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May 3, 2022

VIA E-MAIL ONLY

Humboldt County Planning Commission  
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Eureka, California 95501  
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Peggy O'Neill [sregon@aol.com](mailto:sregon@aol.com)

**Re: Old Arcata Road Rehabilitation and Pedestrian/Bikeway Improvements  
Coastal Development Permit; Bayside Area; Record Number PLN-2022-1764  
(filed 2/28/2022)  
Meeting Date: May 5, 2022 at 6 p.m.**

**Objection Based Adverse Effect on Wetlands and Failure to Consult  
the Department of Fish & Wildlife**

Dear Members of the Humboldt County Planning Commission:

On behalf of Bayside Cares, we are writing to request that the Humboldt County Planning Commission deny approval of a Coastal Development Permit for the above-referenced Project because of the disastrously adverse effects the proposed Project will have on wetlands, and because the Department of Fish & Wildlife was not consulted concerning the adverse effects on wetlands.

The Humboldt Bay Area Plan of the Humboldt County Local Coastal Program, (hereinafter referred to as the "Coastal Plan") prohibits you from approving any Project which does not comply with the Coastal Plan. (Chapter 1, pg. 1, section 1.10)

Chapter 3, page 43, Section 1(a)(1) of the Coastal Plan lists Wetlands and the Humboldt Bay as being "environmentally sensitive habitats".

Chapter 3, page 43, Section 1(b) states: "The review of these sensitive habitat areas and the identification of appropriate land uses and/or mitigation measures shall be in cooperation with the Department of Fish and Game."

The initial Final Environmental Impact Report stated that the Project would not involve filling wetlands. The Partly Recirculated FEIR now states that the Project will be filling wetlands. Because the Project will be filling wetlands, and because the filling of wetlands and insertion of a culvert in the wetlands next to Jacoby Creek Road as part of the Project, has a direct connection to wetlands in the Coastal Zone and to the Humboldt Bay, and also occurs in an area the FEIR acknowledges contains endangered red legged frogs and special status plants, the City and CalTrans were required to consult with the Coastal Commission and the Department of Fish and Wildlife concerning the wetland filling and mitigation. (*See, e.g., Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 936.) The City and CalTrans did not consult with the Coastal Commission or the Department of Fish and Wildlife concerning filling the wetlands or mitigation.

The Coastal Plan requires mitigation of adverse effects on wetlands to be “in cooperation with the Department of Fish and Game” (now called the Department of Fish and Wildlife), so this Project violates the Local Coastal Plan, as well as the CEQA. (*Public Resources Code* § 21003; CEQA Guidelines, § 15080.)

The Project not only involves filling wetlands; there is a direct connection between the filled wetlands and wetlands in the Coastal Zone wetlands, as well as a direct connection to Humboldt Bay (as set forth in the letter from expert, Kyle Wear, with his subsequent emails and a map of the area of the Project in the Coastal Zone which is attached). Drainage and runoff water from the Project flows directly to the Coastal Wetlands and Humboldt Bay. Yet the City did not consult with the Department of Fish & Wildlife either concerning the runoff water flowing into the Coastal Wetlands and Humboldt Bay, or concerning mitigation measures, again in violation of the Coastal Plan.

### **Conclusion**

The Humboldt Bay Area Plan of the Humboldt County Local Coastal Program, (hereinafter referred to as the “Coastal Plan”) prohibits you from approving any Project which does not comply with the Coastal Plan. (Chapter 1, pg. 1, section 1.10)

Chapter 3, page 43, Section 1(a)(1) of the Coastal Plan lists Wetlands and the Humboldt Bay as being “environmentally sensitive habitats”.

Chapter 3, page 43, Section 1(b) states: “The review of these sensitive habitat areas and the identification of appropriate land uses and/or mitigation measures shall be in cooperation with the Department of Fish and Game.”

As set forth above, wetlands are filled and runoff water flows into coastal wetlands and the Humboldt Bay, but the City and CalTrans did not formulate mitigation measures in cooperation with the Department of Fish and Game (now the Department of Fish & Wildlife), so the Project violates the Coastal Plan.

On the basis of the foregoing, the Planning Commission must deny approval of a Coastal Development Permit for the Project.

Very truly yours,

STOKES, HAMER, KIRK & EADS, LLP

*Chris Johnson Hamer*

By: \_\_\_\_\_  
Chris Johnson Hamer

CJH/ja  
Encls: letter from Kyle Wear  
emails from Kyle Wear



Kyle S. Wear  
Botanical Consultant  
(707) 601-1725  
kyle\_wear@suddenlink.net

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January 26, 2022

**Re: Roundabout and Wetland Drainage for the Old Arcata Road Rehabilitation & Pedestrian/Bikeway Improvements Project (SCH # 2021010176)**

To whom it may concern:

At the request of local citizens, I have evaluated the connection between Jacoby Creek and other aquatic resources and the wetlands impacted within the drainage ditch along Jacoby Creek Road and potential runoff from a new roundabout. The evaluation was based on observations of the storm drain system along the road and evaluation of aerial imagery and Lidar contours.

The wetland ditch and area where the new roundabout is proposed drain into a storm drain that flows to the southwest along the east side of Old Arcata Road. The storm drain also drains wetlands and other ditches east of the road. Approximately 1,275 feet southwest of the intersection of Old Arcata Road and Jacoby Creek Road, the storm drain flows west under Old Arcata Road into a drainage ditch. Water also flows northeast away from Jacoby Creek into the drain inlet at this location. From Old Arcata Road, the drainage ditch flows northwest and appears to drain into an old slough channel and emergent wetland and likely eventually into Cannon Slough along Highway 101. The surface drainage does not appear to flow into Jacoby Creek before it enters Humboldt Bay based on aerial images and Lidar contours. Because the wetland ditch to be filled along Jacoby Creek Road has a direct connection to wetlands and Humboldt Bay, it is potentially an Army Corps of Engineers jurisdictional feature.

Maps showing the presumed drainage and a National Wetlands Inventory Map of the area are attached.

Please contact me if you have any questions or need additional information.

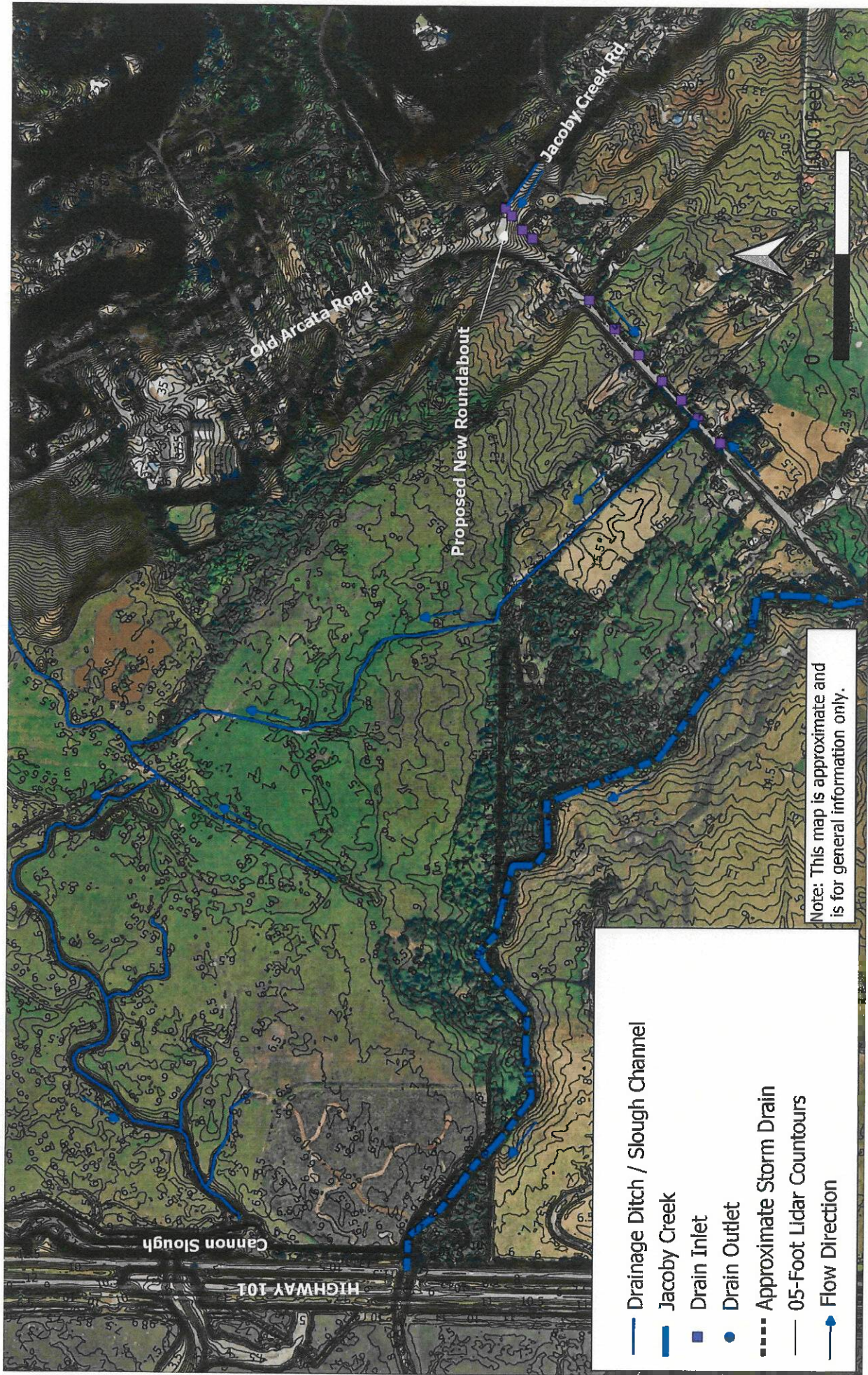
Sincerely,

Kyle Wear

**Attachments:**

- A. Drainage Map
- B. National Wetlands Inventory Map

Attachment A. Roundabout Drainage Map.



- Drainage Ditch / Slough Channel
- Jacoby Creek
- Drain Inlet
- Drain Outlet
- - - - - Approximate Storm Drain
- 05-Foot Lidar Countours
- Flow Direction

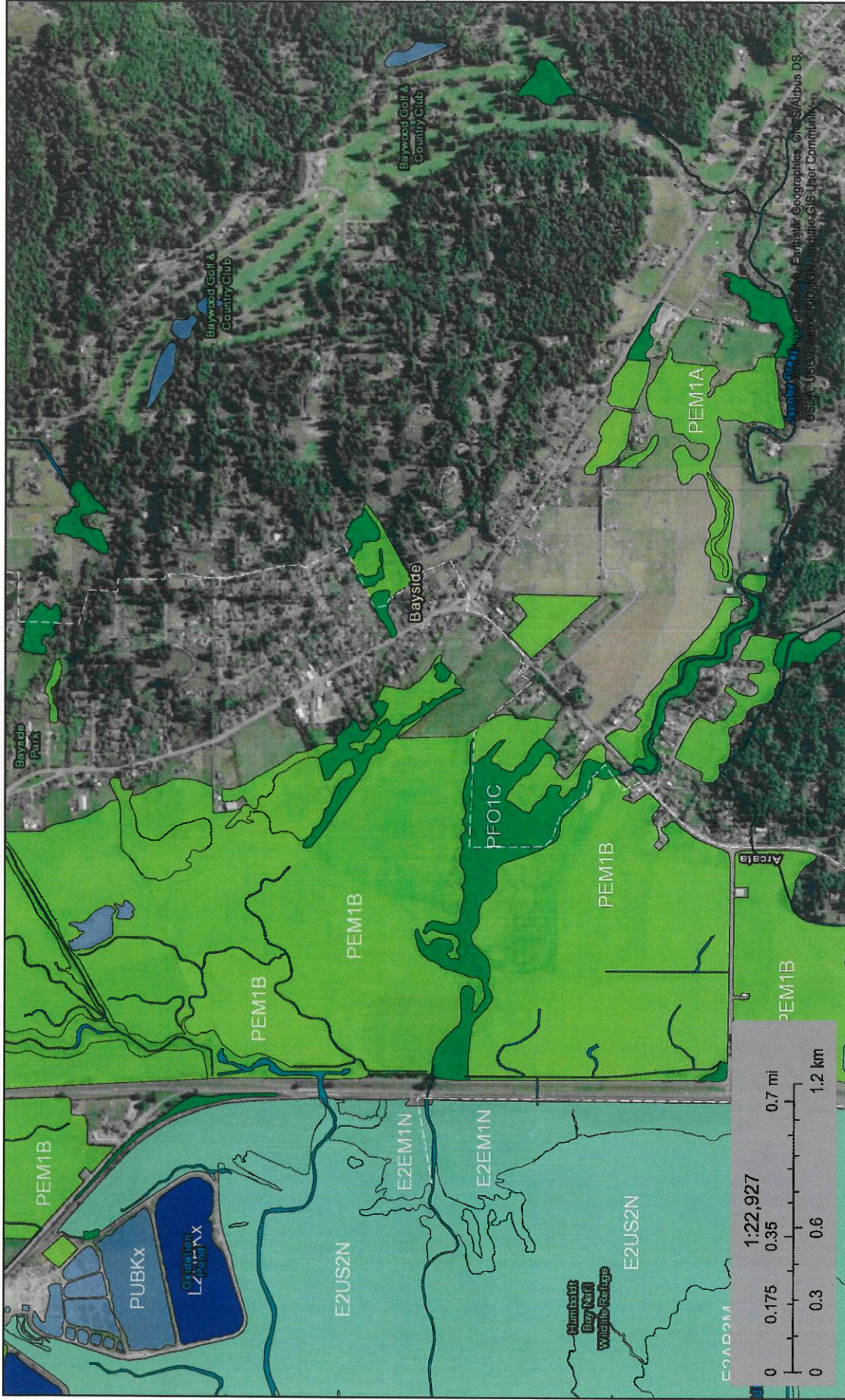
Note: This map is approximate and is for general information only.



U.S. Fish and Wildlife Service

# National Wetlands Inventory

## Wetlands



This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

January 26, 2022

### Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

## Jenny Auwarter

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**From:** kyle\_wear@suddenlink.net  
**Sent:** Friday, January 28, 2022 3:55 PM  
**To:** Chris Hamer  
**Cc:** 'Bob McPherson'; 'Susan McPherson'; kiriki@streamguys.com; Jenny Auwarter  
**Subject:** RE: Bayside Roundabout--need for Coastal Commission consultation and possible additional coastal development permit

Yes, pretty much everything west of the road is in the coastal zone, it looks like it goes right through the roundabout on that map, but that map may not be super accurate, is from the County GIS application. Yes, in my opinion the wetland and drainage from that area has a direct connection to wetlands and eventually the bay in the coastal zone.

Kyle

---

**From:** Chris Hamer <Chris@shkklaw.com>  
**Sent:** Friday, January 28, 2022 2:45 PM  
**To:** 'kyle\_wear@suddenlink.net' <kyle\_wear@suddenlink.net>  
**Cc:** 'Bob McPherson' <bob.mcpherson@humboldt.edu>; 'Susan McPherson' <susanamcpherson@gmail.com>; kiriki@streamguys.com; Jenny Auwarter <Jenny@shkklaw.com>  
**Subject:** RE: Bayside Roundabout--need for Coastal Commission consultation and possible additional coastal development permit

Hi Kyle,

Thank you.

So, Old Arcata Road and everything West of Old Arcata Road is Coastal Zone? Am I reading the map correctly?

Would you say that the water from the culvert in the wetland next to Jacoby Creek Road has a direct connection to wetlands in the Coastal Zone and Humboldt Bay?

*Chris Johnson Hamer*

Stokes, Hamer, Kirk & Eads, LLP  
381 Bayside Road  
Arcata, CA 95521  
Telephone: 707-822-1771 x120  
Facsimile: 707-822-1901

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**From:** kyle\_wear@suddenlink.net <kyle\_wear@suddenlink.net>  
**Sent:** Friday, January 28, 2022 2:00 PM  
**To:** Chris Hamer <Chris@shkklaw.com>  
**Cc:** 'Bob McPherson' <bob.mcpherson@humboldt.edu>; 'Susan McPherson' <susanamcpherson@gmail.com>; kiriki@streamguys.com; Jenny Auwarter <Jenny@shkklaw.com>  
**Subject:** RE: Bayside Roundabout

Attached is a map showing the coastal zone boundary.

Kyle

---

**From:** Chris Hamer <Chris@shkklaw.com>  
**Sent:** Friday, January 28, 2022 11:20 AM  
**To:** 'kyle\_wear@suddenlink.net' <kyle\_wear@suddenlink.net>  
**Cc:** 'Bob McPherson' <bob.mcpherson@humboldt.edu>; 'Susan McPherson' <susanamcpherson@gmail.com>; kiriki@streamguys.com; Jenny Auwarter <Jenny@shkklaw.com>  
**Subject:** Bayside Roundabout

Thank you, Kyle, for your good letter.

I have one more question: is anything you were mentioning, (wetlands or anything else), in the Coastal Zone? The Coastal Commission would have to be consulted in that event.

Seems like the West side of Old Arcata Road, all the way out to the Bay, is Coastal Zone?

Thank you.

*Chris Johnson Hamer*

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**From:** kyle\_wear@suddenlink.net <kyle\_wear@suddenlink.net>  
**Sent:** Wednesday, January 26, 2022 9:09 AM  
**To:** Chris Hamer <Chris@shkklaw.com>  
**Cc:** 'Bob McPherson' <bob.mcpherson@humboldt.edu>; 'Susan McPherson' <susanamcpherson@gmail.com>; kiriki@streamguys.com; Jenny Auwarter <Jenny@shkklaw.com>  
**Subject:** RE: Kyle, I need your letter and maps ASAP!!! OUR DEADLINE IS THIS WEEK!

Ok I will have that done by mid-day or so

KYLE

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**From:** Chris Hamer <Chris@shkklaw.com>  
**Sent:** Tuesday, January 25, 2022 12:03 PM  
**To:** kyle\_wear@suddenlink.net  
**Cc:** Bob McPherson <bob.mcpherson@humboldt.edu>; 'Susan McPherson' <susanamcpherson@gmail.com>; 'kiriki@streamguys.com' <kiriki@streamguys.com>; Jenny Auwarter <Jenny@shkklaw.com>  
**Subject:** Kyle, I need your letter and maps ASAP!!! OUR DEADLINE IS THIS WEEK!

The comment period ends Thursday.



We need to demonstrate that drainage is to a river or creek, that Arcata did not do necessary consultation and get necessary permits for filling the wetlands, putting a culvert where a ditch had carried water, directing more water to a creek,

From the Army Corps of Engineers and the Department of Fish & Wildlife.

Thank you!

*Chris Johnson Hamer*

Stokes, Hamer, Kirk & Eads, LLP  
381 Bayside Road  
Arcata, CA 95521  
Telephone: 707-822-1771 x120  
Facsimile: 707-822-1901

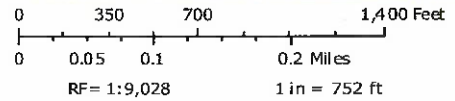
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## ArcGIS Web Map

Humboldt County Planning and Building Department

Highways and Roads	— Private or Unclassified	— Intermittent
Principal Arterials	— Major River or Stream	— Subsurface
— Minor Arterials	<b>Blue Line Streams</b>	— City Boundary
— Major Collectors	— Perennial 1-3	— Counties
— Minor Collectors	— Perennial >4	— Parcels (no APN labels)
— Local Roads		— Coastal Zone Boundary



Printed: January 28, 2022

Web AppBuilder 2.0 for ArcGIS

### Map Disclaimer:

While every effort has been made to assure the accuracy of this information, it should be understood that it does not have the force & effect of law, rule, or regulation. Should any difference or error occur, the law will take precedence.

Source: Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Humboldt County GIS, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community