

## CALIFORNIA COASTAL COMMISSION

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# Th13c & Th14a

Appellate Jurisdiction (A-1-MEN-04-036)

Filed: 6/17/04

49<sup>th</sup> Day: waived 6/22/04

Retained Jurisdiction (CDP No. 1-05-036)

Submitted: 8/05/05

Filed: 8/31/05

(Application No. 1-03-038 withdrawn 1/20/05)

Staff: M. Faust; V. Metz

Staff Report: 9/01/05

Hearing Date: 9/15/05

Commission Action:

## **STAFF REPORT: RETAINED & APPELLATE JURISDICTIONS**

### **SUBSTANTIAL ISSUE & DE NOVO & REGULAR PERMIT ITEMS**

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: **A-1-MEN-04-036**

APPLICANT: California Department of Transportation

#### **APPELLATE JURISDICTION PROJECT (as approved):**

Construct new approximately 550 ft. long, 44 ft. wide Greenwood Creek Bridge on State Highway Route 1, and realign highway approximately 500 linear feet north, and south, to connect the bridge, undertake approximately 45,720 cu. yds. total grading (27,860 cu. yds cut, 10,200 cu. yds. fill, and 17,660 export) and up to 10,000 cu. yds. demolition debris, and construct 3 vertical concrete retaining walls totaling approx. 900 linear feet and rising to a maximum height of 30 feet above finished grade. New bridge to include two 12-ft.-wide traffic lanes and two 8-ft.-wide paved shoulders with no pedestrian separation, with taper back to 4-ft.-wide shoulders after short transition off bridge, with Type 80 concrete guard rail topped by galvanized bike rail on the bridge. Total approved project length estimated at approximately 1,550 linear feet of State Highway Route 1 (not shown on plans).

LOCATION: One-half mile south of Elk, southern Mendocino County, at post mile 33.6

APELLANTS: Ted Berlincourt, Norman de Vall, Peter Lit,  
Peter Talbert, & J. David Colfax

RETAINED JURISDICTION PROJECT (as proposed August, 2005):

Construct new, widened section of State Highway Route 1 on new alignment, including new approx. 44-ft.-wide bridged crossing of Greenwood Creek 50 feet inland (upstream) from existing bridged crossing (inland edge of each, including 6-ft.-wide separation), for a total new, approximately 2,500-linear-ft. highway section east of the existing roadbed, to the point of conformity north and south, undertake approx. 22,759 cu. yds. total grading (4,718 cu. yds. cut, 11,380 cu. yds. fill, and 6,661 cu. yds. export) and construct 3 vertical concrete retaining walls totaling approx. 670 linear feet and rising to a maximum height of approx. 26 feet above finished grade. Demolition and disposal of up to 10,000 cu. yds. of debris from abandoned bridge and highway. New bridge includes two 12-ft.-wide traffic lanes and two 8-ft.-wide paved shoulders with no pedestrian separation (total width approx. 44 ft), and Type ST20 bridge rails (visual analysis not provided, height estimated at 4.5 ft.). Existing bridge includes two 11-ft.-wide traffic lanes and two 2-ft.-wide paved shoulders, and two 2-ft.-wide elevated curbed walkways for pedestrians (total width approx. 30 ft. outside-outside).

**MOTIONS & RESOLUTIONS:** (A) **Substantial Issue: Page 9**  
(B) **de novo: Pages 9 and 10**  
(C) **CDP Application No. 1-05-036: Pages 10 & 11**

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**STAFF RECOMMENDATION:**

The staff recommends that the Commission:

- (1) determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed, because the appellants have raised a substantial issue with the local government's action and its consistency with the policies and provisions of the certified LCP and with the coastal access and recreation policies of Chapter 3 of the Coastal Act;
- (2) after *de novo* public hearing, which may be held immediately following the determination that substantial issue exists, or at a future meeting, **deny the portion of the project as proposed that is located in the Commission's appellate jurisdiction** on the basis that the proposed project is inconsistent with the County's certified LCP and with the public access and recreation provisions of the Coastal Act, and further, the proposed project does not comply with the requirements of the California Environmental Quality Act

because feasible mitigation measures and/or alternatives exist which would substantially lessen the significant adverse effects of the development on the environment, and because there are cumulative adverse impacts of the proposed project and related actions made necessary by the project (such as utility relocations and water line excavations) that have not been adequately disclosed nor the associated individual and cumulative environmental impacts on the environment evaluated; and

- (3) after public hearing, which the applicant requests be held at the same hearing as item (2) above, **deny the portion of the project as proposed that is located in the Commission's retained jurisdiction** on the basis that feasible alternatives and mitigation measures exist, but have not proposed by the applicant, that would render the project proposed by the applicant consistent with the applicable policies and provisions of the Coastal Act; and further, because feasible mitigation measures and/or alternatives exist which would substantially lessen the significant adverse effects of the development on the environment, and because there are individual and cumulative adverse impacts of the proposed project and related actions made necessary by the project (such as utility relocations and water line excavations) that have not been adequately disclosed nor the associated individual and cumulative impacts on the environment evaluated.

It is the opinion of staff that a range of feasible project alternatives (most importantly, variations of an alternative identified by Caltrans generally as Alternative 2) and feasible mitigation measures exist that could resolve the most significant concerns raised by the project, and minimize adverse environmental effects.

### **Notes**

The link at left takes you to Exhibits 1, 1a and 11.

1. **Combined Exhibit Package**

To conserve resources, one set of Exhibits has been provided for Agenda Items Th13c and Th14a; however additional Exhibits will be presented in an addendum.

2. **Appeal Process**

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within one hundred feet of a wetland or stream or three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county.

The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The approved development is appealable to the Commission because it is located between the sea and the first public road paralleling the sea as well as within 100 feet of a wetland, and is a major public works project.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises substantial issue and the Commission may proceed to its *de novo* review. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would then hold a full (*de novo*) public hearing on the merits of the project. This *de novo* review may occur at the same or subsequent meeting.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellants and persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

*De novo* hearing: The applicable test for the Commission to consider is whether the development is in conformity with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

Any interested party may testify before the Commission during the Commission's appellate jurisdiction *de novo* hearing.

### 3. Filing of Appeal

The County of Mendocino approved Coastal Development Permit CDP #26-03 on June 1, 2004. The Commission received a Notice of Final Local Action from Mendocino County on June 15, 2004. The appellants filed their appeal to the Commission in a timely manner on June 17, 2004, within 10 working days of receipt by the Commission

of the Notice of Final Local Action. The applicant executed a 49-day-waiver on June 22, 2004.

4. Withdrawal of former CDP Application No. 1-03-038 January 2005 and submittal of new CDP Application No. 1-05-036 in August 2005

Retained jurisdiction (regular permit) hearing: The applicable test for the Commission to consider is whether the development is in conformity with the applicable policies of the Coastal Act.

Any interested party may testify before the Commission during the Commission's retained jurisdiction hearing concerning Coastal Development Permit Application No. 1-05-036.

Application review; background

Caltrans originally submitted an application to the Commission for the retained jurisdiction portion of the subject project on June 5, 2003. The County review was concurrent, the County approved the appellate jurisdiction portion of the project in June, 2004 and that project was appealed (A-1-MEN-04-036) as noted above.

The Commission staff review of the pending application indicated that the application lacked a complete project description, including adequate project and grading plans, and did not include an adequate or accurate delineation of wetlands or adequate baseline data on the extent of sensitive habitat and species within the project area, or analyze accurately the extent of temporary and permanent impacts that could be caused by the project if constructed as proposed. In addition, the staff concluded that the application lacked an adequate analysis of project alternatives, including an evaluation of the extent of environmental impacts that would be caused by various alternatives in comparison with Caltrans' proposed project.

These concerns were the subject of substantial correspondence and numerous meetings of Commission staff with Caltrans during the continuing review of the application, through September 2004. Then, without resolution of the staff concerns regarding the extent of information missing from the pending application, Caltrans staff made a request during a meeting with staff on September 21, 2004 for a hearing on the project as soon as possible. Staff advised Caltrans that a hearing would be scheduled but the likely recommendation would be denial of the proposed project, in part due to the significant lack of information that remained, and the resultant inability of staff to adequately review the project's potential impacts on coastal resources.

In response, Caltrans provided a letter dated October 17, 2004, requesting that the appeal and retained jurisdiction coastal development permit application remain together on a future hearing agenda and acknowledged that additional information was being prepared by Caltrans. The letter indicated that no further hearing request would be made by Caltrans before December 21, 2004. (Exhibit 13).

Subsequently, in a letter dated January 6, 2005 and received on January 10, 2005, staff received additional information from Caltrans with a cover letter stating that:

“...Caltrans is submitting this information with the understanding that every effort will be made to process our permit application at the February 2005 Coastal Commission meeting.” (Exhibit 13)

Staff informed Caltrans that the retained and appellate jurisdiction projects would be placed on the Commission’s February agenda as requested, though the information submitted by Caltrans was deemed insufficient by staff to resolve the concerns about the accurate delineation of wetlands, the extent of project impacts on coastal resources, and the evaluation of alternatives.

Caltrans then submitted a letter dated January 20, 2005 withdrawing the pending application but only upon the condition that when a new retained jurisdiction application was submitted subsequently, that the appellate and retained jurisdiction projects be placed on the same agenda. Caltrans staff indicated that the new application would arrive within a few months or less. (Exhibit 13)

Commission staff continued to advise Caltrans concerning methods of accurate wetland delineation and offered detailed advice on other information that would be necessary to ensure that the new application could be filed (See Exhibits 7, 20). Staff also met with Caltrans staff on May 4, 2005 in an attempt to resolve issues raised by the proposed project that remained relevant to the pending new application, and to discuss information requirements for the new application Caltrans was preparing. Caltrans staff indicated during the meeting that the agency was retaining an outside consulting firm to prepare the wetland delineation and the new application (URS) and that the new application was expected to be finalized the next month.

During the May meeting, Commission staff encouraged Caltrans staff to prepare a contingency plan for interim reinforcement of the Greenwood Creek Bridge and to consider construction of a temporary project to secure the bridge for the forthcoming estimated four years of startup (condition compliance, contract preparation and bid, etc.) and construction (due to seasonally restricted work windows), assuming that a new project description resolving outstanding issues on re-submittal would be favorably considered. Commission staff suggested that a summer installation of temporary protective measures would minimize impacts within Greenwood Creek Stream Corridor, which typically contains low flows during the summer. Caltrans staff responded that there was little agency interest in expenditures that would not make permanent improvements.

Caltrans also informed Commission staff during the meeting that Caltrans had secured \$20,000 in special funding to place “movement sensors” on the Greenwood Creek Bridge piers. Caltrans staff confirmed in the meeting that the pending Greenwood Creek project application might be submitted as a “seismic retrofit program” project. The statute that provided for that program expired on June 30, 2005 however, and with

it that option. Caltrans informed Commission staff, however, during a conference on August 15, 2005 concerning a different pending Route 1 bridge project in Mendocino County that was previously identified as a "seismic retrofit project" that Caltrans anticipated urgency legislation by September 13, 2005 to reinstitute the seismic bridge program. (The previous seismic retrofit statute minimized the time for Commission review and action to 15 working days from submittal of a coastal permit application, afforded the applicant an appeal to an appointed state board that could overturn any Commission action--including removing imposed conditions, and rendered such projects CEQA-exempt).

On August 5, 2005 staff received a new coastal development permit application (Application No. 1-05-036, pending) accompanied by a cover letter dated August 3, 2005 requesting an August 2005 hearing. (Exhibit 13).

The new application acknowledged that the environmental impacts of Caltrans' proposed project significantly exceed the level of environmental impacts of one or more of the rejected alternatives that were not adequately evaluated previously. The application continues to propose the same alternative as previously proposed (construction of a new, wider section of State Highway Route 1 east of the existing section, or what was known as Alternative 3 in Caltrans' environmental review documents). The application concludes that developing new plans for a bridged project more closely aligned with the existing footprint (Alternative 2) would require 4 or 5 more years to complete and that using an inflation escalator for costs of the proposed project during the 5 year interval, the costs would increase by \$5 million thereby rendering the less environmentally damaging alternative "impracticable."

Thus, Caltrans estimates in the new coastal development application that even though environmental impacts would be lessened through construction of a different project alternative, 4-5 years would be required to develop new plans and applying an inflation escalator to present day costs (including, it appears, a \$1 million "cost" for public inconvenience due to traffic control measures assigned primarily to Alternative 2), would increase project costs by \$5 million compared to the present estimate of \$10 million for the project Caltrans proposes. The new application does not include a project description component for the extensive utility line relocations, and water district line relocations Caltrans has indicated that Alternative 3 will require, and suggests, but does not include in the project description, that Caltrans tentatively plans to dispose of demolition debris at a ranch southeast of the project site, in the coastal zone of Mendocino County.

However, adequate assessment of true mitigation costs for the substantially increased impacts to coastal resources that accrue toward Alternative 3 have not been calculated by Caltrans (see also discussion of mitigation costs in Exhibit 11). The new application does not include a mitigation plan for Alternative 3, other than revegetating disturbed areas on site after construction is completed. Thus, a true cost comparison of the feasibility of other project alternatives that could be weighed against Alternative 3 is not possible (though such an analysis was previously requested by Commission staff).

Nevertheless, based on Caltrans' assumptions as stated in the new application, an analysis was undertaken by the Commission staff biologist (Exhibit 11). The Commission analysis concludes that feasible alternatives to Caltrans' proposal exist.

In addition, though extensive utility relocations would be required for Alternative 3 (the proposed project) no cost for the relocations has been added to the analysis of related project costs, and the environmental impacts of such relocation may significantly increase the cumulative impacts of the proposed project on sensitive coastal resources, including habitat and visual resources. The extent of the need for utility relocations and the potential associated cost to mitigate such impacts should be considered in determining the feasibility of various project alternatives.

On August 16, 2005 Commission staff advised Caltrans that the new application did not significantly resolve the concerns raised previously, and moreover indicated that the adverse environmental impacts of the alternative preferred by Caltrans now appeared more substantial than the level of impacts posed by some of the alternatives Caltrans had rejected. Commission staff also informed the project manager that unless Caltrans was willing to modify the project, that the likely staff recommendation to the Commission would remain that the Commission deny the project as proposed. At the time, Caltrans responded that regardless of the staff recommendation, Caltrans would still prefer the next available hearing, in September. Caltrans staff has now indicated that they would prefer to postpone the hearing. The September hearing, which is held in Eureka only once a year, would make it possible for the community members of the Elk area to attend the hearing, compared to the distance to the two subsequent meeting locations (San Diego and Los Angeles, in October and November, respectively).

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**I. MOTIONS AND RESOLUTIONS:**

**A. SUBSTANTIAL ISSUE**

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

**MOTION:**

***I move that the Commission determine that Appeal No. A-1-MEN-04-036 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.***

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the



local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-1-MEN-04-036 presents 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 project with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

**B. DE NOVO**

**MOTION:**

***I move that the Commission approve Coastal Development Permit A-1-MEN-04-036 for the development proposed by the applicant.***

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit as approved by the County of Mendocino and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the appointed Commissioners present.

**RESOLUTION TO DENY CDP A-1-MEN-04-036**

The Commission hereby denies a coastal development permit for the proposed development and adopts findings set forth below on the grounds that the development does not conform with the certified County of Mendocino LCP, is located between the sea and the nearest public road and does not conform with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because feasible mitigation measures and/or feasible alternatives exist which could substantially lessen the significant adverse effects of the development on the environment.

**C. RETAINED JURISDICTION REGULAR COASTAL DEVELOPMENT PERMIT:**

**MOTION: *I move that the Commission approve Coastal Development Permit No. 1-05-036 as proposed by the applicant.***

**STAFF RECOMMENDATION of DENIAL:**

Staff recommends a **NO** vote. Failure of this motion will result in the denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

## **RESOLUTION TO DENY THE PERMIT:**

The Commission hereby **denies** Coastal Development Permit as proposed by the applicant pursuant to application 1-05-036 and adopts the findings set forth below on grounds that the development does not conform with the applicable policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because feasible mitigation measures and/or alternatives exist which could substantially lessen the significant adverse effects of the development on the environment.

## **II. FINDINGS AND DECLARATIONS: SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

### **A. APPELLANT'S CONTENTIONS**

The Commission received a timely appeal of the County of Mendocino's June 1, 2004 decision to approve the coastal development permit (Mendocino County CDP 26-03) from appellants Ted Berlincourt, Norman de Vall, Peter Lit, Peter Talbert, & J. David Colfax. The applicant executed a 49-day-waiver on June 22, 2004. (Exhibits 3 and 4)

County Coastal Development Permit 26-03 (A-1-MEN-04-036) approves that portion of a project proposed by the California Department of Transportation (hereinafter "Caltrans") that is situated within the area of Mendocino County's delegated coastal development permit jurisdiction. A portion of the physical project (the bridged section) also physically traverses the Commission's area of retained jurisdiction within the Greenwood Creek corridor (CDP Application No. 1-05-036, Agenda Item 14a).

Thus, while various elements of the physical project straddle the Commission's appellate and retained jurisdictional boundaries, the project components are inextricably linked physically, and come to the Commission joined as items Th13c and Th14a on the September 15, 2005 agenda. The appellants do not distinguish particularly between the component in the Commission's retained jurisdiction and the portion approved by the County. Caltrans has requested that the Commission keep the appellate and retained jurisdiction items together on the same agenda, which helps the Commission to consider the project as a whole. However, for purposes of the substantial issue determination, the findings address the elements of the project to which the appellants object in the appeal that arise in the Commission's area of appellate jurisdiction rather than the elements of the project that arise in the area of the Commission's retained jurisdiction (CDP Application No. 1-05-036, Agenda Item 14a).

Caltrans proposes to construct a new section of State Highway Route 1, including the Greenwood Creek crossing, at the south end of Elk in southwestern Mendocino County. The County's permit and related documents are set forth in Exhibits 5 and 6.

The appellants object primarily to the scale of the new highway section, the substantial landform alteration and vegetation removal necessary to achieve the widening and relocation proposed by Caltrans, and the proposed installation of concrete retaining walls along the newly cut slopes on the relocated highway shoulders, where forested and naturally vegetated slopes presently exist. The appellants contend that the project is oversized for the scenic, rural setting in which it is proposed and that the physical changes of the project will be out of character with the area and with the northern end of the affected Route 1 section which presently serves as the "gateway" to the entrance to the village of Elk and to the adjacent Greenwood Beach Creek State Park.

The appellants further object to Caltrans' choice of the proposed project alternative when one or more alternatives exist that the appellants contend would substantially reduce or avoid the need to undertake the significant landform alteration Caltrans proposes, and that would potentially avoid most of the construction of vertical concrete retaining walls.

The appellants note that the public notice provided by Caltrans prior to the County's approval of the project (Public Notice, Environmental Assessment, 2002, Exhibit 1A) only identified the project as the "Greenwood Creek Bridge Replacement Project in Mendocino County" and with the statements excerpted below minimized the extent of the non-bridged sections of the project. The appellants indicate that the project description only stated that:

"The California Department of Transportation (CALTRANS), and the Federal Highway Administration (FHWA), are conducting environmental studies and preparing the preliminary design to replace the Greenwood Creek Bridge. The bridge rails and shoulder width will be upgraded to enhance safety for bicycle traffic. In addition, retaining walls will be constructed along the approaches to minimize construction impacts."

The appellants note that the public notice also stated that:

"Caltrans and FHWA have studied the effects that the proposed project may have on the environment. The report that explains the project and our studies is called an Environmental Assessment/Initial Study/(EA/IS). Our studies show that the project will not significantly affect the quality of the environment within the project limits. Mitigation measures are proposed for minimal impacts. This notice is to inform you of the preparation of the EA/IS and its availability for your review from May 20, 2002 until June 20, 2002..."

The appellants further note that in a public workshop brochure distributed by Caltrans prior to the "Greenwood Creek Bridge Informational Workshop" June 6, 2002 at Greenwood Community Center in Elk (and provided to staff by appellants, Exhibit 1A), the following statements are made:

**“NEED AND PURPOSE.** The purpose of this project is to address a structurally deficient bridge due to potential scour (erosion) conditions. These conditions are threatening the bridge substructure. In addition, the existing roadway alignment does not meet current design standards. The proposed project will also increase shoulder width from one foot to eight feet, increase stopping sight distance and upgrade bridge rail protection to provide enhanced safety for pedestrians and bicycle traffic. As a result of this project, the traveling public will enjoy a safer and wider bridge.”

**“PROJECT DESCRIPTION.** Greenwood Creek Bridge is located on Route 1. Route 1 is the lifeline of the Mendocino coast and is part of the Pacific Coast Bike Route. Caltrans has identified Greenwood Creek Bridge as “Scour Critical.” Bridge scour can occur when the creek floods and erodes the bridge footings and piers. Consequently, Caltrans has made this project a priority. “

**“ALTERNATIVES. 1. No Build. 2. Widen and Rehabilitate the existing bridge.** (\$6 to \$8 million). The existing bridge would be widened 14 feet (40 feet wide between bridge rails with two-12 feet lanes, and two-8 feet shoulders). Bridge Rails would be upgraded to current standards by using type 80 see-through concrete rail with hand railing for bicycle traffic. The centerline of the bridge would be shifted approximately seven feet east. Route 1 would be realigned to the east to connect the approaches of the widened ridge. The realignment would extend approximately 600 feet north and south of the bridge. At least three retaining walls would be built along the bridge approaches to minimize construction impacts due to the roadway realignment. Extensive abutment work would be required to repair existing shear cracks and the entire bridge deck would need to be replaced. The existing footings and piers would be strengthened and seismically retrofitted. Four additional piers would be constructed to accommodate the bridge widening. **3. Replace existing bridge (preferred).** (\$5 million) The new bridge will be 40 feet wide between bridge rails with two-12 feet lanes, and two-8 feet shoulders. Bridge Rails will be upgraded to current standards by using type 80 see-through concrete rail with hand railing for bicycle traffic. The centerline of the new bridge will be shifted approximately 40 feet east of the existing bridge. Route 1 will be realigned to the east to connect the approaches of the new bridge. The realignment will extend approximately 600 feet north and south of the bridge. Up to three retaining walls will be built along the bridge approaches to minimize construction impacts due to the roadway realignment.

The Project Development Team recommends Alternative Three as the preferred alternative for further detail study in the Draft Environmental Document. While Alternative three has been selected as the preferred alternative by the project development team, final selection of the preferred alternative will not be made until after the public review period.”<sup>1</sup>

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<sup>1</sup> The Project Design Team had been recommending the eastward alignment (only) since 1998, as shown in Exhibit 21, without the benefit of adequate baseline data on the comparative levels of adverse environmental affects that would have been available to the design team if a more robust preliminary alternatives analysis had been provided for their consideration before selecting a preferred alternative.

The appellants note that as set forth above, Caltrans states that Alternative 2 would only move the new bridge centerline 7 feet east of the existing bridge centerline (compared to a move identified in the workshop brochure of 40 feet east for the preferred Alternative 3) *yet requires the same amount of new highway construction, landform alteration and retaining wall construction to the north and south of the bridged portion.* The appellants also assert that Caltrans indicated that only an alignment to the west would have avoided the new highway sections with retaining walls but that this alignment would not be acceptable to State Parks and therefore was not identified as an alternative.

In the version of the project approved by the County, over 40,000 cubic yards of total grading were proposed, and construction would include not only landform alteration, but the installation afterward of retaining walls that would replace formerly natural, forested slopes along almost 900 linear feet of the new highway divided among three wall sections that would rise to a maximum height of up to 30 feet above finished grade in some locations.<sup>2</sup> Finally, and although Caltrans did not finalize the environmental document until December 2002, the workshop brochure states:

“Caltrans and FHWA have studied the effects the proposed project may have on the environment. The report that explains the project and our studies is called an Environmental Assessment/Initial Study (EA/IS). **Our studies show that the project will not significantly affect the quality of the environment within the project limits.**”

The appellants note that it was not publicly disclosed by Caltrans prior to County permit approval, that the actual length of the realigned new highway necessary to match the bridged section under Alternative 3 (the project approved by the County) was actually almost 500 feet longer than disclosed, at each end of the project, for a total project length of over 2,000 feet (of which the bridged section is only approximately 540 linear feet), or that there would be paved shoulders as wide as 8 feet (or more) off the bridge, or widened maintenance parking turnouts on the northern inland-side shoulder up to 19 feet wide. The appellants state that Caltrans indicated that only a short distance of off-bridge taper would be required to reduce the proposed 8-ft.-wide paved shoulders to 4-ft.-wide shoulders. According to the appellants, and confirmed by County staff on request, no to-scale site plans, elevations, or grading plans were provided by Caltrans in support of the County application, or presented at the public hearings.

The appellants further note that “Alternative 2” as described above, which includes using the existing Route 1 alignment for a widened bridge is stated as also requiring the construction of the same extent of retaining walls called for in Alternative 3. The

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<sup>2</sup> According to County staff, Caltrans did not provide to-scale plans to the County that showed that the total length of the alignments north and south of the approximately 540-ft. new bridged section would add as much as 2,000 additional linear feet of new highway construction to the point of conformity north and south of the project area, and significantly wider paved shoulders than Caltrans had represented at the time of County approval.

appellants state that Caltrans claimed that the retaining walls could only be avoided by a western alternative that Caltrans rejected due to the proximity of Greenwood Creek Beach State Park. (Staff note: Caltrans subsequently informed Commission staff during review of previously withdrawn CDP Application No. 1-03-038 that Alternative 2, or versions thereof, would likely not require any retaining walls except perhaps one that Caltrans proposed for the relocation of the water district access road that leads to the area below the existing bridge, and that every 4 feet of new project width equates with approximately 10 percent length and 10 percent width of the retaining walls).

Finally, the appellants specifically contend that the County's approval of CDP 26-03 is inconsistent with a number of policies and provisions of the certified LCP that protect the special character of unique coastal communities, including Elk, and that protect the visual integrity and quality of the designated highly scenic corridors in rural Mendocino County, including the proposed project location.

The appellants also contend that the project as proposed is inconsistent with the standards for development of Route 1 set forth in the certified LCP, including policies that limit the expansion of State Highway Route 1 in scenic, rural areas of Mendocino County.

The appellants further contend that alternatives and/or mitigation measures exist that would avoid or eliminate most of the proposed project's permanent adverse impacts on coastal views and the community character of Elk, but that the County approved CDP 26-03 without adequately considering these alternatives or mitigation measures, which were eliminated from consideration, minimized, or erroneously represented by Caltrans in the supporting environmental documents submitted for consideration when the subject coastal development application was submitted to Mendocino County.

## **B. LOCAL GOVERNMENT ACTION**

On June 1, 2004 the County of Mendocino approved Coastal Development Permit No. CDP 26-2003 (Caltrans) (Exhibits 5 and 6). The CDP was approved by the County's Coastal Permit Administrator and no further appeals (without fees) were available at the local level. Appeal to the County Board of Supervisors requires payment of a substantial processing fee; thus, the appellants chose to timely appeal the Coastal Permit Administrator's approval of CDP 26-2003 directly to the Coastal Commission. Therefore, neither the Mendocino County Planning Commission nor the Board of Supervisors considered CDP 26-2003.

The subject development was approved by the County with eight (8) standard conditions and three (3) special conditions. The Special Conditions are as follows (the Special Conditions are also included in Exhibit 5 (see also Exhibit 6), which contains the County's staff report and subsequent County documents memorializing the inclusion of Special Conditions 2 and 3 as conditions of approval:

Special Condition One (1): Pursuant to permit procedures of the Mendocino County Air Quality Management District, Caltrans shall contact the District prior to undertaking any development to address the following issues: lead based paint, fugitive dust and the use of any stationary onsite internal combustion engines over 50 horsepower.

Special Condition Two (2): Caltrans shall apply and obtain a Flood Hazard Zone Development Permit for the project. The first portion of the application packet must be completed prior to commencing construction. Upon completion of construction the second portion of the permit must be completed. The second section with post construction certification must be submitted to the Department of Planning and Building Services for approval.

Special Condition Three (3): Retaining walls shall have an appearance similar to the top photograph of Figure D3 of the Environmental Assessment/Initial Study dated December 2002.

In its action on the project, the County's Coastal Permit Administrator approved the permit and certified the Negative Declaration, dated December 2002, and the Subsequent Negative Declaration, dated January 2004, both prepared by CALTRANS, based on his findings that impacts had been adequately mitigated below a threshold of significance, and that the development is consistent with the County's certified LCP (Exhibits 5 and 6).

A Notice of Final Local Action of the City's approval of the permit was received by Commission staff on June 15, 2004. The permit was appealed to the Coastal Commission in a timely manner by the appellants on June 17, 2004, within the requisite 10-working-day period after receipt by the Commission of the Notice of Final Local Action. A copy of the local record was received by the North Coast District Office on June 29, 2004. The applicants waived the 49-day deadline for the Commission to set a hearing on the appeal on June 22, 2004.

## **C. PROJECT LOCATION, SETTING AND DESCRIPTION**

### **Project Location; Setting**

This project concerns a Caltrans proposal to construct a new, wider bridged and non-bridged section of State Highway Route 1, on a new alignment including the Greenwood Creek crossing, in a highly scenic rural area, just south of the village of Elk, in southern Mendocino County. The proposed project is located immediately adjacent to and east of Greenwood Creek Beach State Park. The north end of the affected Route 1 section provides the scenic gateway to the picturesque village of Elk, where Route 1 remains the "Main Street" of the historic community.

The certified Mendocino County Local Coastal Program (LCP) designates the project area (both east and west of Route 1) as "Highly Scenic." Greenwood Creek Beach

State Park is immediately west of the site, which is otherwise surrounded by riparian woodlands, pasturelands, ocean bluffs, beaches, and sparse residential development. The California Coastal Trail is located on Route 1 in this section, and the route is also designated as a part of the Coastal Bike Route. The LCP notes that this section of State Highway Route 1 is the most lightly traveled section south of Westport (where Route 1 heads inland toward Leggett/U.S. Highway 101). Thus, the section of Route 1 just south of Elk represents one of the truly rural, scenic, two-lane stretches of coastal Route 1.<sup>3</sup>

The certified Mendocino County LCP states (Section 4.10):

“... This (including Greenwood/Elk) planning area covers 12 miles of narrow coastal shelf and high bluffs interrupted only by deep gulches at Elk and Greenwood Creeks. The Coastal Element designates most of the planning area west of Highway 1 as a “highly scenic area” within which development “shall be subordinate to the character of its setting” as required by Section 30251 of the Coastal Act. Only two exceptions exist west of Highway 1: The Rural Village of Elk and a small residential area known as Little Geyserville. **The town of Elk is a “unique community,” so distinctive as to make this portion of the coast worth a journey to many visitors.**

**“.... Traffic on this segment of Highway 1 is lighter than at any other location south of Westport. The plan calls for widening narrow sections to provide 12-foot vehicle lanes and 4-foot shoulder for bicycles. At some locations, construction of this 32-foot road section may so disrupt the environment that it should not be built.”**

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<sup>3</sup> The California Coastal Act, Section 30254 (Public works facilities) states: New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that **it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road.** Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development. (emphasis added)



Views of the bridged section of Route 1 at the Greenwood Creek crossing are available at the Coastal Records Project website, which affords readers with internet access the ability to scan through adjacent images for views of adjacent stretches of Route 1:

Figure 1. Greenwood Creek Bridge, State Highway Route 1, at Elk, California.



Copyright 2002-2004 Kenneth & Gabrielle Adelman, California Coastal Records Project, quick search image 11798, to see this and adjacent areas of State Highway Route 1, see: <http://www.californiacoastline.org>

Figures 2 & 3 show the village of Elk, perched atop bluffs, as viewed from offshore, and a scenic view toward the coast from one of the small inns that serve coastal visitors and help to provide the economic base for the village, which is about a three-hour drive north of San Francisco and has fewer than 600 residents.

Figures 2 & 3. The village of Elk viewed from offshore, and blufftop views from Elk toward the Pacific Ocean.



The “Mendocino County Coastal Conservation Plan” dated April, 2003, prepared by Mendocino County Land Trust with project funding by the California State Coastal Conservancy states,

“Mendocino County’s coast exemplifies the state legislature’s definition of the coastal zone as a ‘distinct and valuable natural resource of vital and enduring interest to all people.’ (From California Coastal Act of 1976) Famous for its spectacular rocky shoreline, commercial fisheries, and productive forests, the Mendocino coast is also home to other ecological riches, from un-dammed coastal streams supporting endangered anadromous fish, to an unusually high diversity of rare species, to celebrated panoramic views along scenic Highway 1.

... Resources of the Mendocino coast are primarily threatened by human activities. The most significant threats include:

- Timber and agricultural practices which result in the impairment of water quality and the decline of salmonid and other aquatic species.
- Reduction in Late Seral Redwood/Douglas fir forest habitat and the decline of wildlife and aquatic species dependent upon this forest successional stage.
- Poorly designed or maintained roads, resulting in water quality impairment and the decline of salmonid and other aquatic species.
- Inappropriate development, resulting in fragmentation of sensitive habitats, deteriorated cultural and historic sites and scenic resources, and the loss of opportunities to provide public coastal access and California Coastal Trail connections.
- Decline in forest cover, and conversion of agricultural and forested lands to residential and other land uses.
- Highly concentrated and/or improperly managed public coastal access, resulting in the reduction and/or degradation of sensitive coastal habitats and species.

The Coastal Conservation Plan also notes that the project area is a potential linkage point for the California Coastal Trail. In addition, the Coastal Conservation Plan identifies the open, mostly undeveloped scenic panoramic views available from Highway 1 – including views other than toward the coast—as “Critical Scenic Resources.” The location of the project site immediately inland from Greenwood Creek Beach State Park further emphasizes the sensitive visual qualities of the project location.

Northbound travelers on the existing Route 1 come into view of the southern end of the village of Elk, a tiny Victorian-style village (population less than 600) surrounded by pastureland open spaces and forests, from the northern end of the Greenwood Crossing, which is located less than one-half mile north of the project site.

Signs posted at the north end of the existing bridged portion of the highway call for traffic to slow to 30 miles per hour at the north end of the Greenwood Creek Bridge. The speed limit remains at 30 miles per hour through Elk, though Caltrans and the community report that speeding through Route 1 within Elk is common.

The Mendocino County LCP identifies Elk as the coast's only linear historic town, and notes that Elk is a distinctive place, with unique community character and spectacular coastal vistas that draws coastal visitors. The village is home to a collection of inns, spas, restaurants, shops focusing on coastal visitors, and outdoor recreation outfitters. More than half of the 15 enterprises identified in Elk by Caltrans were directly related to coastal visitor serving businesses (CEQA Negative Declaration, 2002). The overall economy of Elk is almost completely dependent on tourism.

As noted above, the 2003 California Coastal Plan identifies the provision of visual buffers to rural villages as an important scenic preservation guideline. The northern end of the proposed project is known as the gateway to Elk, which is identified as a "rural village" in the County's certified LCP, and is noted as the coast's only linear, historic district. The California Coastal Plan emphasizes the need to maintain visual buffers surrounding the rural villages of the coast, including Westport, Cleone, Caspar, Little River, Albion, Elk, Manchester, and the historic district of Mendocino.

The Greenwood Creek crossing area contains a number of highly sensitive resources; for example, sensitive animal species that would potentially be impacted by the project include several species listed as Endangered and Threatened (i.e., Northern Spotted Owl, Marbled Murrelet, Point Arena Mountain Beaver, Tidewater Goby, Coho Salmon, and Northern California Steelhead), and several state Species of Special Concern (i.e., Red Tree Vole, California Red-legged Frog, Foothill Yellow-Legged Frog, and Tailed Frog). Red Tree Voles have been observed nesting and utilizing Douglas and Grand Fir trees proposed within the proposed project area (Red Tree Voles feed exclusively on the fir trees). In addition, the Purple Martin, a state Species of Special Concern was observed nesting under the bridge at Greenwood Crossing, and a bat species that is a Federal Species of Concern was observed feeding at dusk in Greenwood Creek in the proposed project area. Northern rough-winged swallows, which do not have special listing status, were also observed nesting under the bridge.

The biological resources of the proposed project area are evaluated in more detail in Exhibit 11, a memorandum of Commission staff biologist.

## **Project Description**

Note: The physical project traverses both the Commission's appellate and retained jurisdiction areas. In accordance with Caltrans' wishes, except for the Commission's determination on substantial issue, both jurisdictional areas are considered together herein, as items TH13c and TH14a on the Commission's September 15 agenda.

Project Purpose: Caltrans states that the purpose of the proposed project is to replace the existing Greenwood Creek Bridge located on State Highway Route 1 because the bridge has been rated scour critical, has substandard shoulder widths and requires a barrier upgrade and deck rehabilitation. Caltrans also indicates that the project would modernize the affected highway segment by providing greater sight distances for drivers, wider lanes, and wider shoulders, thus accommodating throughflow of vehicles at the higher speeds Caltrans finds modern drivers attaining while traversing the 1950s-vintage bridge (speed studies).

Summary description (See also Exhibit 8 for new CDP 1-05-36 application project description): Caltrans proposes to construct a new, widened approx. 2,000—2,500 linear-foot section of bridged and non-bridged State Highway Route 1 on a new alignment that includes the Greenwood Creek bridged highway crossing, and to demolish the existing highway to the point of conformity north and south.

The proposed project as approved by the County included up to 40,000 cubic yards of total grading, though preliminary new grading estimates submitted by Caltrans in August 2005 indicate that total grading may be 20,000 cubic yards. Construction of the vertical, faux-stone-finished concrete retaining walls were estimated at the time of County approval as comprising approximately 900 linear feet of wall divided among three retaining walls, with the highest wall rising to approximately 30 feet above finished grade. Presently Caltrans proposes approximately 650 linear feet of retaining walls rising to a maximum height of approximately 26 feet above finished grade.

Caltrans did not provide plans to the County indicating the width and length of paved shoulders off the proposed bridged crossing and along the approximately 1,500-2,000 linear feet of non-bridged new highway that would be constructed. Caltrans had notified Commission staff during past permit application review that the shoulders would range from 8 feet to 10 feet off the bridged section and on the non-bridged highway section, and that at the northern inland side of the northbound lane, a permanent maintenance turnout would be constructed of up to 19 feet in paved width, though this element may not be retained by Caltrans.

After the County's review, Caltrans also reduced the 10-ft.-wide paved shoulders adjacent to the vertical concrete retaining walls from 10 -ft.-wide as Caltrans proposed the shoulders in September 2004, to 8-ft.--wide. Caltrans would not reduce the paved shoulders further on the inland side and determined that the shoulders should be at least that width continuously between non-retained stretches as well. More recently, Caltrans did conceptually agree to reduce the 8-ft.-wide shoulders on the coastal side to only 4 ft. in width, but did not incorporate a pedestrian pathway on or off the bridged components that would provide a physical barrier between cars and pedestrians. Caltrans confirmed that the design speed for the proposed project is 55 miles per hour on the bridge, with reduced speed limits posted at the northernmost end for northbound traffic, remaining at 30-35 miles per hour, as with the existing bridged section. Caltrans declined to reduce the posted speed limits to that speed throughout the bridged section as an alternative to reduce new bridge increased widths somewhat.

The existing bridged section of the Greenwood Creek crossing is approximately 505 feet long and contains two 11-ft.-wide traffic lanes, two 2-ft.-wide paved shoulders, and two 2-ft.-wide elevated curb pedestrian walkways for a total outside-to-outside width of approximately 30 feet.

The proposed bridged section would be approximately 554 feet long and would contain two 12-ft.-wide traffic lanes, two 8-ft.-wide paved shoulders with no physical separation for pedestrians, for a total outside-to-outside width of approx. 44 feet. The upstream relocation of the new project footprint proposed by Caltrans is 50 feet to the east of the existing bridged highway section (this includes the 6-ft.-wide clear span separation between the existing and proposed bridge until demolition of the existing bridge and the approximately 44-ft. in width of the proposed installation).

The elevated two-ft-wide pedestrian curb on the existing bridge would be eliminated, but Caltrans has not included a physical barrier between pedestrians and traffic on the coastal side of the proposed 8-ft.-wide paved shoulders. As stated previously, the bridged crossing of Greenwood Creek and the paved shoulders within the proposed project area contain the California Coastal Trail. Caltrans indicates that public comments did not include requests for these features and Caltrans does not believe adequate demand exists to provide them in this rural location.

Additional project elements have either been added in new application No. 1-05-036 (Exhibit 8) or are noted in correspondence to other agencies thought not specifically incorporated into the proposed project description. These include changes in the exclusion of night lighting to allow night lighting, placement of a “temporary bridge” for as long as three years utilizing pile driving techniques to place the bridge in a different location than previously proposed and to leave the bridge in place rather than remove it seasonally to clear the structure from the creek during the rainy season, and other changes that Commission staff has overviewed and that Exhibit 11 addresses in more detail with regard to changes that may have impacts on sensitive resources. The new application file additionally identifies substantially more sensitive habitat, including impacts to wetlands and sensitive species, than had been disclosed in previous applications to the County or to the Coastal Commission. These changes are also discussed in more detail in Exhibit 11.

Finally, some aspects of the proposed project have been raised by Caltrans, Commission staff, and other parties (such as Elk County Water District) since the County’s approval of CDP 26-03 in June, 2004 and were not known to the appellants. These include (a) the location of a site for disposal of demolition debris at “RD Beacon” ranch property south of the proposed Greenwood Crossing (within the coastal zone, east of Route 1)—though this location is not included in any permit applications to date and no details concerning the disposal site have been submitted by Caltrans to Coastal Commission or to County staff concerning the potential disposal site, (b) the relocation of a number of utility lines and poles, including underground water lines owned by Elk County Water District that will require substantial grading within a stream corridor along the southerly portion of the

proposed project; (c) the need to relocate the new highway section to a location directly below a high-voltage transmission line corridor owned by PG&E though Caltrans has not produced evidence to date that PG&E accepts this new alignment as compatible with the continued location of the transmission towers and power lines; and (d) many changes proposed by Caltrans to mitigation measures (such as rainy season grading restrictions) previously relied on by Caltrans in the 2002 Environmental Documents included in attachments supplied with the new CDP Application No. 1-05-036 submitted on August 5, 2005 (some of these changes are addressed within Exhibit 11).

#### **D. SUBSTANTIAL ISSUE ANALYSIS**

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.*

##### **1. Appellant's Contentions That Are Valid Grounds for Appeal**

The contentions raised in the appeal present valid grounds for appeal in that they allege the local approval's inconsistency with policies of the certified LCP.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
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, or those of regional or statewide significance.

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

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation 1 below, the alleged inconsistency of the project as approved with the visual resources protection policies, a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP. As further discussed below, the Commission also finds that with respect to allegation 2 regarding inconsistencies of the project as approved with the LCP policies and provisions addressing infrastructure/configuration of State Highway One, a substantial issue exists with regard to the approved project's conformance with the certified County of Mendocino LCP.

### **Allegations Raising a Substantial Issue**

The appellants contend that:

- The proposed project fails to protect public coastal views to and along the coast from State Highway Route 1 and from Greenwood State Beach (a State Park).
- The proposed project is not compatible with the established physical scale of the area.
- The proposed project would significantly alter existing natural landforms.
- The proposed project is inconsistent with LCP standards for the configuration of Highway 1.
- The proposed project does not conform to the certified County of Mendocino Local Coastal Program (LCP), including LCP policies 3.5-1, 3.5-2, 3.5-4, 3.6-20, 3.8 Highway 1 limitations, including 3.8-6.
- Alternatives exist that would achieve the goal of updating this section of State Highway Route 1 in a context-sensitive manner that would avoid the extensive impacts on coastal visual resources that will result if the project is constructed in the manner Caltrans presently proposes.

The appellants contend that the County action approving Coastal Development Permit No. 26-03 is inconsistent with the requirements of applicable policies and provisions of



the certified LCP protective of coastal visual resources. The appellants contend that construction of the approved new Highway 1 bridge, including new accompanying sections of Highway 1 north and south of the bridge, particularly if constructed on the eastward relocated alignment presently proposed, will cause significant but avoidable adverse impacts to public coastal visual resources, counter to the requirements of the LCP.

The appellants assert that in particular, the retaining walls that would be constructed along a highly scenic section of Highway 1, are out of character and scale with the rural, relatively remote, scenic setting of the subject project, and could be avoided through implementation of other project alternatives than the approved alignment east of the existing highway.

The appellants contend that the LCP requires that development in rural areas of the coast designated as Highly Scenic be subordinate to the setting in which such development is proposed, and that the project as approved is excessive in design, size, and location and thus is not subordinate to its setting as is required.

The appellants contend that a paved shoulder of four feet in width would be consistent with the LCP and would reduce the footprint of the bridged section of the crossing by a total of 8 feet, which combined with relocation of the footprint of the crossing to an alignment more consistent with that which presently exists, or somewhat to the west, would likely eliminate the need for substantial landform alteration and the construction of vertical concrete retaining walls. The appellants additionally assert that LCP Policy 3.6-20 and other LCP policies specifically establish the requirement for a maximum 4-foot paved shoulder on Highway 1.

The appellants also contend that Elk is called out in the LCP for special protection of its quaint, visitor-serving community character and that the proposed project would impose a significantly more urban solution to the bridge upgrade than is necessary, thereby altering the picturesque scenery of this section of Highway 1, which is the southerly gateway to the community, and thus damaging the community character of nearby Elk and incompatible with the surrounding natural setting within which Caltrans proposes the highway project.

The appellants further assert that alternatives and mitigation measures exist, but have not been fully evaluated or proposed, that would potentially reduce or avoid the impacts of the proposed project (Exhibits 3 and 4). The appellants state the certified LCP Policy 3.5-1 requires the weighing of alternative designs in the selection of a project that is "sited and designed" to protect visual resources and to fit in with the character of the setting within which it is proposed.

**LCP Policies and Provisions: VISUAL RESOURCES** (cited in pertinent part)

**Coastal Element Policies: Visual Resources; Special Community Character**

- 3.5-1 State Highway 1 in rural areas of the Mendocino County coastal zone shall remain a scenic two-lane road.

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

- 3.5-2 The Town of Mendocino is designated as a "special community". Development in the Mendocino Town shall maintain and enhance community character, as defined in the Mendocino Town Plan.

Other communities and service centers along the Mendocino Coast including Westport, Caspar, Little River, Albion, Elk and Manchester shall have special protection to the extent that new development shall remain within the scope and character of existing development by meeting the standards of implementing ordinances.

- 3.5-3 The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

...

- Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

**(note: the proposed project is located in this area, in a location designated as a highly scenic area on both the east and west sides in the LCP)**

...

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

The policies also require that the visual impact of development on hillsides be minimized by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate

buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. The visual impacts of development on terraces shall be minimized by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area. The visual impact of development on ridges shall be minimized by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.

### **Other LCP policies and provisions providing standards for Highway 1**

The Coastal Access section of the LCP requires paved 4-foot shoulders along Highway 1 unless significant environmental effects would result:

- 3.6-20: **Paved 4 foot shoulders should be provided by Caltrans along the entire length of Highway 1 wherever construction is feasible without unacceptable environmental effects.** [emphasis added.]
- 3.8-6 **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). The minimum objective shall be a 14-foot vehicle lane width (10-foot vehicle lane and 4-foot paved shoulder). New widening projects shall be allocated, first to safety and improved capacity needs and secondarily to paved shoulders.** [emphasis added.]

The appellants contend that the County's approval of a coastal development permit for the proposed project, including 8-foot-wide paved shoulders, is inconsistent with the limitations on the intensity of development of Route 1 set forth in the certified LCP. The certified LCP discusses development limitations on Highway 1, in Section 3.8 (Transportation, Utilities, and Public Service), and incorporates Section 30254 of the Coastal Act (which limits rural State Highway Route 1 to a scenic two-lane road).

The certified LCP, page 108 (below) offers the following guidance for improvement to State Highway Route 1 throughout unincorporated Mendocino County, while acknowledging that maximum highway capacity cannot everywhere be achieved without unacceptable levels of adverse environmental impacts, such as landform alteration. Moreover, Caltrans reports, and the certified LCP states, that the subject section of Route 1 within which the proposed project is located, is one of the least heavily traveled, remote sections of Highway 1 in Mendocino County. Thus, achieving maximum highway capacity in a section where no statistically elevated accident rates are reported by

Caltrans at the expense of substantial adverse environmental impacts raises concern regarding the consistency of such impacts with the requirements of the certified LCP.

The LCP further states on page 108:

**Amount of Improvement. For maximum highway capacity, the optimum roadbed width would be 36 feet: each side consisting of 12 foot lane with a 6 foot paved shoulder.** If Highway 1 were improved to these standards, capacity increases would range from 6 percent near Gibney Lane to 54 percent at most locations south of Van Damme State Park (#14 California Coastal Commission). A bridge at Dark Gulch and massive earth moving around Navarro Head would probably be required. **However, developing the highway for maximum capacity would not be consistent with the environmental policies of the Coastal Act. Current Caltrans policy is to build a 32-foot section—12-foot lanes and 4-foot paved shoulders, where feasible. The Land Use Plan designates 12-foot lanes, and 4-foot shoulders except where topography and absence of development close to the road pose few problems.** The minimum width of the bikeways (see policy 3.6-20) must be 4 feet. (3.8-6 and 3.6-20 state that Caltrans should provide 4-foot shoulders along the entire length of Highway 1 wherever construction is feasible without unacceptable environmental effects.) [emphasis added.]

## Analysis

### Consistency of County's Approval with LCP Policies Regarding Configuration of State Highway Route 1

As established in the certified LCP excerpts set forth above, within rural areas of Mendocino County, the County has determined that if environmental considerations and the requirements of the Coastal Act were not a factor, the optimal road bed for Route 1 could include shoulders of up to 6 feet in width. However, weighing this against the significant environmental impacts that could result from widening projects on Route 1, the certified LCP concludes that such a width would not be consistent with the limits of the Coastal Act, and could have unacceptable adverse effects on the environment, and therefore establishes a **4-foot shoulder** for Route 1, where feasible, except where topography and absence of development close to the road pose few problems. The LCP also states that where there will be bicycle use, a 4-foot paved shoulder should be provided – wherever construction is feasible *without unacceptable environmental effects*.

In addition, the certified LCP makes numerous references to the desired configuration of Highway 1 in various locations in Mendocino County, and the standard of a 4-foot paved shoulder is consistently represented. No examples of policy standards anywhere in the certified LCP require a paved shoulder greater than 4 feet in width in rural, scenic areas of the Mendocino coast portions of State Highway Route 1.

When all applicable certified LCP policies and provisions are read together, the certified LCP establishes a 12 –foot-wide lane, and a 4-foot-wide paved shoulder as the guiding standard for improvement to sections of State Highway Route 1, particularly in rural scenic areas, and provides that this width shall be provided wherever construction is feasible without unacceptable environmental effects.

Pertinent examples from the certified LCP:

4.3 Little Valley Road to Fort Bragg Planning Area (includes Cleone)

...”The present condition of Highway 1 is a major constraint to development in this area. Highway 1 just north of Pudding Creek currently is operating at maximum capacity, or Service Level E, during peak hours. **The Land Use Plan recommends widening the 10-foot lanes to 12 feet, with additional 4-foot bike lanes.**

4.3-1 Caltrans shall be directed to prepare a plan for widening the present alignment of Highway 1 from the north city limits of Fort Bragg to the north limits of Cleone rural village. **Lane width shall be 12 feet, shoulder width 4 feet.** This plan shall include provisions for pedestrian, bicycle and equestrian paths in Cleone rural village and at the entrance to MacKerricher State park and provisions for landscaping and replacement of trees. Road widenings shall minimize encroachments on existing residences.

4.8 Van Damme State Park to Dark Gulch Planning Area (Little River Planning Area)

...”**The Land Use Plan prescribes improvement of Highway 1 to 12-foot vehicle lanes and 4-foot shoulder – little more than what exists today.** Several permit applicants have recorded offers to dedicate a 25-foot easement along the west side of the highway for a pedestrian and bicycle path in lieu of providing shoreline access.

4.8-2 **Previously adopted policies relating to improvement throughout the Highway 1 area providing for 12-foot road strips and 4-foot shoulders, where possible,** should be pursued in this particular area...

4.12 Iverson Road to Sonoma County Line Planning Area (Anchor Bay-Gualala)

“... Potential highway capacity is one constraint on development in the planning area. The potential for improving the highway varies significantly within the planning area. The sharp turn at Fish Rock Gulch and the nearby 9-foot lanes cannot be improved much and thus will continue to limit improvements. **At other points, the roadbed can be widened to permit 12-foot lanes with a 4-foot shoulder on each side; south of Anchor Bay the full 32-foot section including 12-foot vehicle lanes and 4-foot bicycle lanes, can be built.** With additional improvements such as protected left turn lanes, the volume of traffic currently passing through Gualala could be increased by 75 percent.

Commission staff conferred with Mendocino County staff regarding the County’s implementation of the highway improvement guidance in the LCP; County staff could

not located any examples of proposals by Caltrans for projects on rural State Highway Route 1 sections where the County has interpreted the LCP to require that Caltrans include a paved highway shoulder wider than 4 feet (excluding turnouts, parking or viewing areas and other similar amenities).

Therefore, the Commission finds that the appeal of the County's approval of a permit for a construction of a new section of Highway 1 with 8 ft.-wide shoulders raises a substantial issue of conformity with the requirements of the certified LCP set forth above.

### Consistency of County's Approval With Other LCP Visual Resource Policies

As set forth above, the section of scenic, rural two-lane State Highway Route 1 within which Caltrans proposes the subject development is designated in the certified LCP as highly scenic, on both sides of the road. The subject area is identified in the LCP as one of exceptionally scenic beauty and is surrounded by forest and pastures lands, and located adjacent to scenic Greenwood Creek Beach State Park, which is managed by the California Department of Parks and Recreation.

The approved project includes a new, wider section of State Highway Route 1 on a new alignment in a highly scenic, rural, minimally traveled two-lane segment of Route 1. As stated previously, significant landform alteration will be necessary to construct the highway realignment to the point of conformity north and south of the new bridged crossing of Greenwood Creek that Caltrans proposes.

Notwithstanding the County's approval, Caltrans has submitted a new application for Coastal Development Permit No. 1-05-36 which contains general information on grading that indicates total grading may be reduced to approximately 20,000 cubic yards; however, the portion of the project that is located within the area of the Commission's retained jurisdiction does not include most of the area that is proposed for cut and fill, and Caltrans has not specifically amended their originally proposed project and indicated that for the purpose of Commission's *de novo* review, the reduced grading would apply to the portion of the project in the Commission's appellate jurisdiction.

LCP Policy 3.5-1 cited above requires that the scenic and visual qualities of the State Highway Route 1 corridor in rural Mendocino County be protected, and that the alteration of natural landforms be minimized. LCP Policy 3.5-3 also includes specific restrictions on permissible development in areas such as the proposed project site that have been identified as highly scenic; applicable examples include the requirements that such development minimize visual impacts of development on hillsides by requiring grading or construction to follow the natural contours of the site, resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms, avoiding development in large open areas if alternative site exists, designing development to be

in scale with rural character, and prohibiting removal of tree masses which destroy existing ridgeline silhouettes.

The appellants contend that the extent of hillside grading and vegetation removal, and construction of artificial concrete retaining walls will alter the natural landscape in a manner that will cause permanent adverse impacts on the scenic resources of the area, adversely alter views from Greenwood Creek Beach State Park, and adversely change the character of the scenic, rural approach this section of Highway 1 creates at the entrance to the village of Elk (north end of the project area). The appellants contend that these changes are not in keeping with the rural scale and character of the landscape into which Caltrans seeks to place them, and that alternatives exist that would minimize or eliminate many of these adverse impacts, but which Caltrans has rejected and which the County did not review in its approval of the subject coastal development permit.

The alteration of natural landforms includes grading and vegetation removal, and replacement of natural slopes with vertical concrete retaining walls does not minimize loss of natural landforms if alternatives exist that would avoid the need for such landform alteration in the first place. One of the many possible versions of "Alternative 2" (generally using the existing alignment, or slightly east or west of existing in addition to existing) would substantially reduce hillside grading and vegetation/tree removal compared to the proposed Alternative 3 (See Exhibit 11) and ensure that the project is accommodated, but in a way that fits it into the existing landscape and thereby makes the project more subordinate to the character of the surrounding area.

In addition, the widened footprint of the highway proposed by Caltrans adds to the amount of hillside grading otherwise necessary to achieve the realignment. Caltrans has informed Commission staff that every 4 feet in project width to the east (compared to the existing bridge location) equates with an approximately 10 percent reduction in the length and width of the three concrete retaining walls Caltrans proposes to construct, and an unspecified reduction in total grading and vegetation removal. Thus, the inclusion by Caltrans of two 8-foot-wide paved shoulders instead of the 4-foot-wide shoulders consistent with the provisions of the certified LCP, increases the height and length of the retaining walls and associated landform alteration by 20 percent over what would otherwise be required, even if the eastward alignment were implemented as proposed, but with reduced paved shoulders..

Whether additional pavement width is constructed for a lane or a paved shoulder, the wider the corridor, the greater the impression that a rural, two-lane road is being replaced by a more urban configuration. Moreover, since the subject project location is just one segment of rural Route 1, and shoulders and lane widths narrow considerably just outside the project area, it is not clear that building the new paved road bed to the width Caltrans presently proposes in the project area will afford the suggested safety benefits unless Caltrans intends to widen the entire Route 1 corridor to this standard,

which, as the LCP states, is inconsistent with other provisions of the LCP protective of environmental resources.

### **Conclusion:**

Caltrans reports that there are no elevated accident statistics on this segment of Highway 1, nor is it an intensively traveled section of Route 1. The certified LCP, and Caltrans' application to the County for the approved project, indicate that this is one of the least traveled segments Highway 1 in rural Mendocino County. Therefore, a significant concern is raised that this project will establish a new precedent for widening Route 1 in scenic, rural locations with light traffic use. Further, the Commission finds that the County's approval of the subject proposal, including realignment in a scenic resource area, associated landform alteration and vegetation removal, and the construction of a widened road bed that exceeds the goals for improvement of Route 1 established in the certified LCP, has a high degree of precedential value for future interpretations of the County's LCP in a manner that would not be conducive to the preservation of coastal visual resources.

Although the total extent of the adverse impacts of the proposed project on scenic coastal resources were not fully disclosed by Caltrans at the time of project approval by the County, sufficient information was known to the appellants to raise the argument that the County's approval of the subject project, in light of the impacts it was then known to pose on scenic resources and community character, was inconsistent with a number of applicable policies and provisions of the certified LCP. In addition, the inclusion of Caltrans of 8-foot-wide paved shoulders on the bridged (and non-bridged, though unknown to the appellants at the time of their appeal) sections of the proposed project, and Caltrans' decision to pursue a new alignment that requires substantial landform alteration, construct concrete retaining walls in an area where none previously existed, and build wide (8 feet or more) paved shoulders along the inland non-bridged sections raises questions about whether the County in approving the proposed project took into account the full extent of the specific and cumulative adverse impacts of the proposed project on the scenic coastal resources of the area proposed for new highway development, and considered alternatives that may have reduced or eliminated much of the worst of the adverse impacts of the project on scenic coastal resources.

Therefore, for all of the reasons set forth above, the Commission finds that the appeal of the proposed project as approved by Mendocino County raises a substantial issue with respect to conformance of the approved project with the LCP standards regarding the design and siting of State Highway Route 1 projects, particularly in highly scenic, rural areas of Route 1, and with other applicable LCP policies and provisions, including LUP Policies 3.5-1, 3.5-2, 3.5-3, 3.6-20, 3.8-6, 4.3, 4.3-1, 4.8, 4.8-2, and 4.12.

### **Alternatives**



The appellants contend that in approving the coastal development permit for the project then proposed by Caltrans, the County failed to evaluate a range of alternatives that would reduce the adverse visual impacts of the proposed project and render the project more compatible with the character of the surrounding area. These alternatives (generally described as Alternative 2, or generally as a western alignment) are discussed more specifically in the Commission's finding *de novo* and are also set forth in Exhibits 3 and 4.

### **COASTAL ACCESS AND RECREATION**

The certified Mendocino County LCP specifically provides for the California Coastal Trail:

- 3.6-17 Caltrans shall be required to improve or construct view turnouts designated on the Land Use Maps as part of adjoining highway improvement projects when such improvements involve widening or improvements of the highway.
- 3.6-18 Along sections of the highway where development intensity will result in pedestrian use, or where this is the siting of the County designated coastal trail, a 15-foot accessway measured from the right-of-way of Highway 1 shall be offered for dedication as a condition of permit approval if the topography is deemed suitable for pathway development. Coastal trail includes trails identified in Table 3.6-1 and portions of Highway 1 and Usal Road that are necessary to connect these trail segments. All such access offers that have been recorded shall be offered to Caltrans for acceptance. Prevailing acquisition methods for acquiring public right of way by Caltrans shall apply to this section.

Along intensively developed sections of Highway 1, (such as between Cleone and Albion or in Gualala) Caltrans shall be requested to build a separate pedestrian, equestrian path parallel to the highway where pedestrian traffic warrants and physical conditions permit.

Paved 4-foot shoulders should be provided by Caltrans along the entire length of Highway 1 wherever construction is feasible without unacceptable environmental effects.

- 3.6-21 The County of Mendocino coastal trail shall be integrated with the coastal trails in the cities of Fort Bragg and Point Arena, and with Humboldt County to the north and Sonoma County to the south so as to provide a continuously identifiable trail along the Mendocino County Coast.
- 3.6-22 In carrying out the coastal access policies of this Coastal Element, the county or other appropriate designated management agency shall consider and encourage the utilization of innovative access management techniques including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

In addition, the Chapter 3 policies of the Coastal Act concerning coastal access state in pertinent part:

**Section 30210 Access; recreational opportunities; posting**

In carrying out the requirement of [Section 4 of Article X of the California Constitution](#), maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

(Amended by Ch. 1075, Stats. 1978.)

**Section 30211 Development not to interfere with access**

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

**Section 30212 New development projects**

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

... (c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by [Sections 66478.1 to 66478.14](#), inclusive, of the Government Code and by [Section 4 of Article X of the California Constitution](#).

**Section 30212.5 Public facilities; distribution**

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

**Section 30213 Lower cost visitor and recreational facilities; encouragement and provision;**

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

**Section 30214 Implementation of public access policies; legislative intent**

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access

depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
  - (2) The capacity of the site to sustain use and at what level of intensity.
  - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
  - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.
- (b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to [Section 4 of Article X of the California Constitution](#). Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under [Section 4 of Article X of the California Constitution](#).
- (c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

The proposed project as approved by the County raises not only local issues, but issues of regional and statewide significance. State Highway Route 1 is specifically identified in the LCP and Coastal Act as especially important to the character of the coast. The law recognizes that driving Highway 1 is a distinct and special coastal experience. The LCP and Act intend for Highway 1 to be maintained as a two lane road in the project area, because widening the roadway would reduce the value of the overall experience of California's signature coastal road.

The LCP and Coastal Act additionally recognize the provision of public coastal access generally as a guiding principal. The California Coastal Trail is to pedestrian coastal visitors what Highway 1 is to drivers, and in the location of the approved project, the Coastal Trail is located on Highway 1 through that segment.

Greenwood Creek Beach State Park and the village of Elk are within easy walking distance of the proposed Greenwood Creek crossing replacement. The existing highway crossing contains narrow elevated pedestrian walkways on each side of the bridge. These walkways will be removed, and in the proposed project, paved 8-foot-wide shoulders on each side of the bridge would be provided, including additional 8-foot-wide shoulders off the bridge on most of the inland side (adjacent to the northbound traffic lane). While the paved shoulder would be wider, it would be shared with bicycles

and would be unseparated from adjacent traffic, passing at highway speeds (the proposed design speed is 55 miles per hour according to Caltrans, for the bridged highway segment). The lack of a separate pedestrian pathway may render the use of this section of Highway 1 dangerous for ordinary pedestrians using the Coastal Trail, and highly dangerous for trail users with any degree of frailty or disability.

The anticipated lifetime of the subject bridge is approximately 50 years (the existing bridge was constructed in 1955 or 1956). Thus, there would be no pedestrian-safe link in the California Coastal Trail for at least this 50-year period. Although Caltrans states that public workshops on the proposed project did not yield requests for a separate pedestrian component, Elk is a small community of local citizens that attracts coastal visitors from all over the state – even from other states and countries. Moreover, the Greenwood Creek Beach State Park is immediately west of the proposed project and both the park, beach, and village would attract users of the Coastal Trail who might find pedestrian coastal recreation appealing. Pedestrian use of the California Coastal Trail may also become a favorite lower cost coastal recreation pursuit as future energy prices make driving Highway 1 more expensive. In addition, concern about the Coastal Trail extends not only to potential visitors in other areas, but to coastal visitors of future generations. Safe separation from vehicle traffic for universal viewing areas in particularly scenic locations would also allow the widest possible range of Coastal Trail users to enjoy the special views that bridge spans afford.

For all of these reasons, the Commission finds that the appeal raises a substantial issue of conformity with the coastal access and recreation policies of both the certified LCP and Chapter 3 of the Coastal Act.

### **FINDINGS AND DECLARATIONS: Retained & De Novo Appellate Jurisdictions**

The Commission hereby finds and declares:

#### **A. INCORPORATION BY REFERENCE**

The Commission hereby incorporates by reference the attached Exhibits, and Substantial Issue Findings set forth above, including information on the project setting, location, and description.

#### **B. VISUAL RESOURCES AND COMPATIBILITY WITH SURROUNDING CHARACTER; COASTAL ACT SECTION 30254; COASTAL ACCESS & RECREATION.**

The certified Mendocino County LCP policies and provisions cited in the Substantial Issue Visual Resource analysis, and the Coastal Access and Recreation policies of the Coastal Act cited in the Substantial Issue analysis are hereby incorporated by reference.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

Section 30254 (Public works facilities) of the Coastal Act states:

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Sections 30210 and 30211 of the Coastal Act mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, Section 30212 of the Coastal Act requires that adequate public access to the sea be provided and to allow use of dry sand and rocky coastal beaches.

All development located between the first public road and the sea must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act, even if such development occurs in an area with a certified LCP, based on the access, recreation, and development sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

Caltrans proposes to construct a new bridged section of State Highway Route 1 approximately 50 feet east of the existing bridged crossing of Greenwood Creek, and to realign approximately 1,000 linear feet of new highway to the point of conformity north and south of the bridge connections. Caltrans also proposes to widen the roadway substantially as compared with the existing section of Route 1 that would be replaced by the new eastward alignment.

The Greenwood Creek area of Route 1 has been designated as “highly scenic” on both sides of the highway in the County’s certified LCP, and as discussed in Part II below, previously has been acknowledged as highly scenic in the Coastal Conservation Plan, dated 2003, prepared by the Mendocino Land Trust with funding from the California Coastal Conservancy. In addition, Caltrans acknowledges the sensitive character of Route 1 in Mendocino County in the 2003 Route 1 Concept Report, which maps out Caltrans’ planning framework for that portion of State Highway Route 1 located within Caltrans District 1.

To construct the new highway section on the proposed alignment requires extensive landform alteration (the latest proposal requires approximately 1.2 acres of cut and 0.5 acres of fill) and the construction of three retaining walls totaling 670 linear feet and rising to a maximum of 26 feet above finished grade. The walls would be colored and textured in a faux-stone pattern. Artificial retaining walls have not been installed in visually sensitive rural locations along a 50-mile stretch of Route 1 north and south of the proposed project location.

The appellants raised a concern that the extent of the proposed landform alteration, and vegetation removal would visually degrade the natural setting of the area and that the retaining walls would replace naturally vegetated and forested slopes with artificially textured vertical retaining walls that mimic natural surfaces incompletely and would change the natural, scenic character of this lightly-traveled section of rural two-lane Route 1. In addition, the paved surface area of the new highway sections would be widened and the existing arc of the bridge curvature straightened, opening up much wider expanses of pavement and lines of sight that may cause drivers to speed up compared to current conditions. Caltrans acknowledges that drivers are already speeding at the north end of the bridge, driving into Elk, and that because 85<sup>th</sup> percentile speed studies performed by Caltrans in August 2004 indicate that drivers at the bridge are traveling 47 miles per hour at the north end, Caltrans may simply maintain the existing 55 mile-per-hour legal limit entering the bridge from the south and re-sign the existing 30 (35) mile per hour sign to 45 miles per hour once construction is completed. Caltrans prefers to do that because highway standards call for the speed of travel between sequential curves not to exceed about 10 miles per hour. Since traffic presently coming onto the bridge may travel at 55 miles per hour, the slower required speed to the north is not in step with this standard.

Caltrans staff explain that every new highway project is an opportunity to move vehicles more efficiently, which means increasing speeds but with a project configuration that does so by developing the physical attributes to enable the additional speed to be reached safely.

The changes in driver line-of-sight, wider paved shoulders, and changed curvature (geometrics) as compared to the existing bridged crossing configuration requires that the entire highway section in the proposed project area be aligned eastward of the existing highway. To conform the highway to this alignment requires construction of

highway in locations that are presently occupied by forested, naturally-vegetated slopes, a portion of Bonee Gulch Creek, and several other tributary streams, as well as seep wetlands, rare plant habitat, and other resources identified by Caltrans in August 2005.

No elevated accident statistics exist to suggest that the existing alignment is troublesome. Much of rural State Highway Route 1 snakes around tight curves and narrow shelves along hillsides, and drivers seek out Route 1 as much for the experience of negotiating the quaint sections of the rural highway as for the stunning coastal views and sparsely developed open spaces that punctuate the route.

Along State Highway Route 1, the legislature placed a specific statement of intent concerning the protection of Route 1 in Policy 30254 of Chapter 3 of the Coastal Act:

**it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road.** (bold emphasis added)

The legislature foresaw that development pressure would eventually arise, along with demands to widen Route 1, but offered special protection to the route as a signature coastal resource, a driving destination of unparalleled visual quality of statewide importance. Like the State Parks through which U.S. Highway 101 passes, the preservation of the special character and visual resources of some places is protected even from the goal of assuring the highest possible safety standard at the expense of the area's character.

Thus, through Coastal Act Section 30254, the legislature, well aware that rural Route 1 was winding and narrow, called for it nevertheless to remain much the same. The County's certified LCP adds the refinement that 4-foot-wide paved shoulders should be provided for the sake of bicyclists, and encourages the connection of the California Coastal Trail where it traverses Route 1 in Mendocino County. As noted, Caltrans' District 1 Route 1 Concept Report acknowledges the need to provide for the Coastal Trail on Route 1 and further acknowledges that improving Route 1 to Caltrans' standards would in many locations not be consistent with the Coastal Act and could cause substantial adverse environmental impacts.

The coastal trail and bikeway both follow on Highway 1 at the Greenwood Creek crossing. An ideal configuration of shoulders, depending on associated environmental impacts that might arise, would be two 12-foot traffic lanes flanked by two 4-foot paved shoulders (perhaps with wider turnouts at the bridge ends for vehicles in difficulty) and a separate path for pedestrians.

Design features along the Coastal trail are central to the consideration of the proposed project, because Caltrans proposes to secure a higher safety standard through widening the roadway in a manner that is the equivalent of a road with three or possibly more lanes in some segments of the project, and to additionally change the alignment of the section altogether by moving it inland and opening up the curved portion that

includes the proposed bridged section of highway, as proposed. The road would not be striped for three or more traffic lanes, but because the two widened lanes would be flanked by 8-foot-wide or wider shoulders in some locations, the effect would be to create the equivalent of additional lanes in terms of the overall change in the roadway's built environment.

Finally, though design speed, paved road width, coastal access amenities, and other aspects of the proposed project or the project location are discussed above, the overarching visual resource impact concern posed by the proposed project remains the proposal to move the road alignment eastward. By moving the alignment eastward, construction would occur where presently undisturbed existing hillsides, stream corridors, forestlands and wetlands exist.

An alternative generally identified as "Alternative 2" has been identified, though it could be a range of slightly west or slightly east of center alignments, but overall would include a new bridged highway section constructed along the same general alignment as presently exists. By following the existing alignment, significant reduction in visual resource impacts and landform alteration and habitat loss would be achieved. These changes are more fully compared with the impacts of the proposed project in Exhibit 11. Most of the hillside grading and construction of vertical retaining walls would be eliminated, and the final project would fit more closely with the character of the existing setting.

Therefore, for the reasons discussed above and based on the visual resource and coastal access findings incorporated by reference from Section II, the Commission finds that the proposed project is inconsistent with the applicable policies of the certified LCP and of the Chapter 3 of the Coastal Act, as regards protection of coastal visual resources, protection of the rural, two-lane scenic character of State Highway Route 1, and coastal access and recreation. The Commission further finds that alternatives (such as pursuing the range of options identified generally as Alternative 2) and mitigation measures, such as providing for safer pedestrian use of the Coastal Trail on Route 1, would remedy many of the adverse impacts of the proposed project on coastal resources and better ensure project conformity with the requirements of the certified LCP and with the Coastal Act.

### **C. STREAM CORRIDORS AND VEGETATION; ESHA; WATER QUALITY**

Both the Coastal Act and the certified Mendocino County LCP include policies for protection of stream corridors, coastal waters, and environmentally sensitive habitat areas.

Coastal Act Section 30230 Marine resources; maintenance

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic



significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 Biological productivity; water quality

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30236 Water supply and flood control

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240 Environmentally sensitive habitat areas; adjacent developments

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30253 Minimization of adverse impacts

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- (4) Minimize energy consumption and vehicle miles traveled.
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The Mendocino County LCP contains polices protective of environmentally sensitive resources, riparian corridors, and coastal waters. These include:

- 3.1-2 Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.
- 3.1-7 A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:
  - It shall be sited and designed to prevent impacts which would

significantly degrade such areas;

- It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and
- Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

3.1-31 Structures or projects involving a diversion of water from streams appearing as dotted or dashed blue lines on 7.5 minute U.S.G.S. quadrangle maps shall be sited and designed to not impede upstream or downstream movement of native fish or to reduce stream flows to a level which will have a significant adverse affect on the biological productivity of the stream and its associated aquatic organisms.

3.1-24 Any development within designated resource areas, if not specifically addressed by other policies, shall be carefully reviewed and established in accord with conditions which could allow some development under mitigating conditions but would assure the continued protection of the resource.

3.1-25 The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.

3.1-10 Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for:

- Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;
- pipelines, utility lines and road crossings, when no less environmentally

damaging alternative route is feasible;

- existing agricultural operations;
- removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values.

Caltrans proposes to replace the existing Greenwood Creek crossing of State Highway Route 1 with a new bridged section of highway located upstream at a new crossing approximately 50 feet east of the existing crossing. Caltrans also proposes to construct the new highway from the bridge takeoffs to approximately 1,000 linear feet to the north and to the south to the point of conformity, to connect the new bridge.

### Overview of Biological Impacts

Habitat areas that would be impacted by the proposed construction on the new alignment includes Greenwood Creek, four tributaries (including Bonee Gulch Creek), and 7.6 acres of vegetation including 3.7 acres of wetlands and 2.5 acres of Coastal Coniferous Forest). (See Exhibit 11, memorandum of Commission staff biologist dated August 31, 2005.)

The construction staging areas and most of the access road from the highway to the creek are located in the Greenwood Creek riparian corridor. An approximately 200-foot wide section of Greenwood Creek's riparian slopes would be cleared of vegetation along the length of the new 554-ft long bridge, resulting in a clearing of approximately 2.5 acres. The access road would be widened as necessary, 177 linear feet of the access road moved, and a temporary trestle bridge across Greenwood Creek would provide access to the north side of the creek. These impacts arise primarily, but not completely, within the area of the Commission's retained jurisdiction; however Caltrans has not provided an analysis of this division of the proposed project.

The proposed roadway realignment and widening would require extensive landform alteration (re-estimated by Caltrans in new CDP Application No. 1-05-36 submitted August 5, 2005 as: approximately 1.2 acres of cut and 0.5 acres of fill, expressed in surface area impacted), and approximately 16,000 cubic yards of total grading (4,718 cu. yds. cut and 11,380 cu. yds. of fill as stated in most recent August 5, 2005 application) expressed as volume of material cut or placed as fill, as well as the construction of three retaining walls totaling 670 linear feet, and rising to a maximum of approximately 26 feet above finished grade.

The roadway realignment would require culvert extensions in four tributary streams, including Bonee Gulch Creek, tributary to Greenwood Creek, the placement of fill in the

waterways and riparian corridors of three of the tributaries, and the removal of vegetation (including wetlands and Coastal Coniferous Forest) in the location of the new roadway. These impacts arise primarily in the area of the Commission's appellate jurisdiction.

In addition, the August 2005 wildlife surveys conducted by Caltrans' consultants found that the coniferous forest on the project site provide habitat for Special Status species such as the Northern Spotted Owl and the Red Tree Vole. Caltrans acknowledged in the new August 2005 application that over 1,100 trees would potentially be removed in the project area and that 83 native Douglas Fir trees providing Red Tree Vole habitat would be removed in the project area. Of these, the biological survey submitted by Caltrans indicates approximately 15 are documented Red Tree Vole nesting trees. Caltrans has provided no evidence of consultation with the California Department of Fish and Game regarding the project's specific impacts to Red Tree Vole populations in the project area.

The application also states that California Natural Diversity Database (Calif. Dept. of Fish and Game, 2003) has designated some of the plant communities found on the site as "rare and worthy of consideration." Caltrans estimated that a total of 4.62 acres of Rare Plant Communities would be impacted by the project (0.77 acres permanently). However, no State or Federally Listed Endangered, Threatened, or Rare Plants (Calif. Dept. of Fish and Game) have been observed on the property.

In 2004, Mendocino County staff asked Caltrans to confirm that construction that will occur in the County permit area is located outside of any ESHA or ESHA buffer. Caltrans replied that "it is difficult to determine with certainty that there are no ESHAs located in the County's permit jurisdiction....Nonetheless, it appears that the wetlands and the animal habitats are located within the Coastal Commission jurisdiction."<sup>4</sup> As such, the County in approving the local coastal development permit for the subject project attached no special conditions concerning sensitive habitat impacts, which the County appeared to believe based on Caltrans' submittal, would only arise in the more limited area of the project (the bridged portion within Greenwood Creek) in the Commission's retained jurisdiction. However, it is now known that the County's jurisdiction contains wetland and riparian ESHA, and four tributaries, all impacted in temporary or permanent ways by the proposed project.

### Stream Impacts Analysis

As stated above, County LCP policies set forth in Section 3.1 (see above) and Coastal Act policies 30230, 30231, 30236, and 30240 specifically protect environmentally sensitive habitat, areas of special biological value, and coastal waters. Removal of riparian vegetation, culvertization of natural stream areas, and placement of fill within

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<sup>4</sup> April 28, 2004 Memo to Coastal Permit Administrator from Rick Miller (Mendocino County planner): Responses to CPA Questions/comments via email dated April 27, 2004. See Exhibit 11.

riparian corridors will have permanent, significant impacts on environmentally sensitive habitat areas within the project area, and extensive temporary impacts as well.

LCP Policy 3.1-9 and Coastal Act Section 30236 limit channelization, dams, or other substantial alterations of rivers and streams to three specific categories of allowable activities only: water supply projects, flood control projects to protect existing development, and projects designed to enhance habitat as the primary purpose. LCP Policy 3.1-10, however, does include allowance for construction of:

... **“Pipelines, utility lines and road crossings, where no less environmentally damaging alternative route is feasible...”** [emphasis added.]

The proposed project would culvertize and fill over approximately 90 linear feet total of streams including 48 linear feet in Bonee Gulch Creek alone, which Caltrans indicates will be filled with a massive fill slope extending the paved roadbed to the east of the existing roadway. New grading plans have not been provided in the August 2005 application, but previously, at the September 13, 2004 site visit, Caltrans engineers indicated that the road bed would extend approximately 60 feet east of the existing roadbed—measured from existing white line at the inland most shoulder of existing and proposed, and that the new area would rest atop the fill slope placed in Bonee Gulch, located in the proposed new highway section situated between the two retaining walls proposed at the southern end of the overall project. Previous plans received from Caltrans in October, 2004 for the coastal development permit application for the subject project (withdrawn January 20, 2005) also showed an unquantified amount of riprap placement within Bonee Gulch Creek in addition to and extending beyond the area shown for placement of fill.

Bonee Gulch Creek in the area proposed for fill is presently a relatively pristine, fully vegetated riparian canyon of significant habitat value according to the Commission staff biologist (site visit September 13, 2004). Bonee Gulch Creek is also tributary to Greenwood Creek, a salmonid stream, and the combined waters of the two reach Greenwood Creek State Beach and the Pacific Ocean less than one half mile from the project area. Caltrans has not received Stream Alteration Agreements from the California Department of Fish and Game for the culvertization of the smaller tributaries. The Stream Alteration Agreement for Greenwood Creek was, however, amended at the request of Caltrans to authorize construction of the retaining wall component of the project during the rainy season. Similarly, Caltrans does not propose to limit cut and fill and culvertization work preliminary to construction of the proposed retaining walls to dry season work windows.

Caltrans has not presented any evidence that the landform alteration and fill of stream corridors undertaken during the rainy season will not discharge sediment into the affected riparian areas and subsequently into Greenwood Creek and the Pacific Ocean. Sediment discharge can adversely affect salmonid populations in all life stages, and other biological resources as well. To the contrary, in Northern California areas such as Mendocino County where significant winter rainfall is typical, grading during the rainy

season, particularly in locations bounded by riparian corridors, is typically prohibited by the Commission in permit considerations, even for projects where the proposed development is an otherwise allowable use.

In a meeting with Caltrans on September 21, 2004 Commission staff asked Caltrans to consider project alternatives that would avoid fill of Bonee Gulch Creek (the extent of impact to other tributaries had not been disclosed at that time), including utilizing the existing alignment ("Alternative 2") rather than relocating the highway to the east ("Alternative 3" – the proposed project). Caltrans rejected that option, and staff asked (also in the September 21, 2004 meeting) if Caltrans would consider utilizing a vertical retaining wall in the proposed new section adjacent to Bonee Gulch Creek, so that placement of fill would be reduced (the surface area of the proposed fill slope, which could be similarly provided through use of a vertical wall, is far less than the extent of fill at the toe of a buttressed fill slope because of the ratio of horizontal to vertical necessary to achieve stability of the fill slope). Caltrans rejected the use of a vertical wall in lieu of a fill slope on the inland side of the new highway section at the Bonee Gulch crossing, stating that it presented "constructability issues" and that Caltrans relied on revegetating the resultant fill slope in Bonee Gulch for part of its revegetation credits.

As stated above, County LCP policy 3.1-9 and Coastal Act Section 30236 limit alteration of streams to very limited, specific kinds of projects.

LCP Policy 3.1-10, however, does include allowance for construction of:

... **"Pipelines, utility lines and road crossings, where no less environmentally damaging alternative route is feasible..."** [emphasis added.]

Exhibit 11 sets forth a detailed analysis of the level of adverse impacts posed by the proposed project as compared to other alternatives, prepared by a Commission staff biologist. Exhibit 11 concludes that the extent of adverse impacts to stream corridors posed by the project if constructed according to Caltrans' most recent submittal, could be significantly reduced through implementation of alternatives, and further explains why at least one alternative ("Alternative 2") appears feasible. As at least one less environmentally damaging alternative is feasible, the proposed project is inconsistent with LCP Policy 3.1-10 in this regard as well. Exhibit 11 also establishes that no significant mitigation plan has been presented to date for the extensive riparian corridor impacts posed by the project.

Therefore the Commission finds that the project as proposed by is inconsistent with LCP Policy 3.1-10 and must be denied.

Further, as described above and in Exhibit 11, the project as proposed will have significant, and substantially avoidable, adverse impacts on many forms of environmentally sensitive habitat, including rare plant habitat, and Red Tree Vole habitat, and the project as proposed is therefore inconsistent with the applicable policies

of the certified LCP and with the applicable policies of Chapter 3 of the Coastal Act, including Sections 30230, 30231, 30236 and 30240.

#### **D. WETLANDS IMPACT ANALYSIS**

The certified Mendocino County LCP contains two policies specifically pertaining to wetlands, 3.1-4 and 3.1-6, and 3.1-8. In addition, the County's LCP defines wetlands as Environmentally Sensitive Habitat and affords wetlands the protection offered under the ESHA-related policies of the LCP. This section, however, focuses on those policies which specifically address development affecting wetlands.

LCP Policy 3.1-4 explicitly incorporates the requirements of Coastal Act Section 30233 and can thus be read together with Section 30233 (below). LCP Policy 3.1-8 requires that the Implementation Plan of the LCP incorporate and apply standards consistent with those recommended in the document titled "California Coastal Commission's Statewide Interpretive Guidelines for Wetland and Other Wet Environmentally Sensitive Habitat Areas, adopted February 4, 1981."

As stated above, LCP Policy 3.1-4 incorporates the requirements of Coastal Act Section 30233 (Filling and Dredging in Coastal Waters and Wetlands) and therefore the two can be read and analyzed together in considering the consistency of the proposed project with these policies.

Section 30106 of the Coastal Act defines development, in part, as the "*removing, dredging, mining, or extraction of any materials.*" Section 30108.2 defines fill as the placement of earth or other substance or material in a submerged area.

Prior to August, 2005 Caltrans had not submitted an accurate wetland delineation in support of the proposed project. However, as described in detail in Exhibit 11 and as summarized in tables from Exhibit 11 also placed in Section E below, the proposed project is now known to affect significant wetland areas, including seep and other wetlands not previously identified by Caltrans. The wetland delineation submitted by Caltrans and other supporting materials contained in the new application submitted August 5, 2005 (Exhibit 8) and the memorandum of staff biologist set forth in Exhibit 11 describe the locations and impacts of proposed wetland fill.

Section 30233 of the Coastal Act provides as follows, in applicable part:

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

...

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



Section 30231 of the Coastal Act address the protection of coastal water quality and marine resources in conjunction with development and other land use activities. Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantially interference with the surface water flow, encouraging, wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The above policies set forth a number of different limitations on what development projects may be allowed in coastal wetlands. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

that the purpose of the filling, diking, or dredging is for one of the eight uses allowed under Section 30233;

that the project has no feasible less environmentally damaging alternative;

that feasible mitigation measures have been provided to minimize adverse environmental effects; and

that the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

a. Alternative Analysis

One test of Section 30233(a) is whether there are feasible less environmentally damaging alternatives to the proposed project. Coastal Act Section 30108 defines “feasible” as follows:

‘Feasible’ means capable of being accomplished in a successful manner within a reasonable time, taking into account economic, environmental, social, and technological factors.’

The analysis of feasible alternatives to the proposed project is set forth in the memorandum of the Commission biologist dated August 31, 2005, contained in Exhibit 11, and is specifically incorporated by reference here. The Commission staff biologist concludes that at least one alternative to the proposed project is feasible.

Caltrans asserts that while “Alternative 2” (addressed in Exhibit 11) is the environmentally least damaging alternative that would meet the project goals, it is not a feasible alternative. Caltrans states that Alternative 2 is not feasible because “it would take at least 4 years” to prepare a new set of project plans to implement that alternative and they would prefer instead to build the project for which they presently have draft plans. Caltrans further states that, based on project inflation for the period of 4 years that Caltrans states would be needed to draft revised plans, the project costs will increase by \$5 million.

However, the Commission finds that an adequate assessment of the true mitigation costs for the substantially increased impacts to coastal resources resulting from Caltrans' preferred alternative has not been calculated by Caltrans. Therefore, Caltrans has not performed a true cost comparison of the feasibility of project alternatives. The Commission also finds that it is a discretionary decision by Caltrans to secure personnel and administrative support and prioritized attention to enable the timely preparation of project plans for the identified alternative that would use the existing highway alignment (otherwise referred to as Alternative 2, compared with Alternative 3 – the proposed project).

The Commission further finds that the lack of substantive mitigation plans for Alternative 3, the proposed project, limits Caltrans' ability to adequately project the true costs for such mitigation, particularly if acquisition of land to undertake offsite mitigation is necessary. It is the Commission's experience that mitigation is costly, and often takes longer and requires significantly more adaptive management to achieve success than applicants typically anticipate. The Commission further notes that conditions of approval typically imposed by the Commission where mitigation is required in consideration of a permit, include binding requirements to achieve and demonstrate long term mitigation plan success. Therefore, the costs of mitigation are more than theoretical, they must be weighed as absolute project costs.

The Commission further finds that in order for Caltrans to implement their preferred alternative, a number of additional project components are required, according to documents supplied by Caltrans and by the Elk Water District, but have not been included in the proposed project description to date. These include the extensive utility relocations identified by Caltrans in preliminary project scoping documents and published in "Utility Conflict Maps" prepared by Caltrans for the subject project.

These relocations may require additional landform alteration and vegetation removal, and in the case of one water line owned by Elk Water District, would require substantial excavation of a water line that is in the path of the proposed new highway alignment. The water line in question is at the southerly end of the proposed project and is located beneath one of the tributary streams that traverses the southerly end of the proposed project.

According to the water district's executive director, in a site visit to the District's water wells within Greenwood Creek in March, 2005, the Water District obtained a preliminary estimate of work required to relocate that water line and learned that significant excavation of hillside area for large equipment staging, and digging up the water line located approximately five feet beneath the bed of the tributary would be required. The Water District states that Caltrans encouraged the District to undertake the excavation separately, and agreed to pay for the work, but that the Water District determined that coastal development permits from the County would be required and has pursued neither the permits nor the work since.

In addition, Commission staff asked Caltrans to provide written evidence from PG&E that the new highway alignment Caltrans proposes is compatible with the high-voltage electrical transmission lines running directly above some portions of the proposed new alignment. Caltrans has not provided this evidence to date and concern remains that the new highway

alignment, if undertaken, could force a relocation of a conflicting portion of a transmission line, which traverses highly sensitive habitat. The expense and environmental damage of utility relocations made necessary by the proposed project, but reduced in other alternatives that Caltrans dismisses as less feasible, must be included in any cost/feasibility comparisons.

Caltrans assigns a cost of \$1 million to traffic delays that would be experienced by the public if Alternative 2 is implemented, and charges that cost against the project. This cost is not borne by Caltrans, but is assigned as a “psychological” cost of loss of time due to the typical wait a motorist experiences during traffic management at road construction sites. On the other hand, Caltrans has not assigned a cost to the more concrete expenses of utility relocations that would be more directly passed on to utility ratepayers. Caltrans also assigns a cost to transportation management for Alternative 3, but as noted in Exhibit 11, Caltrans proposes in Alternative 3 to undertake grading and vegetation clearance within areas tributary to, or containing coastal streams during the winter rainy season, and other measures which compress the project timeline at the expense of potentially increased project impacts. These measures appear to shorten the duration of traffic management that accrues to Alternative 3, however it is likely that even if Alternative 3 were favorably considered, protection of coastal waters from sedimentation and other impact avoidance concerns would likely extend the construction period for Alternative 3 and increase traffic management costs in a way that should be considered in Caltrans’ assessment and comparison of traffic management/driver delay costs.

Thus, the Commission concludes that a range of feasible alternatives exists that would reduce project impacts, including permanent wetland impacts, compared to the proposed project, as outlined in Exhibit 11 incorporated herein by reference as stated above. Exhibit 11 evaluates the comparative impacts to biological resources, landform alteration, coastal waters, and related coastal resources and substantiates that Alternative 2 is significantly less environmentally damaging than the proposed project.

In addition, previous sections of the staff report have analyzed the additional visual impacts caused by the proposal to build a new highway section through areas of existing sensitive habitat, including natural, vegetated slopes adjoining the highway that would be excavated and replaced with faux-stone concrete retaining walls. These impacts would largely be avoided by Alternative 2. Caltrans states that the use of the retaining walls is to reduce environmental impacts. Although the use of retaining walls reduces the extent of grading required to otherwise lay back a slope further, as needed to avoid retaining walls, in the case of the proposed project, it is only the eastward alignment of the new highway that requires most of the grading that creates the need for walls at all. Caltrans concedes that implementation of Alternative 2 would likely eliminate the need for most – if not all – of the proposed retaining walls that are only made necessary by the relocation of the highway to an area that is presently comprised of hillsides and stream corridors.

The previous sections also discuss policies and provisions of the certified LCP and the Coastal Act that protect the scenic integrity and character of rural, two-lane State Highway Route 1. In addition, project designs that afford physical protection of pedestrians utilizing the California Coastal Trail where joins Highway 1 in Mendocino County should be developed and should

include the most minimal and visually transparent guard rail available, to minimize the visual impacts to pedestrians, bicyclists, and drivers on this highly scenic section of Route 1.

## Conclusion

The Commission finds that feasible alternatives to avoid impacts to coastal resources exist. The Commission finds therefore that the proposed project is not the least environmentally damaging feasible alternative as required by Section 30233(a) of the Coastal Act and the similar requirement of the County's certified LCP policy 3.1-4.

### b. Feasible Mitigation Measures

Another test set forth by Section 30233 is whether feasible mitigation measures have been provided to minimize adverse environmental impacts. Exhibit 11, which has been previously incorporated herein by reference, contains an assessment of some of the mitigation measures proposed in the Environmental Assessment (2002) prepared by Caltrans. The most recent coastal development permit application submitted by Caltrans contains indications that many of the mitigation measures previously established have been weakened or eliminated through modification of stream alteration agreements, changes to the temporary bridge to require 3-year continuous installation (rather than seasonal removal) and installation via the use of pile driving techniques which Caltrans previously did not propose to use on the subject project.

The most recent Caltrans coastal development permit application, dated August 5, 2005, lacks mitigation plans, and previous plans submitted with the previous application that has been withdrawn only showed in one case, through a one-page grading conceptual illustration prepared by a Caltrans civil engineer, expansion of a Caltrans roadside mitigation site at Cleone by excavating an open space area near Highway 1 of undisclosed present habitat value, and allowing water to collect. No vegetation plan or habitat analysis was included. It is not clear whether Caltrans even continues to propose the expanded use of the Cleone site, and none of the requested evaluation of the success of the existing mitigation program at Cleone was provided in the new application.

Other feasible mitigation measures (which arguably could also be considered a range of project alternatives) include reducing the extent of paved roadbed proposed, which provides even greater benefits in combination with a relocation of the project footprint to coincide with the existing highway alignment. As stated in previous sections, Caltrans engineers informed Commission staff on request that every 4 feet of project footprint width (as applied to the proposed project) equates with approximately a 10 percent reduction in the length and height of the associated retaining walls proposed.

A number of measures have been identified to reduce project impacts, but which have not been proposed by Caltrans. These include, as noted in Exhibit 11, (a) implementing seasonal restrictions that avoid landform alteration during the rainy season (as Caltrans originally proposed); (b) avoiding night lighting that could disturb night-feeding raptors that are known to utilize the project area for hunting, and are known to nest nearby; (c) providing temporary nesting sites for bridge nesting birds and bats that may roost on the bridge; and (d) limit

staging, materials storage and other unnecessary impacts that increase the footprint of riparian corridor impacts (Caltrans engineers told Commission staff on request at a site visit on September 13, 2004 that equipment and materials storage and staging would not take place within the riparian corridor of Greenwood Creek but would instead occur offsite at a location that had not then been determined, yet staging areas are now shown beneath the existing bridge, in the middle of the riparian corridor, within an area marked as "Caltrans right of way."). No formal mitigation plan was provided with the August 5, 2005 submittal, and unless otherwise stated, the presumption is that any mitigation proposals in previous submittals to staff were withdrawn when CDP Application No. 1-03-38 was withdrawn by Caltrans January 20, 2005 if such mitigation was not specifically included or referenced as included, in the new application.

Therefore, the Commission finds that feasible mitigation measures are available that would lessen the proposed project's environmental damage but that these measures have in some cases either been withdrawn or modified by Caltrans since set forth in previous agreements or approvals with other agencies or in environmental documents previously prepared by Caltrans.

c. Conclusion

The Commission thus finds that the proposed project is not an incidental public purpose use, there are feasible less environmentally damaging alternatives available, that feasible mitigation is available and should be required for potential adverse impacts on coastal resources that will be caused if the project is constructed as proposed. Therefore, the Commission finds that the project is inconsistent with the applicable requirements of Section 30233 of the Coastal Act and with the equivalent requirements of certified Mendocino County LCP Policy 3.1-4 and must therefore be denied.

E. ALTERNATIVES

The Memorandum of staff biologist Vanessa Metz, Ph.D., dated August 31, 2005, and attached hereto as Exhibit 11 is hereby incorporated by reference in full in this section, and summary tables attached to the memorandum are additionally set forth below for reference.

Summary of Main Habitat Impacts of Alternatives 2 vs. 3,  
Greenwood Creek Bridge Replacement Project

(Compiled by Vanessa Metz, Calif. Coastal Commission, from CDP Application data).

Alternative 2 = Replace and Widen Existing Bridge

Alternative 3 = Eastern Alignment (Proposed Project)

<u>PERMANENT Habitat Impacts</u>	<u>Alt. 2 (Replace)</u>	<u>Alt. 3 (Proposed)</u>
All Wetland Types	0.33 acres	0.61 acre
Freshwater Seep Wetlands	0.001 acre	0.01 acre
Non-Seep Wetlands	0.33 acre	0.60 acre

Creeks	0.001 acre	0.01 acre
Individual Trees Removed	893 trees	1107 trees
Fir trees (vole habitat)	48 trees	82 trees
Vole nesting trees	14 trees	15 trees
All Plant Communities	0.81 acres	1.33 acres
Rare Plant Communities	0.42 acres	0.77 acres
Coastal Coniferous Forest	0.33 acres	0.47 acres

<u>“TEMPORARY” Habitat Impacts</u>	<u>Alt 2</u>	<u>Alt 3</u>
All Wetland Types	2.50 acres	3.14 acres
Freshwater Seep Wetlands	0.01 acres	0.03 acres
Non-Seep Wetlands	2.49 acres	3.11 acres
Creeks	0.22 acres	0.21 acres
All Plant Communities	4.00 acres	6.28 acres
Rare Plant Communities	2.54 acres	3.85 acres
Coastal Coniferous Forest	0.93 acres	2.02 acres

<u>Culvert Extensions</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Culvert Extensions	15.5 linear feet	88.8 linear feet
Bonee Gulch Creek Culvert	none	48.0 linear feet
Tributary 1 Culvert	7.0 linear feet	15.0 linear feet
Tributary 2 Culvert	none	20.0 linear feet
Tributary 3 Culvert	8.5 linear feet	5.8 linear feet

<u>Fill in Tributaries</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Fill in Tributaries	none	0.0005 acre (21.5 ft <sup>2</sup> )
Fill in Tributary 1	none	0.0003 acre (12.9 ft <sup>2</sup> )
Fill in Tributary 2	none	0.0002 acre ( 8.6 ft <sup>2</sup> )
Fill in Tributary 3	none	none

<u>Cut and Fill</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Cut and Fill Area	0.03 acres	1.7 acres
Cut Area	0.01 acres	1.2 acres
Fill Area	0.02 acres	0.5 acres
Total Cut and Fill Volume	n/a	16,098 cu yd
Cut Volume	n/a	4,718 cu yd
Fill Volume	n/a	11,380 cu yd

TOTAL, PERMANENT, AND TEMPORARY IMPACTS BY HABITAT

<u>All Wetland Types Impacts</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Wetland Impacts	2.83 acres	3.75 acres
Permanent Wetland Impacts	0.33 acres	0.61 acres
Temporary Wetland Impacts	2.50 acres	3.14 acres

<u>Seep Wetland Impacts</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Seep Wetland Impacts	0.009 acres	0.04 acres
Permanent to Seep Wetland	0.001 acres	0.01 acres
Temporary to Seep Wetland	0.009 acres	0.03 acres
<u>Non-Seep Wetland Impacts</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Non-Seep Wetl. Impacts	2.82 acres	3.70 acres
Permanent Non-Seep Wetl.	0.33 acre	0.60 acre
Temporary Non-Seep Wetl.	2.49 acres	3.11 acres
<u>Creeks Impacts</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Creeks Impacts	0.22 acre	0.22 acre
Permanent Creeks Impacts	0.001 acre	0.01 acre
Temporary Creeks Impacts	0.22 acre	0.21 acre
<u>All Plant Communities Impacts</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total All Plant Community Impacts	4.81 acres	7.61 acres
Permanent All Plant Comm.	0.81 acre	1.33 acres
Temporary All Plant Comm.	4.00 acres	6.28 acres
<u>Rare Plant Communities Impacts</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Rare Plant Community Impacts	2.96 acres	4.62 acres
Permanent Rare Plant Comm.	0.42 acres	0.77 acres
Temporary Rare Plant Comm.	2.54 acres	3.85 acres
<u>Coniferous Forest Impacts</u>	<u>Alt 2</u>	<u>Alt 3</u>
Total Coniferous Forest Impacts	1.26 acres	2.49 acres
Permanent Coniferous	0.33 acres	0.47 acres
Temporary Coniferous	0.93 acres	2.02 acres

The previous sections of the staff report have discussed a range of issues raised by the project as proposed by Caltrans. The proposed project would adversely affect a range of coastal resources protected by the policies of the certified Mendocino County LCP and by the Coastal Act. These resources include visual, public access and recreation, community character, scenic qualities of rural two-lane State Highway Route 1, coastal streams and wetlands, water quality, environmentally sensitive habitat and species.

In addition, the appellants have cited a range of alternatives that they believe would reduce the visual and community character impacts of the project.

The Commission finds therefore that feasible alternatives and mitigation measures exist that would lessen the adverse environmental impacts that will otherwise be caused if the project is constructed as presently proposed by Caltrans. The Commission further finds that if the project were revised to utilize the existing highway alignment, and to

minimize the footprint of impact and other concerns raised herein, that a project would result that could be favorably approved. The Commission therefore encourages Caltrans to expeditiously redesign the project in consultation with Commission staff so that a project could be approved that will address legitimate safety concerns in a manner that preserves sensitive coastal resources to the maximum extent feasible.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The preceding sections provide findings that the proposed project does not conform with the access and recreation provisions of Chapter 3, or to the provisions of the certified Mendocino County LCP and that alternative designs and mitigation measures exist that would allow the proposed project, modified and/or mitigated accordingly, to achieve consistency with the policies and provisions of Chapter 3 of the Coastal Act, and with the certified Mendocino County LCP. The applicant has declined to incorporate some or all of these changes or mitigation measures into the proposed project, or has reduced or eliminated mitigation measures that were previously proposed by the applicant or required through agreements with other agencies. Therefore, as presently proposed, the development will cause adverse impacts on coastal resources.

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in the findings addressing the project alternatives, there are feasible mitigation measures and feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment.

The Commission finds for all of the reasons set forth above that the proposed project, as submitted, will have significant adverse effects on the environment within the meaning of the California Environmental Quality Act of 1970. In addition, one or more alternatives exist that would avoid or reduce these impacts, but which the applicant has declined to incorporate into the proposed project. Therefore, the proposed project, as submitted, does not adequately mitigate the adverse environmental impacts that the project will pose on coastal resources and is therefore determined to be inconsistent with the requirements of the CEQA, with the applicable policies of the certified Mendocino County LCP, and with the applicable policies of Chapter 3 of the Coastal Act.