

Attachment 1

Comments by Bayside Cares Concerning City’s Responses to Comments

The City provided the public with only 7 calendar days, which was 3 days less than the minimum of 10 calendar days, between releasing the Final Environmental Impact Report (“FEIR”) for the Project and scheduling the City Council’s consideration of the FEIR for certification. (14 C.C.R. Section 15088(b).) Four (4) of those 7 days were weekend and holiday days (including Thanksgiving Day and the holiday weekend), leaving only three (3) business days to review hundreds of pages of FEIR revisions, new technical documents, responses to comments, the staff report, and draft resolutions.

During the limited time period within which the members of Bayside Cares and their counsel and consultant have had the opportunity to review the FEIR and other materials, we have observed numerous omissions, inaccuracies and other problems with the Master Responses and responses to individual comments. Please note that, while the comments below identify some deficiencies with the responses to comments, the comments do not provide a comprehensive discussion of all deficiencies we have observed. The City has simply provided too little time to both conduct a thorough review of all responses to comments and prepare comments that addresses each and every deficiency.

Inadequate Master Responses

Master Response	Primary Objection(s)
<p>1. Failure to Describe Bicycle Lane and Sidewalk Connectivity Beyond the APE</p>	<p>The City’s response to the Comment is that bicycle and pedestrian connectivity outside the APE is not considered an environmental effect under CEQA. The response is deficient. The Project potentially creates safety hazards to both bicyclists and pedestrians by encouraging walking and bicycling within the 1 mile limit of the APE, and then “transitioning” them onto to striped narrow shoulder of Old Arcata Road, the old Highway 101, which has a 45 mile per hour speed limit, and in which the shoulder is repeatedly blocked by telephone poles, forcing pedestrians and bicyclists to share the roadway with high-speed motor vehicles, causing danger to both pedestrians and bicyclists.</p>
<p>2. Replacement of Sewer Laterals</p>	<p>Not analyzed in the DEIR. The DEIR only contains the statement that “existing sanitary sewer laterals may be replaced with new cleanouts”. The DEIR does not contain any of the facts claimed in the City’s Response to the Comment, i.e., that only failing or failed sewer laterals will be replaced, and that potential service interruptions will be “short in duration.” The construction schedule allocates no more than one work day to complete this work. According to the comment, the City will test all sewer laterals in the APE to see if they are failing and required them to be replaced if they are.</p>

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	<p>The City’s response to the Comment states that there is no evidence that the sanitary sewer lateral replacements will have any impact separate from and not already disclosed in the DEIR based on the overall Project. This is not true. Under existing Arcata Ordinances, which imposes the financial burden of replacing sewer laterals on homeowners, the requirement of sewer lateral replacements could lead to a form of blight or “urban decay.” (<u>See Bakersfield Citizens for Local Control v. City of Bakersfield</u> (2004) 124 Cal.App.4th 1184.)</p> <p>Arcata Municipal Code Section 7412 requires the private property owner to pay the <i>entire cost</i> of the sanitary sewer lateral, both labor and materials. City of Arcata Master Fee Schedule, Section 9, sets forth some of the fees the City charges for a sanitary sewer connections. The cost is thousands of dollars, not counting the cost of labor and materials. If the private property owners in the APE do not or cannot pay for the new sanitary sewer lateral, the City will deny them sewer service if their sewer lateral has failed or is failing. This could lead to a very significant indirect environmental impacts. It could cause a form of blight or urban decay, that is cognizable under CEQA, with numerous homeowners without sewer service.</p>
<p>3. Elimination of an Un-disclosed Number of Parking Places</p>	<p>Not analyzed. The City’s response to Comments is only that the loss of parking as a result of the project is not considered an environmental impact under CEQA. This is not accurate. (<u>Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California</u> (1988) 47 Cal.3d 376 [demand for parking created by the project was an environmental impact under CEQA].) In addition, the elimination of parking potentially creates other environmental effects on traffic and air quality, because if motorists cannot legally park, they will illegally park or idle their cars in the roadway, causing traffic to back up and causing air pollution to concentrate where motorists are idling their motor vehicles. The City’s response is that because bike paths and sidewalks will make it easier to bike and walk in the APE, less people will use their motor vehicles. This ignores the reality that people drive their children to school, then drive themselves to work, shop or do errands or attend appointments outside out of the APE, then return to pick up their children from the two schools in the APE. This ignores the reality that many community events at the Bayside Community Hall are attended by persons not living in the APE, who must attend by motor vehicle. This also ignores that fact that the APE is only approximately 1 mile long, and that there are no bike lanes or sidewalks on both sides of the APE to facilitate bicycling or driving. The DEIR does not disclose how many existing parking places will be eliminated by the Project.</p>

Master Response	Primary Objection(s)
4. Noise and Vibration	<p>In response to Comments that the vibrations from construction and from motor vehicles impacting with the Project’s speed humps could damage historic structures, the City’s response was that the maximum vibratory level for vehicles under 7.5 tons was under Caltrans guidance thresholds. However, the APE is regularly used by loaded logging trucks. Under California Vehicle Code Section 35552, these trucks are permitted to weigh 34,000 pounds - 69,000 pounds, depending on the number of tandem axels. A ton is 2,000 lbs. Hence, the logging trucks can weigh 17-34.5 tons. The DEIR does not analyze the vibration of loaded logging trucks impacting the speed humps.</p> <p>In response to Comments that, by the Project bringing the roadway much closer to Mistwood Montessori School, the Project will increase the noise levels for sensitive receptors, the City concedes that projected noise contours in the Noise Element show the highest level of anticipated noise along and adjacent to the immediate roadway of Old Arcata Road where Mistwood School is located, but claims, without offering factual basis, that it would not exceed the City of Arcata Noise Element. The City asserts, without offering any factual evidence, that noise would decrease due to a smoother roadway, traffic calming measures, signage and speed humps. The City offers no factual evidence that these factors will reduce noise, or of what the actual noise level will be near Mistwood School.</p>
5. Drainage	<p>Not analyzed. City says it will prepare a drainage analysis in the future, and the recommendations in the drainage analysis it conducts in the future, will be adopted as mitigation measures, and may involve modification of the existing or future storm drain system. This constitutes impermissible deferral of analysis and mitigation. CEQA’s demand for meaningful information is not satisfied by simply stating that the required analysis will be provided in the future.</p>
7. Historical Resource s/10 Architect ural Area of Potential Effect Maps	<p>The City’s response to Comments that the City failed to survey and formally evaluate for National Register eligibility Old Arcata Road and adjoining properties constructed after 1945, eight 19th and early 20th century properties within the APE (which are eligible for National Register), 28 ranch style structures which has attained sufficient age since 1974 to be eligible for National Register, the 1882 Temperance Hall, failure to consider that there are 65 structures in the APE likely to contribute to an historic district, that the area is a significant cultural landscape worthy of preservation as an historic district, and that the APE was artificially and inappropriately limited to include only the road and public right of way, the City replied, essentially, that its experts had done their work, and called this a difference of expert opinion, when in fact, the City’s experts failed to include and render an expert opinion which included the actual affected structures or road. The City’s experts re-drew the original APE map after the comment period had expired, to include only 6 parcels adjacent to the roundabout, as the result of “a pedestrian survey”. The DEIR did not include this pedestrian survey or even the addresses of the 6 parcels. They are now in the</p>

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	<p>Errata. The City concluded that only the setting of these parcels was potentially impacted, and it concluded that there was no impact. This is incorrect. The City’s experts neglected to survey or evaluate most of the historic structures and Old Arcata Road in rendering their opinions. Because they did not even survey these structures and road, their opinion is not based upon the facts, buildings and setting in which the Project is to be constructed.</p> <p>The City’s experts also revised the APE map in a manner which appears deliberately calculated to render a no impact opinion. In Bayside Cares’ Comment on the DEIR and in Kathleen Stanton’s Comment on the DEIR, it was pointed out that the City completely omitted from discussion in the DEIR three historic structures within the APE which had been released to the public at that time: the Orr House at 2332 Jacoby Creek Road, the Connors-Lawlor-Wilson House at 1945 Old Arcata Road, and the historic structure at 1972 Old Arcata Road, all of which are eligible for the National Register. The City then produced a new APE map intentionally altered so that these three properties would be excluded from the APE to support a false finding of no effect.</p> <p>In addition, also to support a false finding of no effect, the APE includes, in most cases, only the public right of way and does not include the whole parcels or the structures on them. The City falsely claims that the Old Jacoby Schoolhouse Building is not impacted, when it is in close vicinity to the roundabout and to the 5 overhead lights, sidewalks and bikepaths it entails. The setting of this building, as well as all other historic structures in the vicinity will be greatly impaired, in violation of the Secretary of Interior Standards for the Protection of Historic Setting (District/Neighborhood). The road will be much closer to the Old Temperance Hall (moved from 111 feet away to 35 feet away) and open space near that historic building will be removed. (See Letter from Kathleen Stanton, attached as Exhibit E.)</p>
<p>8. Impacts to Wetlands</p>	<p>The City’s response to comments states that there are no impacts to wetlands by the Project, so no mitigation of damage or destruction of the wetlands is required. This is not true. According to the City’s own wetland delineation map and 30% design Plan Set, the Project will entail filling delineated wetlands and covering them with asphalt.</p> <p>A wetland delineation report was prepared by GHD in January 2019 that was updated in July 2021. The original report identified four 3-parameter wetland polygons associated with the drainage ditch along the northeast side of Jacoby Creek Road. In the revised 2021 wetland delineation, the wetland determination was changed <i>as to only one of the polygons</i>, which was the one closest to Old Arcata Road. The remainder of the ditch is still mapped as a 3-parameter wetland. The map of the roundabout area (Sheet C-113) in the 30% design Plan</p>

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	<p>Set provided in Appendix B of the Final EIR shows that the ditch, which is still mapped as a 3-parameter wetland, will be filled and covered with asphalt.</p> <p>The Project will fill these mapped wetlands, contrary to what is stated in the DEIR. The DEIR does not state that wetlands will be created to mitigate the loss of the wetland the Project will fill and destroy or that any other mitigation will be provided. The DEIR is incomplete and cannot be certified. (See letter from Kyle Wear, Botanical Consultant, attached as Exhibit F.)</p>

Deficient Responses to Bayside Cares Comments

Response	Primary Deficiencies
<p>46-2 (1), 46-2(9), 46-3(1), 46-15, 46-17, 46-21, 46-29(1), (2), (3), 46-34(1), 46-37(3)</p> <p>(Storm Drain and Flooding Issues)</p>	<ol style="list-style-type: none"> <li data-bbox="380 789 1419 1041">1. The City admits it has not performed a drainage analysis to ensure that there is no negative impact on drainage conditions. The City assumes, without any evidence, that the drainage conditions will not be negatively impacted, stating that “a drainage analysis will be prepared prior to final design.” Without the required analysis, the City does not have any substantial evidence upon which to base a conclusion that the Project will not adversely affect drainage in the Project area. <li data-bbox="380 1073 1419 1766">2. Section 3.9.3 of the DEIR, page 3.9.4 states, quoting Water Quality Order No. 2013-0001-DWQ NPDES General Permit No. CAS000004 Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4 Permit): “Projects that create or replace 5,000 sq ft or more of impervious surface are considered Regulated Projects under this Permit. Regulated Projects must use Site Design Measures, as defined in the Permit, to capture the maximum amount of the 85th percentile, 24-hour storm runoff event. Any runoff that cannot be captured by Site Design Measures must then be routed to an appropriate bioretention facility.” <p>The City admits: “Based upon 30% design, the Project would increase impervious surface by approximately 15,200 square feet (approximately 0.35 acres)”.</p> <p>Accordingly, the Project is a “Regulated Project” under the above permit. In violation of the above permit, the City does not state that it will use Site Design Measures to capture the maximum amount of the 85th percentile, 24-hour storm runoff event, and to route drainage which cannot be captured to an appropriate bioretention facility.</p> <li data-bbox="380 1797 1419 1860">3. Section 3.9.2 of the DEIR, page 3.9-1, states: “The Project Area is not typically affected by flood waters when Jacoby Creek overtops its banks.”

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	<p>The area on Old Arcata Road immediately adjacent to the Project Area is yearly flooded by Jacoby Creek when it overtops its banks. The Jacoby Creek Land Trust has been awarded a grant to conduct a study on how to reduce flooding impacts in the lower Jacoby Creek Valley, which is the area immediately adjacent to the Project Area. (See Request for Proposal, attached as Exhibit “A”; see Grant Application for \$325,000 grant awarded to the Jacoby Creek Land Trust, to study, <i>inter alia</i>, alleviating the flooding from Jacoby Creek Road to Graham Road, attached as Exhibits A and B, and letters from local residents, as well as pictures, attached as Exhibit C.)</p> <p>In response to the Comment, the City states:</p> <p style="padding-left: 40px;">“To ensure that the Project would not negatively impact drainage conditions, a drainage analysis will be prepared prior to final design, as required under Mitigation Measure HWQ-1 . . . If warranted, the existing and proposed drainage facilities would be modified to ensure no environmental impact, particularly to adjacent properties.”</p> <p>“CEQA’s demand for meaningful information is not satisfied by simply stating that information will be provided in the future. “(<u>Vinyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordoba</u> (2007) 40 Cal.4th 412, 430-432[as modified April 18, 2007.] The City must provide meaningful information as to the Project’s effects on drainage conditions <i>now</i>, rather than simply saying that it will perform a drainage study in the future and modify the drainage facilities in the future if it deems modification warranted.</p> <p>City of Arcata General Plan, quoted in the DEIR, page 3.9-6, states:</p> <p style="padding-left: 40px;">“7. New projects that affect the quantity or quality of surface water runoff shall be required to allocate land necessary for detaining post-project flows and/or for incorporating measures to mitigate water quality impacts related to urban runoff. To the maximum extent possible, new development shall not produce a net increase in peak stormwater runoff.”</p> <p>The City’s response to the Comment is: “Changes in impervious surfaces would be small in scale and would not result in substantive increase in surface runoff.”</p> <p>In saying this, the City admits that the Project will increase the quantity of surface runoff water, but the City does not consider the increase “substantive”. Whether or not the City considers the increase “substantive”, (whatever that means), the City is required to allocate land necessary to detain post-project flows and/or for incorporating measures to mitigate water quality impacts</p>

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	<p>related to urban runoff. The City does not intend to do this, according to the DEIR and the City’s response to the Comment.</p> <p>The City’s response to the Comment states: “Contrarily, the City’s DEIR analysis regarding stormwater and related runoff issues were evaluated by the Project’s licensed Professional Engineer, who developed specific mitigation measure to ensure the Project does not cause or exacerbate flooding.”</p> <p>This is not true. The City’s engineer said that in the future the City would do a drainage study, it would make recommendations, that the City would follow the recommendations, and that these would be its mitigation measures. The engineer developed <i>no mitigation measures</i>. He stated that, in the future, the City would get a study to determine what the adverse effects on flooding and drainage would be, and follow the recommendations in the study, as its mitigation measures.</p> <p>The DEIR states, on page 3.9-1, “Existing storm drainage along Old Arcata Road and Jacoby Creek Road is informal and disjointed, consisting largely of roadside ditches.”</p> <p>The DEIR states, on page 3.9-10: “To ensure that the Project will not negatively impact drainage conditions, a drainage analysis is being prepared prior to final design. The drainage analysis would compare the peak runoff from existing and proposed conditions and analyze the conveyance capacity of the drainage system, and would ensure long-term drainage conditions in the Study Area would not be worsened as a result of Project activities. If warranted, the proposed drainage facilities would be modified to ensure that adjacent properties are not negatively impacted by the Project. Potential modifications to existing drainage facilities would be stated as recommendations in the drainage analysis, and would be fully incorporated into the Project, as included Mitigation Measure HWQ-1. Through the drainage study, the City is obligated to demonstrate existing drainage issues in the area would be not compounded, specifically those hydrologically connected to Jacoby Creek flood conditions.”</p> <p>The City’s Master Response regarding Drainage states: “To ensure that the Project will not negatively impact drainage conditions, a drainage analysis will be prepared prior to final design, as required under Mitigation Measure HWQ-1. If warranted, the existing and proposed drainage facilities would be modified to ensure no environmental impact, particularly to adjacent properties. The requirement to incorporation recommendations from the drainage study are fully incorporated into the Project, as included in Mitigation Measure HWQ-1 (page 3.9-10.)</p>

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	<p>“CEQA’s demand for meaningful information is not satisfied by simply stating that information will be provided in the future.” (<u>Vinyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordoba</u> (2007) 40 Cal.4th 412, 430-432[as modified April 18, 2007.]</p> <p>The City must provide meaningful information as to the Project’s effects on drainage conditions <i>now</i>, and how the adverse effects will be mitigated, rather than simply saying that it will perform a drainage study in the future and modify the drainage facilities in the future if it deems modification warranted. The area regularly floods, as shown by the Grant and Request for Proposal by the Jacoby Creek Land Trust to study flooding in the area, attached as Exhibits A and B, and by the letters also attached to this letter as Exhibit C.</p>
<p>46-2 (2.) Failure to describe sewer upgrades.</p>	<p>The Comment notes that the DEIR states only that “sanitary sewer laterals may be replaced with cleanouts.” The Comment states that there is no explanation in the DEIR as to why this may occur, which sewer laterals will be replaced, or any analysis of the adverse effects of such replacement or potential adverse effects of the Project on the provision of sewer service to properties in the APE.</p> <p>The City responds to the Comment by saying that it will be “providing more reliable sewer service by replacing failed or failing laterals”. The private property owners will have to bear all costs of the labor and materials as well as pay fees to the City for the replacement of their sewer laterals pursuant to Arcata Municipal Code Sections 7412 and 7433 and the City of Arcata Master Schedule for Various Fees, Service Charges and Taxes. The City will presumably be testing every sewer lateral in the APE and every private property owner may potentially be required to replace their sewer lateral, at a cost of many thousands of dollars. (See Letter from Sue Moore, attached as Exhibit “D”.) Those that do not or cannot pay, will be denied sewer service from the City. This has the potential adverse environmental effect of creating blight or “urban decay”, by causing many homes to be without sewer service. (<u>Bakersfield Citizens for Local Control v. City of Bakersfield</u>(2004) 124 Cal.App.4th 1184.)</p> <p>As the City notes, per CEQA Guideline Section 15151, the City must prepare the DEIR with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision. By simply stating in the DEIR that “existing sanitary sewer laterals may be replaced”, no information whatsoever is being provided to decision makers to enable them to make a decision. The DEIR should be revised and recirculated.</p> <p>“CEQA’s demand for meaningful information is not satisfied by simply stating that information will be provided in the future. “(Vinyard Area Citizens for Responsible Growth, Inc. v. City of</p>

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	<p><u>Rancho Cordoba</u> (2007) 40 Cal.4th 412, 430-432[as modified April 18, 2007.).</p> <p>The DEIR should be revised to specify whether all private property owners whose sewer laterals have failed or failing will be required to pay for new sewer laterals and cleanouts and will have their sewer service terminated if they fail to do so, or whether the failed or failing laterals will be allowed to remain connected to the City sewer, and how the potentially adverse effects on the environment will be mitigated.</p>
<p>46-2(3) Failure to Describe Water Utility Upgrades</p>	<p>The DEIR notes only that “water service connections may be updated.”</p> <p>The Comment pointed out that the environmental impact of updating the water service connections, the impact on the provision of water to the owners and occupants using the water service connections, whether all or only some water service connections would be updated, and how these connections would be updated, was not provided in the DEIR. The City’s response to provide information found nowhere in the DEIR. The DEIR should be revised and recirculated.</p> <p>In its response to the Comment, the City states that it would be “replacing failed or failing water service connections”, that “these upgrades” would occur to aging water utility infrastructure.” The City’s response is that the condition of the utility and availability of funding would determine if a water connection would be replaced, and that water service interruption would be no more than one work day. None of this is stated in the DEIR. The DEIR also fails to state whether the private property owners will be required to pay for the updating of their water service connections, and whether their water service will be terminated if they fail to do so, potentially causing blight or urban decay, with residential properties having no access to water. The DEIR should be revised and recirculated.</p>
<p>46-2(4), 46-3(3), 46-4(1), (2), 46-7(7)(b), 46-11, 46-24, 46-36,46-38(1), (2) Elimination of an</p>	<p>The City’s response to Comments is only that the loss of parking is as a result of the project is not considered an environmental impact under CEQA. This is not accurate. (See <u>Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California</u> (1988) 47 Cal.3d 376 [demand for parking created by the project was an environmental impact under CEQA.]) In addition, the elimination of parking potentially creates other environmental effects on traffic and air quality, because if motorists cannot legally park, they will illegally park or idle their cars in the roadway, causing traffic to back up and causing air pollution to concentrate where motorists are idling their motor vehicles. No mitigation is specified for these adverse environmental effects.</p>

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<p>Undisclosed Number of Parking Places</p>	<p>The City’s response is also that because bike paths and sidewalks will make it easier to bike and walk in the APE, less people will use their motor vehicles, so there will be less cars needing parking places. This is speculation and ignores the reality that people drive their children to school, then drive themselves to work, shop or do errands or attend appointments outside out of the APE, then return to pick up their children from the two schools in the APE. This is speculation and ignores the reality that many community events at the Bayside Community Hall are attended by persons not living in the APE, who must attend by motor vehicle. This also ignores that fact that the APE is only approximately 1 mile long, and that there are no bike lanes or sidewalks on both sides of the APE to facilitate bicycling or driving. The DEIR does not disclose how many existing parking places will be eliminated by the Project.</p> <p>If parking places are eliminated, users of the buildings in the Area of Potential Effect will have to stop and idle their cars while they take their children into the two schools in the APE, or while they go into and out of, buildings in the APE, blocking traffic and causing more pollution from vehicle exhaust to be emitted into the APE. If users of the buildings in the APE do not stop and idle their cars in the APE because they have no place to park, they will park illegally in the bike lanes or sidewalks, blocking bicycle and pedestrian traffic, or they will double park, also blocking traffic. Parents must drive to schools to drop off and pick up their children and to attend school events. Many members of the public also attend community events in the Bayside Grange. A large dirt area owned by the County presently used for parking for Bayside Grange and Mistwood Montessori School will be eliminated. The potential adverse effects on traffic and air quality related to eliminating parking places in the Project area are not analyzed in the DEIR and no mitigation is provided.</p>
<p>46-2(5) Failure to describe bicycle and pedestrian connectivity beyond the APE</p>	<p>The City’s response to the Comment is that connectivity of the bicycle path and sidewalks beyond the APE is not an issue under CEQA. This is not correct, as the Project encourages bicyclists and pedestrians to both use the area adjacent to the APE, endangering both bicyclists and pedestrians, such traffic safety impacts are an issue under CEQA. The Project, by including bike paths and sidewalks in the limited area of the APE, encourages use of the APE by pedestrians and bicyclists, and routes them to the area immediately adjacent to the APE. In the area immediately adjacent to the APE, there is often no space on the shoulder for either bicycles or pedestrians. Bicyclists and pedestrians are therefore forced to use the area traveled by motor vehicles, in a 45-mile-per-hour zone, in which many vehicles travel considerably faster than 45 miles per hour, causing danger to both bicyclists and pedestrians.</p>
<p>46-2(6), (8), 46-3(5), (6),</p>	<p>The response to this Comment states that there are no impacts to wetlands by the Project, so no mitigation of damage or destruction of the wetlands is required. This is not true. The City’s own wetland delineation and 30% design plan set</p>

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<p>46-5, 46-6(1), 46-12, 46-26, Impact on Wetlands, Failure to Mitigate purposes</p>	<p>show that the City will be filling and covering with asphalt a delineated wetland on its map.</p> <p>A wetland delineation report was prepared by GHC in January 2019 that was updated in July 2021. The original report identified four 3-parameter wetland polygons associated with the drainage ditch along the northeast side of Jacoby Creek Road. In the revised 2021 wetland delineation, the wetland determination was changed as to only one of the polygons closest to Old Arcata Road. The remainder of the ditch is still mapped as 3-parameter wetland. The map of the roundabout area (Sheet C-113) in the 30% design Plan Set provided in Appendix B of the Final EIR shows that the ditch still mapped as a 3-parameter wetland will be filled and covered with asphalt.</p> <p>The Project will fill these mapped wetlands, contrary to what is stated in the DEIR. The DEIR does not state that wetlands will be created to mitigate the loss of the wetland the Project will fill and destroy. The DEIR is incomplete and cannot be certified. (See letter from Kyle Wear, Botanical Consultant. Attached as Exhibit F.)</p>
<p>46-2(7), 46-3(4), Failure to describe protection measures to protect sight impaired at crosswalk near round-about</p>	<p>The Bayside Cares' Comment to the DEIR attaches the "Roundabout Geometric Design Guidance for the California Department of Transportation Research Project #65A0229" as Exhibit B1, which states, on page 26, that pedestrians with visual disabilities total walk distance in a roundabout is longer than normal crosswalks because the crosswalks are set back from the roundabout, which causes difficulties in sight impaired pedestrians' navigation. It also states that such sight disabled pedestrians find it more difficult to identify gaps in roundabout traffic through observing sounds at roundabouts. It also states that such disabled pedestrians find it difficult to detect when a driver has yielded to them. It also notes that quiet motor vehicles (such as electric vehicles), cause particular difficulty.</p> <p>The City's response to the Comment is that the Project will include user activated warning lights and detectable surfaces (first specified in the Errata) to detect the location of crossings. These will do nothing to alleviate the dangers to vision impaired pedestrians in determining when a driver has yielded to them or the presence of a vehicle, particularly a quiet vehicle, or whether there is a gap in traffic.</p>
<p>46-2(9) Increases in Roadbed Elevation</p>	<p>The Comment noted that the DEIR did not disclose and analyze the increase the Project would make to roadbed elevation and its effect on drainage and access to properties. The City's response to the Comment states that the pavement overlay will be 3'-6" thick, and includes this in the Errata in the Final EIR. The impact of the increase in the elevation of the roadbed is not analyzed in the DEIR in relation to drainage or access to properties. The DEIR simply states that the City plans to</p>

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<p>related to Drainage or Property Access</p>	<p>do a drainage analysis in the future and comply with its recommendations as mitigation. The City cannot defer to the future its analysis of adverse environmental effects on drainage and property access.</p> <p>There is no information in the DEIR as to the potentially adverse environmental effect of the increase in the elevation of the roadbed on drainage or access to properties. This constitutes impermissible deferral of analysis and mitigation. CEQA’s demand for meaningful information is not satisfied by simply stating that the required analysis will be provided in the future.</p>
<p>46-2 (10), 46-7(8), 46-18 Protective Measures to Ensure that Historic Structures do not suffer damage from vehicle impact with Project’s speed humps</p>	<p>In response to Comments that the vibrations from construction and from motor vehicles impacting with the Project’s speed humps could damage historic structures, the City’s response was that the maximum vibratory level for vehicles under 7.5 tons was under Caltrans guidance thresholds. However, the APE is regularly used by loaded logging trucks. Under California Vehicle Code Section 35552, these trucks are permitted to weigh 34,000 pounds - 69,000 pounds, depending on the number of tandem axels. A ton is 2,000 lbs. Hence, the logging trucks can weigh 17-34.5 tons. The DEIR does not analyze the vibration of loaded logging trucks impacting the speed humps.</p> <p>In response to Comments that, by the Project bringing the roadway much closer to Mistwood Montessori School, the Project will increase the noise levels for sensitive receptors, the City concedes that projected noise contours in the Noise Element show the highest level of anticipated noise along and adjacent to the immediate roadway of Old Arcata Road where Mistwood School is located, but claims, without offering factual basis, that it would not exceed the City of Arcata Noise Element. The City asserts, without offering any factual evidence, that noise would decrease due to a smoother roadway, traffic calming measures, signage and speed humps. The City offers no factual evidence that these factors will reduce noise, or of what the actual noise level will be near Mistwood School.</p> <p>The potential adverse impact of increased noise on sensitive receptors at Mistwood School must be analyzed and mitigated. The DEIR provides no information other than to say that the noise will be the loudest near the school.</p>
<p>46-3(1) Details concerning storm drain improvements have not</p>	<p>The City’s response to this comment was to say that details had been provided, and to point out that it said it will put in a vegetated median, that it will put in new piping, inlets and storm control boxes near Jacoby Creek School and the roundabout, it will put in larger inlet pipes or parallel pipes, and if necessary, permeable pavement in some areas.</p> <p>The City’s response is deficient. The City admitted in the DEIR that it has not done a drainage analysis yet. In the DEIR, the City says it will obtain a drainage analysis in the future and will modify the future or existing drainage system as recommended in the drainage analysis if necessary. The City’s response to the</p>

Response	Primary Deficiencies
<p>been provided.</p>	<p>Comment does not state how the drainage system which exists or with the described additions will be modified by the Project.</p> <p>The DEIR states, on page 3.9-10: “To ensure that the Project will not negatively impact drainage conditions, a drainage analysis is being prepared prior to final design. If warranted, the proposed drainage facilities would be modified to ensure that adjacent properties are not negatively impacted by the Project. Potential modifications to existing drainage facilities would be stated as recommendations in the drainage analysis, and would be fully incorporated into the Project, as included Mitigation Measure HWQ-1.”</p> <p>In other words, the DEIR states that unspecified modifications to the drainage facilities may be made in the future based upon a drainage analysis which the City has not yet obtained. The DEIR does not state what modifications will be made to the storm drain system by the Project.</p> <p>The City must provide meaningful information as to the storm drain improvements the Project will make <i>now</i>, rather than simply saying that it will perform a drainage study in the future and modify the drainage facilities in the future if it deems modification warranted. This constitutes impermissible deferral of analysis and mitigation. CEQA’s demand for meaningful information is not satisfied by simply stating that the required analysis will be provided in the future.</p>
<p>46-3(2), 46-22, Conflicts with existing underground utilities</p>	<p>The comment states that the DEIR has not analyzed the conflicts between the Project and underground utilities. The City’s response essentially admits that this is true, that it has not analyzed the conflicts between the Project and existing underground utilities.</p> <p>The City states that “spatial data files” “were sought” from public and private utility providers and overlaid in the Project Ara to ensure utility conflicts do not occur. The City does <i>not</i> state that it actually obtained spatial data files from all private and public utility providers. The City admits that, based on what information it did receive, that there are, indeed, conflicts between the Project and the existing underground gas line. The City states that “if unavoidable conflicts are identified during final design, the utility owner would be notified and would be required to relocate facilities.” In saying this, the City admits that it does not know all the conflicts that exist between private and public utilities. It does not analyze the potential adverse impacts of the conflict between the Project and existing utilities, including the impact on residents dependent on these existing utilities.</p> <p>The DEIR is completely silent as to the conflicts between the Project and private and public underground utilities. The DEIR is completely silent as to what the City will do in the case of unavoidable conflicts. The DEIR is completely silent</p>

Response	Primary Deficiencies
	<p>as to what potentially adverse effect the conflicts between private and public utilities will have on the environment.</p> <p>The SHN 2019 Report, page 26, states that there will be conflicts between the Project and existing utilities, and this was cited by the Comment, and was a report prepared concerning the Project.</p> <p>The DEIR must be amended to analyze the conflicts between the Project and existing private and public utilities, to state what will be done to avoid such conflicts, what will be done in the case of unavoidable conflict, and the potential effect on the environment of these conflicts. This constitutes impermissible deferral of analysis and mitigation. CEQA’s demand for meaningful information is not satisfied by simply stating that the required analysis will be provided in the future</p>
<p>46-3(9) Failure to address bicycle and pedestrian safety where power poles conflict with bike lanes and walkways .</p>	<p>The City’s response to this Comment is that the DEIR says that the City “will work with utility companies to relocate the pole in question within the existing right of way.” The City also states that it will not build a bike path or sidewalk where there is a pole.</p> <p>This response is deficient. The City does not say that the utility companies have agreed to move the pole, or that there is even additional space within the existing right of way for the pole (near Golf Course Drive and Old Arcata Road) to be relocated. The letter from Robert and Susan McPherson, attached as Exhibit G, states that they are the owners of the property at the corner of Golf Course Drive and Old Arcata Road, that there is no easement or right of way, for the utility pole on their property, and that they are not willing to grant an easement or right of way to allow the utility pole to be moved onto their property. The 30% design plan set shows the utility pole will be 2 feet closer to the road, causing it to be easily clipped by passing motorists, including large trucks. There is no space within the existing right of way into which the utilities can relocate their pole, if they would even agree to relocate it.</p> <p>Pedestrian and bicyclist safety given this utility pole in the only location where a bike path and sidewalk could be place, has not been addressed in the DEIR. The utility pole will force pedestrians and bicyclist into the way traveled by high speed motor vehicle traffic, endangering them.</p> <p>This constitutes impermissible deferral of analysis and mitigation. CEQA’s demand for meaningful information is not satisfied by simply stating that the required analysis will be provided in the future</p>

Response	Primary Deficiencies
<p>46-4(3) Danger to pedestrians in roundabout crosswalks due to lack of stop signs.</p>	<p>The City’s response to this Comment is: please see response to Comment 46-2(7). Bayside Cares hereby incorporates its discussion of the deficiencies of that response by the City, and also notes that the DEIR is completely silent as to the design speed of the roundabout, although the design speed is the factor most closely connected to safety in the roundabout. (See Bayside Cares’ criticism of the City’s response to Comment 46-3(7).)</p>
<p>46-4 (6) Danger to bicyclist and pedestrians due to power poles in the walkways and bike lanes.</p>	<p>The City’s response to this Comment is that the DEIR says that the City “will work with utility companies to relocate the pole in question within the existing right of way.” The City also states that it will not build a bike path or sidewalk where there is a pole.</p> <p>This response is deficient. The City does not say that the utility companies have agreed to move the pole, or that there is even additional space within the existing right of way for the pole (near Golf Course Drive and Old Arcata Road) to be relocated. The letter from Robert and Susan McPherson, attached as Exhibit F, states that they are the owners of the property at the corner of Golf Course Drive and Old Arcata Road, that there is no easement or right of way, for the utility pole on their property, and that they are not willing to grant an easement or right of way to allow the utility pole to be moved onto their property. The 30% design plan set shows the utility pole will be 2 feet closer to the road, causing it to be easily clipped by passing motorists, including large trucks. There is no space within the existing right of way into which the utilities can relocate their pole, if they would even agree to relocate it.</p> <p>Pedestrian and bicyclist safety given this utility pole in the only location where a bike path and sidewalk could be place, has not been addressed in the DEIR. The utility pole will force pedestrians and bicyclist into the way traveled by high speed motor vehicle traffic, endangering them. This constitutes impermissible deferral of analysis and mitigation. CEQA’s demand for meaningful information is not satisfied by simply stating that the required analysis will be provided in the future</p>
<p>46-7,46-13, 46-20, 46-37, Historical</p>	<p>The City’s response to Comments that the City failed to survey and formally evaluate for National Register eligibility Old Arcata Rad and adjoining properties constructed after 1945, eight 19th and early 20th century properties within the APE (which are eligible for National Register), 28 ranch style structures which has attained sufficient age since 1974 to be eligible for National Register, the 1882</p>

Response	Primary Deficiencies
<p>Resources</p>	<p>Temperance Hall, failure to consider that there are 65 structures in the APE likely to contribute to an historic district, that the area is a significant cultural landscape worthy of preservation as an historic district, and that the APE was artificially and inappropriately limited to include only the road and public right of way, the City replied, essentially, that its experts had done their work, and called this a difference of expert opinion, when in fact, the City’s experts failed to include and render an expert opinion which included the actual affected structures or road. The City’s experts re-drew the original APE map after the comment period had expired, to include only 6 parcels adjacent to the roundabout, as the result of “a pedestrian survey”. The DEIR did not include this pedestrian survey or even the addresses of the 6 parcels. They are now in the Errata. The City concluded that only the setting of these parcels was potentially impacted, and it concluded that there was no impact. This is incorrect. The City’s experts neglected to survey or evaluate most of the historic structures and Old Arcata Road in rendering their opinions. Because they did not even survey these structures and road, their opinion is not based upon the facts, buildings and setting in which the Project is to be constructed.</p> <p>The City’s experts also revised the APE map in a manner which appears deliberately calculated to render a no impact opinion. In Bayside Cares’ Comment on the DEIR and in Kathleen Stanton’s Comment on the DEIR, it was pointed out that the City completely omitted from discussion in the DEIR three historic structures within the APE which had been released to the public at that time: the Orr House at 2332 Jacoby Creek Road, the Connors-Lawlor-Wilson House at 1945 Old Arcata Road, and the historic structure at 1972, all of which are eligible for the National Register. The City then produced a new APE map intentionally altered so that these three properties would be excluded from the APE to support a false finding of no effect.</p> <p>In addition, also to support a false finding of no effect, the APE includes, in most cases, only the public right of way and does not include the whole parcels or the structures on them. The City falsely claims that the Old Jacoby Schoolhouse Building is not impacted, when it is in close vicinity to the roundabout and to the 5 overhead lights, sidewalks and bikepaths it entails. The setting of this building, as well as all other historic structures in the vicinity will be greatly impaired, in violation of the Secretary of Interior Standards for the Protection of Historic Setting (District/Neighborhood). The road will be much closer to the Old Temperance Hall (moved from 111 feet away to 35 feet away) and open space near that historic building will be removed. (See Letter from Kathleen Stanton, , Exhibit E.)The City’s response to Comments about the identified APE as being too narrow, the identification of historical resources, and Project impact on historical resources, was to state that it concluded that the APE was only 6 parcels adjacent to the roundabout from a pedestrian survey. The DEIR did not include this pedestrian survey or even the addresses of the 6 parcels. They are now in the</p>

Response	Primary Deficiencies
	<p>Errata. The City concluded that only the setting of these parcels was potentially impacted, and it concluded that there was no impact.</p> <p>The City’s response is deficient. In Bayside Cares’ Comment and in Kathleen Stanton’s Comment, it was pointed out that the City completely omitted from discussion in the DEIR three historic structures within the APE which had been released to the public at that time: the Orr House at 2332 Jacoby Creek Road, the Connors-Lawlor-Wilson House at 1945 Old Arcata Road, and the historic structure at 1972, all of which are eligible for the National Register. The City then produced a new APE map intentionally altered so that these three properties would be excluded from the APE to support a false finding of no effect.</p> <p>In addition, also to support a false finding of no effect, the APE includes, in most cases, only the public right of way and does not include the whole parcels or the structures on them. The City falsely claims that the Old Jacoby Schoolhouse Building is not impacted, when it is in close vicinity to the roundabout and to the 5 overhead lights, sidewalks and bikepaths it entails. The setting of this building, as well as all other historic structures in the vicinity will be greatly impaired, in violation of the Secretary of Interior Standards for the Protection of Historic Setting (District/Neighborhood). The road will be much closer to the Old Temperance Hall (moved from 111 feet away to 35 feet away) and open space near that historic building will be removed. (See Letter from Kathleen Stanton, attached as Exhibit E.)</p>

THE DEIR’S CONSIDERATION OF ALTERNATIVES WAS DEFICIENT

It is well established that an alternative analysis that meaningfully considers a “reasonable range” of alternatives to a proposed project is a major function of an EIR, and that these alternatives are thoroughly assessed by the responsible official. (Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 190, 197; Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 197.)

The City has neglected its core obligation, outlined above by the California Supreme Court, to thoroughly assess all alternatives. Instead, the City’s EIR, for all practical purposes, proposes only a single project “alternative” involving the proposed roundabout. The T-intersection alternative was not fairly considered.

The City analysis of Alternative 2: Intersection at Jacoby Creek with Improvements and Additional Traffic Calming Measures, (hereinafter, “Alternative 2”), was not a thorough, fair and good faith assessment of its potential effects on the environments, as opposed to the proposed roundabout, or its potential for achieving the project objectives. The City concluded that the environmental impacts of the roundabout project and Alternative 2 were identical. This is far from true.

Alternative 2 will not add 15,200 feet of impervious surfaces, as the roundabout project would. Therefore, it would not have the potential adverse effect on the already poor and failing storm drain system in the area or exacerbate the already existing periodic flooding problem in the APE as well as in the area adjacent to the APE to the South.

Alternative 2 will not require or involve the replacement of private sewer laterals or the “updating” of private water connections, as the roundabout alternative will, and hence will not result in private property owners being temporarily or permanently without sewer services or water, as the roundabout project will, nor will it require private property owners to pay \$10,000-\$15,000 to replace their sanitary sewer laterals if they are tested and fail, as the roundabout alternative will.

Alternative 2 will not eliminate much of the available parking places in the APE, as the roundabout alternative will. Alternative 2 will not, therefore, create the traffic congestion and air quality concerns from idling vehicles, that the roundabout alternative will, by reason of its elimination of a large number of parking places. It is not true that Alternative 2 and the roundabout alternative will have the same air quality impacts. Alternative 2 will not eliminate parking, so it will not have the effect of concentrating motor vehicle exhaust in the area from idling vehicles as the roundabout alternative will.

Alternative 2 will not fill or impact delineated wetlands, as the roundabout alternative will, in its filling of the ditch which is a delineated 3-parameter wetland on GHD’s 2021 map. Therefore, Alternative 2 will not have the adverse effect on biological resources that the roundabout alternative will.

Alternative 2 will not move the roadway closer to Montessori School, and therefore will not cause the increase in noise to sensitive receptors and danger from traffic that the roundabout alternative will. The fact it will retain the present braking and acceleration which now exists, does not cause its noise impact to be equivalent to the roundabout alternative, which moves the traffic much closer to Montessori School and the sensitive receptors there.

Alternative 2 will not conflict with existing underground utilities, as the roundabout alternative will.

Alternative 2 will not endanger pedestrians who are mobility impaired or sight impaired, when they use the crosswalks, as the roundabout alternative will.

Alternative 2 will not adversely effect the historic setting of Bayside Corners, including all its historic structures and Old Arcata Road which is itself historic, as the roundabout alternative will.

Alternative 2 will not bring the roadway closer to historic structures, as the roundabout alternative will.

Alternative 2 will not cause the headlights from northbound traffic to shine into the windows of surrounding buildings and residences, as the roundabout alternative will.

Alternative 2 will not add light pollution to the area, with 5 overhead lights, as the roundabout alternative will.

Alternative 2 will maintain the aesthetics, character and setting of this rural and historic area, which the roundabout alternative will not. It is not true that Alternative 2 has “the potential to potentially block or alter existing view through the presence of heavy machinery, materials stockpiling and storage, and construction related age and channelizers and tree removal” and therefore has the same impact on aesthetics as the roundabout alternative. As completed, Alternative 2 will have little or no impact on the aesthetics of the area, while the roundabout alternative will greatly urbanize the area, with the addition of a paved `30’ radius traffic circle, 5 overhead lights, paved sidewalks, paved bike paths, and the roadway being moved much closer to the Old Temperance Hall and the Old Jacoby Storehouse.

Alternative 2 will maintain the integrity, feeling, character and setting of this historical area, which the roundabout alternative will not.

Alternative 2 will not endanger bicyclists by forcing them to share a roundabout with trucks and other large motor vehicles, as the roundabout alternative will do.

Alternative 2 will not entail the deep excavation involved with the roundabout alternative, and hence will not risk encountering undiscovered paleontological resources, as the roundabout alternative will.

Alternative 2 construction time would be much shorter than that of the roundabout alternative, and it would hence not entail the traffic backup that the roundabout alternative will.

Alternative 2 will not have the effect of interfering with the access of emergency vehicles to the area, as the roundabout alternative will.

Alternative 2 would have less impact on water quality because it will have a much smaller footprint, and will not add over 15,000 feet of impervious surfaces and resultant additional runoff from the traveled way that the roundabout alternative will.