cut bank along a hillslope (Navarro Ridge) adjacent to a blufftop. As described in the project description provided as Exhibit 3, Caltrans states the purpose of the project is to address a higher than statewide average rate of incidences of run-off-road collisions along this highway segment. Caltrans' project description goes on to state that a review of the collision history indicated that shoulder widening would address the run-off-road collisions by providing recovery area when a vehicle is leaving the traveled way. In order to construct the project, the project requires cutting further into the hillslope on the east side of the highway and the placement of some fill on the blufftop on the west side of the highway. Specifically, 14,075 cubic yards of material would be removed, and 3,858 cubic yards of the removed material would provide fill for the shoulder extension on the west side of the road. The remaining 10,217 cubic yards of excess material would be hauled off site to an approved disposal site.

The existing average cut slope height along the east side of the project stretch is 5.1 feet, with a maximum height of approximately 15 feet at its tallest point, and the existing cut slope is predominantly inclined between 0.9H:1V (horizontal: vertical) and 1H:1V. The proposed height of the cut slopes on the east side of the highway varies throughout the project stretch based on location specific factors, with an average proposed height of approximately 13.3 feet and a maximum proposed height of 55 feet, with a proposed slope no steeper than 1.1H:1V. Therefore, although the height of the cut slopes will moderately increase, the project will not significantly increase the average height of the cut slopes, and the average steepness of the cut slopes will decrease slightly. The

proposed maximum height of the fill slope on the west side of the highway would be 16 feet with a proposed slope no steeper than 1.4H:1V. As discussed in more detail below, Caltrans proposes and Condition 10 of the County's approval requires that all disturbed soil areas be seeded with native plants after construction. Therefore, in this case, although the grading will modify the hillslope, as the existing highway currently cuts across the hillside, the landform has previously been altered for highway construction and, as the slope incline will be similar to existing conditions, after it has been revegetated the Navarro Ridge hillslope will appear similar overall to existing conditions and continue to blend with the natural setting. The proposed project as conditioned will achieve the safety objectives of the project by adjusting the existing roadway prism without significantly altering the appearance of a natural landform.

Regarding alternatives, Caltrans states the following factors contributed to their specific design of the proposed project: Accomplishing the improved safety objectives of the project by placing more fill on the west side of the highway on the blufftop instead of cutting into the hillside on the east as proposed (1) would have greater direct impacts to the adjacent Navarro Point Preserve public park and recreation area as well as adjacent private properties; (2) would result in routing the highway closer to the bluff edge; (3) would require importing fill; and (4) would have encroached on more ESHAs within the project limits. In addition, as will be discussed in greater detail in Subsection e below, a Geotechnical Design Report was prepared for the project by a Caltrans engineer, and Caltrans asserts that the cut slope is proposed to be steepened as much as feasible to reduce the amount of earthwork required to accommodate the widened shoulders and vehicular lanes. As mentioned above, the LCP encourages four-foot shoulders on Highway 1 where feasible (as is the case here, where there currently are almost nonexistent shoulders) to improve multimodal access, and the purpose of the project is to improve safety for all users of the highway, which is a critical coastal access route through the county.

While the appeal contends that the project exceeds the 18-foot height maximum for Highly Scenic Areas in Section 20.504.015(C) of the IP, the proposed structural roadway improvements would be constructed well below the required height maximums in Highly Scenic Areas.

#### Vegetation Removal

Regarding the vegetation removal required to construct the project and its potential effects on visual resources, the hillslope and blufftop areas that will be disturbed by construction activities are currently densely vegetated, primarily with grasses and some shrubs, but Caltrans proposes to revegetate all disturbed areas following construction, and the County includes two conditions to ensure revegetation is achieved:

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 (emphasis added): “Project implementation shall be consistent with the recommended mitigations, BMPs, and avoidance and minimization measures outlined in Sections 1.2, 1.3, and 3.2 of the *ESHA Assessment*, June 2019 (Exhibit A), Section 1.2.1 of the *Natural Environment Study*, September 2017 and its *Addendum*, November 28, 2018 (Exhibit B), Sections 4 through 8 of the *Onsite Revegetation Plan* (Exhibit C), and Pages 2-4 of the *Rare Plant Memo/Letter* (Exhibit D) intended to protect ESHA.”

Further, in order to promote vegetation of the embankments that must be constructed as a geosynthetic reinforced embankment (GRE) to ensure their stability, a 1-foot-thick layer of topsoil will be placed on the face of the GRE to help with revegetation.

The proposed project also includes the removal of approximately 45 living trees, approximately 15 dead standing trees, and approximately 15 tree stumps to accommodate the project, most of which are located on the west side of the roadway within an LCP-designated “Tree Removal Area” (LUP Map 19, provided in Appendix G). Section 20.504.015(C) of the IP includes a standard that in designated Tree Removal Areas, “tree thinning or removal shall be made a condition of permit approval” when trees “unreasonably obstruct views to and along the ocean and scenic coastal areas.” Therefore, the LCP generally encourages the removal of trees that currently block views to and along the coast in this area. The trees proposed for removal in this case are not ESHA, and most appear to have originally been planted along the highway in a linear fashion. Many of the trees are non-native and, as mentioned above, a large portion are already dead. None of the trees proposed for removal constitute a significant visual resource, and, as noted by the County in its findings for approval of the tree removal (referring to Section 20.504.015(C) of the IP, which implements LUP policy 3.5-5): “The proposed tree removal is consistent with this policy intended to improve public views of the coast.” The appeal contention related to tree removal is discussed further in Subsection g, below.

### Drainage Systems

The visible components of the proposed modifications to the roadway drainage systems primarily include a new cable railing on the one box culvert at the southern end of the project stretch, new rock slope protection at the outlets of four culverts throughout the project stretch, and a slightly larger exposed down drain at post mile 42.11. As these features will be located downslope of the road below the roadway prism, will be low-lying, and will be surrounded by vegetation (primarily grasses) after areas disturbed during construction are revegetated, they will be only partially or minimally visible and will not interfere with coastal views.

### Albion Community Compatibility

The appeal also asserts that the project is inconsistent with the Albion community compatibility standard of LUP policy 3.5-2, which is implemented by IP section 20.504.020. However, section 20.504.020 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 approved project.

#### Grading Plans

Finally, the appeal contends that the application did not include grading plans for new access roads or a visual impact analysis of the proposed grading access roads, inconsistent with LUP policy 3.5-9. LUP policy 3.5-9 states, in applicable part: “The location of all new access roads and driveways in rural areas shall be reviewed prior to any grading work to ensure safe location and minimum visual disturbance...” The project does not include the development of any new permanent access roads or driveways. To construct the project, Caltrans plans to conduct all work within their right-of-way and temporary construction easements. Thus, this LCP policy does not apply. Further, Caltrans has proposed and Condition 10 of the County’s approval (referenced above) requires that all temporarily disturbed soil areas be revegetated.

#### Rural Character and Visual Subordination

As discussed throughout this subsection, the approved project has been designed to minimize visual impacts while still achieving its important safety purposes. The existing highway is within a cut bank in this area, the scale of which will be increased but which will ultimately appear similar to existing conditions; the increase in paved surfaces is limited and is consistent with the LCP-designated lane and shoulder widths for Highway 1; grading has been minimized to the extent feasible and disturbed soil areas will be reseeded with native plants; and the new guardrail will be visually permeable and stained to appear subordinate to the surrounding natural area. The updated highway stretch will ultimately appear similar to many existing segments of Highway 1 in scenic and rural areas of the county, substantially conforms with the existing character of the highway in this area, and will maintain this stretch of highway as a scenic two-lane road,

Therefore, there is a high degree of legal and factual support for the County’s finding that the project as conditioned adequately protects visual resources as required by the LCP.

#### **d. Contention Regarding ESHA Impacts**

The appeal contends the project is inconsistent with the ESHA protection policies of the LCP because (1) application information was out of date and incomplete, (2) measures to protect adjacent ESHA are inadequate, (3) the development is not a use allowed in wetland or riparian areas, (4) impacts to wetland and riparian habitats will not be adequately mitigated as required by LUP policies 3.1-4 and 3.1-10; and (5) the project is not the least environmentally damaging feasible alternative.

#### Applicable LCP Policies

See Appendix E.

## Discussion

Among other specific requirements related to ESHA, the LCP generally limits the types of development that can occur within ESHA; requires that development not significantly degrade or destroy ESHA; requires that if development is proposed within ESHA it must be the least environmentally damaging feasible alternative and must include mitigation measures to minimize adverse environmental effects; and that riparian vegetation lost from development be replaced at a minimum ratio of one to one.

As part of their CDP application, 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 ESHA standards of the LCP. Studies were conducted within the project area and within a 100-foot buffer around the project. The County staff report states the following documents supplied the information contained in their analysis:

1. *Navarro Ridge Safety Project Natural Environment Study*, September 2017
2. *Navarro Ridge Safety Project Natural Environment Study Addendum*, November 28, 2018
3. *ESHA Assessment for the Navarro Ridge Safety Project*, June 2019
4. *ESHA Correction Memo*, September 12, 2019
5. *Report of Compliance*, Undated (submitted May 5, 2021)
6. *Onsite Revegetation Plan*, October 2021
7. *Rare Plant Memo/Letter*, October 25, 2021

Overall, 20 ESHAs were identified within 100 feet of project activities, 18 of which are associated with the drainage features that intersect the highway within the project area, including some manmade roadside drainage ditches. The other two identified ESHAs are patches of rare plants. Development is proposed to occur within 10 of the drainage ESHAs where buffers are infeasible and reduced buffers were requested for 9 ESHAs. The project can maintain a 100-foot buffer from 1 identified ESHA.

Regarding the contention that application information related to ESHA was out of date and incomplete, the County supplied the project and supporting documentation to the California Department of Fish and Wildlife (CDFW) for review and comment, as CDFW is the agency that the County confers with regarding the protection of natural resources, and CDFW did not express concerns regarding the age or adequacy of any of the prepared analyses that support the project. A Senior Environmental Scientist for CDFW reviewed the various biological studies and project documents on three different occasions and concurred with the prepared analyses and all recommended avoidance and minimization measures. In addition to the biological surveys already completed, Caltrans also proposes, and Condition 11 of the County's approval requires, that Caltrans resurvey the project area for certain rare plants and nesting birds prior to the commencement of construction to ensure that sensitive areas are flagged for protection from construction impacts.

Regarding the contention that measures to protect ESHAs are inadequate, the County staff report includes the following discussion, in part:

“The *ESHA Assessment* also addresses how the proposed project is consistent with County code requirements for development permitted within a buffer area. The report concludes that avoidance and minimization measures outlined in the report would ensure the ongoing protection of the ESHAs, despite work occurring within ESHA and within the ESHA buffer. The report states that the no other feasible site is available to perform the work proposed within ESHA buffer since all work would be conducted within or adjacent to the existing developed roadway. The report also concludes that “the work proposed would maintain and improve existing drainage patterns,” and the ESHAs would “maintain their functional capacity” and “maintain natural species diversity.”

Finally, the report states that “all disturbed areas would be revegetated appropriately.” Caltrans provided the County with an *Onsite Revegetation Plan* dated October 2021. The *Revegetation Plan* proposes revegetation areas to restore areas surrounding waters of the United States impacted by construction utilizing a specific, regionally appropriate native seed mix. The revegetation would also limit introduction of invasive plant species within the project area. The *ESHA Assessment*, as amended and supplemented, addresses the County’s standards for reduction of ESHA buffers and for development within an ESHA buffer. The report concludes that the proposed work would be consistent with the County’s ESHA requirements with the utilization of the recommended avoidance and minimization measures.”

In addition to revegetating disturbed areas, Caltrans proposes various standard Best Management Practices (BMPs) regarding the protection of biological resources during construction, including using temporary high visibility fencing to minimize encroachment into ESHAs, silt fencing, fiber rolls, street sweeping, stabilizing construction entrances and exits, temporary gravel bag berms, and concrete washouts. To reinforce the proposal by Caltrans to implement various mitigation measures to minimize adverse environmental effects, the County included the following condition of approval:

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 3.2 of the *ESHA Assessment*, June 2019 (Exhibit A), Section 1.2.1 of the *Natural Environment Study*, September 2017 and its *Addendum*, November 28, 2018 (Exhibit B), Sections 4 through 8 of the *Onsite Revegetation Plan* (Exhibit C), and Pages 2-4 of the *Rare Plant Memo/Letter* (Exhibit D) intended to protect ESHA.”

Regarding the contention that the development is not a use allowed in this ESHA type as well as the contention that there are other less environmentally damaging feasible alternatives, the County staff report includes the following discussion:

“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 adjacent to 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 County concluded with the following findings related to ESHA:

“FINDING 1- Pursuant to MCC Section 20.532.095(A)(1), the proposed development is in conformity with the certified Local Coastal Program. The project would be located within, adjacent to, and within 100 feet of ESHA; however, appropriate protection measures have been incorporated into the project and have been reviewed and agreed upon by resource agencies to ensure continued protection of the resources. The project proposes improvements to SR1 to support public safety; and

...

FINDING 8- Pursuant to MCC Section 20.532.100(A)(1), the proposed development is consistent with ESHA policies that require the following findings: (a) The resources as identified will not be significantly degraded by the proposed development; (b) There is no feasible less environmentally damaging alternative; (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. SR1 is located through this area such that there cannot be buffers from all identified ESHA and there is on other feasible less environmentally damaging alternative. The Applicant has provided documentation to demonstrate the resources identified will not be significantly degraded and all feasible conditions of approval have been included.”

Therefore, there is a high degree of legal and factual support for the County’s finding that the project as conditioned will protect ESHAs as required by the LCP.

**e. Contention Regarding Geologic Hazards**

The appeal contends the application did not include adequate geologic hazard information, required by LUP policies 3.4-1 and 3.4-9, and as such the County’s findings fail to establish that the project will be stable, will not contribute to bluff erosion, and will preserve the bluff.

Applicable LCP Policies

See Appendix F.

Discussion

The LCP generally requires a geologic investigation and report be prepared as part of CDP applications for proposed development in areas of known or potential geologic hazards, such as bluff top lots; that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans and that setbacks be of sufficient distance to eliminate the need for shoreline protective devices; and that any development landward of the blufftop setback be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

As discussed in Subsection c, above, the project would make safety improvements to an existing segment of Highway 1, which in this location is within a cut bank along the side of a hill (Navarro Ridge), adjacent to a blufftop. The majority of the project area is several hundred feet from the bluff edge, except for one location (around post mile 42.11) where the roadway is less than 100 feet from the bluff edge. In order to construct the project approved by the County, Caltrans has to cut further eastward into the hillside and also place fill on the blufftop on the west side of the highway.

In designing the project, Caltrans completed a geotechnical investigation consisting of a review of published geologic maps, field mapping, seismic refraction surveys, laboratory testing, and review of the project plans, and produced a Geotechnical Design Report (final version dated November 16, 2021). The report concludes that the proposed cuts into the hillslope would be stable, and the Commission's staff geologist reviewed the Geotechnical Design Report and concurs with its conclusion. Regarding stabilization of the cut and fill slopes after construction, the County's staff report states:

“Erosion control planting will be implemented across the project area once construction is completed, as delineated on the project Plan Set. Additional revegetation efforts will be implemented consistent with the submitted *Onsite Revegetation Plan*. Final soil stabilization strategies include the use of compost, duff, hydraulic biotic growth medium, and a fiber reinforced matrix. Additional slope stabilization methods include RECP netting, compost socks, duff berms, and fiber rolls. Existing vegetation will be preserved to the maximum extent feasible. Erosion control methods include hydroseeding with a native species seed mix....”

Additionally, to ensure steeply inclined fill-slopes in certain areas will be stable, the embankments in those locations will be constructed as a geosynthetic reinforced embankment (GRE) and a 1-foot-thick layer of topsoil will be placed on the face of the GRE to promote vegetation.

The appeal asserts that Caltrans should have calculated a blufftop setback. However, LUP policy 3.4-7 states in part (emphasis added), “the County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years).” In this case, Caltrans is not proposing a new highway or new highway lanes that would



increase capacity for motor vehicles, but instead is proposing limited safety and multimodal improvements to the roadway and rehabilitation of existing drainage systems. Therefore, in this case, a new structure is not proposed and calculation of a blufftop setback is not required by the LCP. In any case, as noted above, except for one small section of highway at post mile 42.11, the majority of the project area is several hundred feet from the bluff edge and Caltrans states the project life is only 20 years. As discussed in the following paragraphs, the project does incorporate measures to reduce blufftop erosion. In addition, as Caltrans proposes both to cut into the hillside to the east and place fill on the blufftop to the west to construct the project, the proposed centerline of the wider highway fairly closely follows the existing centerline for the majority of the project. In some locations, such as around post mile 42.11 where the existing highway is closer to the bluff edge, Caltrans proposes to cut further to the east so that the highway centerline is moved slightly inland, away from the bluff edge.

As mentioned above, the LCP requires that any development landward of the blufftop setback be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself. The appeal contends that the application did not contain adequate information for the County to find the project consistent with this LCP requirement. However, a Caltrans engineer completed a Drainage Report that evaluates the hydrology and hydraulics of the proposed drainage systems within the project limits, and this report was submitted as part of the CDP application to the County. The Drainage Report notes that to prevent scour and erosion, energy dissipation riprap (also referred to as rock slope protection, or "RSP") lined depressed outlets are specified for several of the drainage systems within the project limits. According to the Drainage Report, Caltrans referred to their Highway Design Manual in determining the specific proposed rock sizes and placements. The appeal also refers specifically to the location within the project stretch at post mile 42.11 where significant erosion appears to have been occurring, seemingly as a result of drainage from the existing culvert at this location. Regarding the culvert at this location specifically, the Drainage Report states:

"To prevent further erosion, which could compromise the fill slope supporting the highway, the existing failing downdrain and culvert will be removed and replaced.

The existing drainage ditch, inlet and 24 inch pipe are proposed to be replaced with a Type G1 drainage inlet within a new ditch, and a 24 inch alternative pipe cross culvert and downdrain. The downdrain is proposed to drain in the same direction, but will no longer allow discharge to free fall to the current scour grade. Instead, the downdrain will be oriented to discharge to the proposed ¼ ton RSP ditch with RSP fabric to help reduce the risk of further erosion."

In addition, the culverts will be upsized throughout the project to reduce runoff velocities and erosion potential. Also, much of the stormwater within the project areas will first collect in a roadside ditch before running through the culverts, which may further help to reduce runoff velocity and erosivity by providing an area for runoff to infiltrate as it

leaves the roadway. Therefore, there is substantial evidence that the drainage modifications been designed to reduce blufftop erosion.

Finally, the appeal alleges that the proposed rock slope protection at post mile 42.11 would be located seaward of the bluff edge and therefore must comply with the LCP policies that regulate development on the bluff face. According to the project plans and other project information, Caltrans proposes to place rock within the gully that appears to have originated on the bluff top on the west side of the road as a result of erosion over time from the existing highway drainage system at this location. As discussed above, the proposed rock is expected to reduce, if not stop, erosion of the bluff.

Therefore, there is a high degree of legal and factual support for the County's decision that the project is consistent with the applicable geologic hazards policies of the LCP.

**f. Contention Regarding Public Access**

The appeal contends the project is inconsistent with the public access policies of the LCP and Coastal Act because it fails to include a new lateral California Coastal Trail segment, turnout, or any other new public access facilities or services; obstructs public access during and post-construction, including with impermissible drainage facilities and by taking new right-of-way that should be devoted to public access; and the County's findings for approval contain inaccurate information concerning public access impacts and does not adequately analyze the impacts of the proposed traffic controls during construction.

Applicable LCP and Coastal Act Policies

See Appendix G.

Discussion

As shown on LUP Map 19 (included as page 5 of Appendix G), the LCP proposes a lateral segment of the California Coastal Trail along the bluff edge within the project vicinity, rather than along Highway 1 within the actual limits of the proposed project. The County's staff report similarly states:

"MCC Section 20.528.010 requires that offers to dedicate easements for public access shall be recorded prior to issuance of a CDP in areas identified in Chapter 4 of the Coastal Element unless required public access has otherwise been secured. Chapter 4.9 of the Coastal Element addresses public access requirements in this subarea, defined as between Dark Gulch and the Navarro River. Chapter 4.9 requires a "blufftop trail along the Navarro Headlands west of Navarro Ridge Road." This required access is currently provided with the existing public access west of Navarro Ridge Road, which will be maintained during and after completion of the proposed project."

The existing adjacent coastal access referred to in the County's staff report is known as the Navarro Point Preserve, is owned and managed by the Mendocino Land Trust, and consists of trails to and along the bluff edge in this area. LUP Map 19 also shows a new turnout to be developed on the west side of the highway at the southern edge of the project limits within Caltrans' right-of-way. This turnout does not currently exist and was not included in the project as approved by the County. However, there is an existing parking lot on the west side of the highway approximately 500 feet to the north associated with the Navarro Point Preserve. This parking lot provides equivalent coastal vista point access as the turnout would. Therefore, as equivalent access exists, the turnout is not necessary or required by the LCP. Further, the approved project will improve public access through 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.

The appeal contends that the proposed project will permanently obstruct some public access by taking land out of the Navarro Point Preserve public access area and the proposed modifications to multiple drainage systems throughout the project limits will preclude the future development of a new segment of the coastal trail laterally along the highway. Regarding the first concern about the Navarro Point Preserve lands, Caltrans is acquiring less than one acre from Mendocino Land Trust in the form of a narrow strip of additional highway right-of-way immediately adjacent to their existing highway right-of-way. The proposed expansion of the roadway into this narrow strip that was part of the Navarro Point Preserve property will not result in any meaningful obstruction of public access as no trails or parking amenities will be lost or impacted as a result and, as mentioned above, the new wider paved shoulders of the roadway will improve safe access for cyclists through this stretch of highway. Further, the County's staff report states that the coastal access provided by the Navarro Point Preserve "will be maintained during and after completion of the proposed project."

As described in Section A, above, the approved project includes modifications to eight drainage systems that intersect the highway within the project limits, including placing rock as an erosion control measure at the outlets of some of the culverts within the project limits. The appeal contends that the proposed modifications to these drainage systems will preclude the future development of a lateral segment of the CCT within the project limits in the future. As discussed above, the LCP does not designate a proposed lateral trail immediately adjacent to the highway and there is no clear LCP policy requirement for Caltrans or any other entity to develop a lateral trail along the highway in this area. The public access policies of the LCP and Coastal Act do generally require that public access be maximized and it is a shared goal of various stakeholders and in the interest of the general public as well as the Commission to develop a new lateral segment of the CCT along the highway here, to connect with the Navarro Point Preserve. Caltrans has been working in cooperation with the Mendocino Land Trust as well as the Coastal Conservancy to plan for the potential future development of this trail segment within the Caltrans highway right-of-way, but planning for this potential project is still in early stages. In this case, the subject County-approved project does not include the construction of a new segment of the CCT and final design of CCT segments are

addressed at such time the construction of a new segment is proposed. There is also little evidence that the proposed drainage system modifications would preclude development of a coastal trail, given that such trails often have to manage drainage crossings. Moreover, the majority of the potential future trail may ultimately be located outside of the highway right-of-way and closer to the ocean along much of the subject project stretch, as recommended by LUP Map 19, given the presence of available bluff top property owned by the Mendocino Land Trust.

Regarding the contention that the County's staff report does not adequately analyze the impacts of the proposed traffic controls during construction, the County's staff report states:

"Caltrans provided the following information related to the public access:

*The anticipated traffic control measures are reversing traffic control, moving lane closure, and shoulder closure. One-lane closure is permitted within the project limits. A minimum of 12 feet of paved roadway must be open for use by public traffic. Bicyclists will be accommodated through the work zone. Signage will be used to alert vehicle operators to the possible presence of bicyclists. The estimated maximum delay during one-way reversing traffic control will be 10 minutes. Access to side roads and residences will be maintained at all times.*

As a result the project would not impact any existing public access points along SR1."

The appeal specifically contends that the project plans show that access to the Navarro Point Preserve will be blocked during construction. However, the plans (Exhibit 4) do not show access to the preserve being blocked during construction. Further, the County's staff report explicitly states (emphasis added), "the estimated maximum delay during one-way reversing traffic control would be 10 minutes. Access to side roads (including access to Navarro Point Preserve parking lot) and to residences would be maintained at all times" and also includes the following finding:

"FINDING 7- 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. All existing public access within the vicinity of the project area will be accessible throughout construction activities..."

Therefore, there is a high degree of legal and factual support for the County's decision that the project is consistent with the public access policies of the LCP and Coastal Act.

**g. Contention Regarding Tree Removal**

The appeal contends the County's findings do not support the allowance of tree removal or address past unpermitted tree removal by Caltrans within the project area.

Applicable LCP Policies

See Appendix H.

Discussion

LUP policy 3.5-5 states, in applicable part:

“ ...In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

In circumstances in which concentrations of trees unreasonably obstruct views of the ocean, tree thinning or removal shall be made a condition of permit approval...”

LUP Map 19 (included in Appendix G) identifies the area on the west side of the subject stretch of highway as a “Tree Removal Area” where the LCP generally encourages the removal of trees currently blocking views to and along the coast. While the appeal contends that the LCP requires a finding be made that the trees proposed for removal unreasonably obstruct ocean views from Highway 1 and that other alternatives to tree removal such as targeted thinning should have been considered, the LCP does not require that the County make such findings to authorize their removal, nor does it require alternatives such as targeted thinning be considered. In this case, Caltrans is proposing tree removal to accommodate the proposed project; the County has not made tree removal a condition of approval but has found the proposed tree removal consistent with all applicable policies of the LCP.

Upon comparing past photos of the subject stretch of highway within the project limits with current photos, it appears some trees that used to be present along this stretch of highway are no longer present, and the Commission is not aware of this past tree removal and the subject County CDP approval does not authorize any after the fact tree removal along this stretch. However, it is unclear what the circumstances of the tree removal were (e.g., whether trees were decadent/windblown and thus removed) or whether Caltrans was the party removing the trees, and the alleged unpermitted tree removal is not part of the project at issue in this appeal.

Therefore, there is a high degree of factual and legal support for the County’s decision that the County-approved tree removal is consistent with the LCP.

**h. Contention Regarding Highway Capacity**

The appeal contends that LUP policy 3.8-1 requires that highway capacity, including safety considerations, be used to demonstrate project need, and this data was not included in the application.

Applicable LCP Policies

See Appendix I.

Discussion

LUP policy 3.8-1 generally requires that Highway 1 capacity and other known planning factors be considered when evaluating applications for development permits and in determining land use classifications and density changes. Therefore, this policy is meant to ensure that when non-highway projects are proposed, there is adequate highway capacity to handle any increases in traffic or circulation changes that may result, as well as adequate capacity of other types of essential services and infrastructure.

The County's staff report includes the following relevant findings:

“FINDING 2- Pursuant to MCC Section 20.532.095(A)(2), the proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities. No utilities are necessary to accommodate the project. The project proposes to enhance SR1 by providing standard travel ways and shoulders to increase public safety through the project corridor. Drainage facilities that would be affected by the project would be replaced and improved to better facilitate runoff and stormwater surrounding the roadway;

...

FINDING 6- Pursuant to MCC Section 20.532.095(A)(6), other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. The project would not contribute new sources of traffic on local and regional roadways. The proposed project is being undertaken to improve public safety within this corridor of SR1;”

The County's findings also note:

“The project would widen and improve an existing roadway; however, the project would not increase the number of lanes, nor would it create or alter any land use that would cause an increase in traffic volume on the existing roadway. The project would provide improved circulation by making the existing corridor safer to motorists in both directions.”

Therefore, there is a high degree of legal and factual support that the project is consistent with LUP policy 3.8-1, as applicable.

**i. Contention Regarding Conditions of Approval**

The appeal contends the conditions of approval for various reasons are all “void” and do not bring the project into compliance with the LCP and the Coastal Act.

### Applicable LCP Policies

See Appendix J.

### Discussion

The appeal asserts that the adopted conditions of the County’s approval (Exhibit 9) are generally overly procedural, vague, unenforceable, and don’t meet legal standards. However, most of the conditions of the County’s approval are fairly standard conditions concerning expiration of the permit, the scope of the permit, requirements for obtaining all other necessary permits, etc. Other adopted conditions relate to protection of various coastal resources. For example, adopted conditions 8 through 11 read as follows:

8. “If any archaeological sites or artifacts are discovered during site excavation or construction activities, the property owners shall cease and desists from all further excavation and disturbances within 100 feet of the discovery, and make notification of the discovery to the Director of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.”
9. “The contractor performing the work shall provide proof of appropriate disposal of exported material to both the Caltrans Resident Engineer and the County prior to close out of construction.”
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.”
11. “Project implementation shall be consistent with the recommended mitigations, BMPs, and avoidance and minimization measures outlined in Sections 1.2, 1.3, and 3.2 of the *ESHA Assessment*, June 2019 (Exhibit A), Section 1.2.1 of the *Natural Environment Study*, September 2017 and its *Addendum*, November 28, 2018 (Exhibit B), Sections 4 through 8 of the *Onsite Revegetation Plan* (Exhibit C), and Pages 2-4 of the *Rare Plant Memo/Letter* (Exhibit D) intended to protect ESHA.”

In reference to Condition 8, the appeal states that the condition fails “to require a qualified and independent archeological monitor of the project area, lacks the necessary measure for its implementation and is therefore meaningless, no archeological survey of the whole project having been disclosed in the CDP application record. Condition 8, adopted in the CPA’s Decision, thus is void.” However, the County’s November 2021 findings for approval of the project as consistent with the archaeological resources protection policies of the certified LCP state, in part:

“Caltrans prepared an Archaeological Survey Report (ASR) for the project area in January 2018. The report was provided to Mendocino County and to Sonoma State University’s Northwest Information Center (NWIC) for review. The ASR concludes that “as a result of the background research, literature review and pedestrian survey, no new or previously identified cultural resources are present within the Area of Potential Effect...[and] the project has no potential to affect historic properties.”

On August 30, 2021, NWIC responded that after reviewing the available documentation provided for this project and for other projects in the area that no additional studies were warranted. NWIC did provide recommended conditions of approval to be included with any approved Coastal Development Permit. NWIC recommended that the discovery of cultural or archaeological resources during construction are subject to the procedures outlined in the standard “Discovery Clause.”

Additionally, NWIC recommended Mendocino County contact local Native American tribes regarding traditional, cultural, and religious heritage values. The County referred the project to the Cloverdale Rancheria, Redwood Valley Rancheria, and the Sherwood Valley Band of Pomo Indians for additional comment. The notified tribes did not provide responses to the requests for comment.

With the NWIC recommended conditions of approval (Condition 8), the project is consistent with Mendocino County’s policies for protection of paleontological and archaeological resources.”

Thus, there is a high degree of legal and factual support for the County’s determination that the project as conditioned includes reasonable mitigation measures to protect archaeological resources as required by the LCP.

With respect to Condition 9, as another example, the appeal asserts the condition is “speculative, lacks requisite specificity for analysis of project component consistency with the LCP and Coastal Act.” However, regarding debris disposal, the County’s November 2021 findings for approval of the project state in part:

“The project will result in a total export of 10,217 cubic yards of material. The applicant states that “excess material would be hauled off site to an approved disposal site under the responsibility of the contractor.” This is standard Caltrans practice where the contractor becomes the owner of the material and is responsible for appropriate disposal at an authorized site with its own environmental clearance. The contractor is required to provide proof of compliance to the Caltrans Resident Engineer (RE) prior to construction close out. The assurance of appropriate export disposal is identified in Caltrans Specifications and construction contract documents and the contractor is required to furnish proof of compliance, which shall be provided to the County in addition to the Caltrans RE, as recommended in Condition 9.”



Thus, there is a high degree of legal and factual support for the County's determination that the project as conditioned includes adequate measures to ensure LCP-consistent debris disposal.

For each of the 11 adopted conditions of approval, the County adopted findings to support its decision that the development as conditioned conforms with LCP requirements. In contrast, the appeal does not cite any specific LCP policy inconsistencies in its assertions that the conditions of approval are insufficient and "void". Therefore, there is a high degree of legal and factual support for the County's approval as conditioned.

### **Invalid Contentions**

#### **a. Contention Regarding 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 K.

#### **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, the County substantially complied with the noticing requirements of the LCP and notified 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.

#### **b. Contention Regarding CEQA**

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<sup>1</sup> The County erred slightly 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.

The appeal contends the project does not qualify for the CEQA categorical exemption under which Caltrans filed the project.

### Applicable LCP Policies

See Appendix L.

### 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. This contention in the appeal does not assert that the approved project is inconsistent with the standards of the certified LCP but rather relates to Caltrans' process and compliance with an entirely different statute. Thus, the Commission does not have authority to review and/or invalidate Caltrans' CEQA determination, which was adopted by Caltrans as lead agency for the project for purposes of CEQA. Were the Commission to find substantial issue and accept the appeal for a full de novo review of the project, it would be required as a *responsible agency* to make its own CEQA-related determinations pursuant to its certified regulatory program, pursuant to Section 13096 of the Commission's regulations. These provisions are not applicable here, because the Commission has not accepted the appeal and is not approving a CDP for development. Although not a valid ground for appeal, the County reasonably relied on Caltrans' exemption determination, made the required CEQA finding in its decision, and addressed the relevant Coastal Act policies in its approval of the CDP. Therefore, this contention is not a valid ground for appeal and does not raise a substantial issue of LCP conformance.

## **2. Conclusion**

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable, such as in this case) conformance. The Commission has in the past and, pursuant to section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are "substantial": (1) the degree of factual and legal support for the local government's decision; (2) the extent and scope of the development as approved or denied by the 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. The investigations and analyses submitted as part of Caltrans' CDP application support the County's decision that the approved development as conditioned will not result in significant degradation of ESHAs, visual resources, or public access and will be safe from geologic hazards. The contentions concerning land division, application completeness and consistency, unpermitted tree removal, and highway capacity do not undermine the high degree of legal and factual basis for the County's approval. The Commission finds there is substantial factual and legal support for the County's decision. As the County thoroughly addressed the relevant coastal resource concerns, the Commission assigns more weight to this factor in the substantial issue analysis.

As to project scope, the approved development is limited to an approximately 0.52-mile road safety improvement and drainage rehabilitation project, primarily involving limited widening of existing paved roadway surfaces, which will not increase capacity for motor vehicles but will provide improved safer access for cyclists, and replacements of existing drainage systems associated with the highway. Thus, the extent and scope of the project are relatively limited 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 a designated Highly Scenic Area under the LCP, the project involves limited widening of existing paved roadway surface areas, the new drainage system features will be minimally visible from public viewpoints, the amount of grading has been minimized, and the conditions of approval require disturbed areas to be revegetated.

Fourth, the County's decision does not involve any novel LCP interpretive issues and would not set an adverse precedent for future interpretations of the County's LCP, especially 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 (primarily geologic hazards and protection of visual resources, ESHA, and public access), as previously discussed, there is a high degree of legal and factual support that 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, will improve public access at this location, and will be safe from geologic hazards.

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 the CDP does not raise a substantial issue of LCP conformance. For the reasons stated above, the Commission finds that Appeal Number A-1-MEN-22-0014 does not present a substantial issue with respect to the

A-1-MEN-22-0014 (Caltrans Navarro Ridge Safety Project)

grounds upon 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.