

CALIFORNIA COASTAL COMMISSION

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Staff Report: June 24, 2011
Hearing Date: July 14, 2011
Commission Action:

TO: Commissioners & Interested Parties

FROM: Peter M. Douglas, Executive Director
Robert S. Merrill, North Coast District Manager
Melissa B. Kraemer, Coastal Planner

SUBJECT: **Humboldt County LCP Amendment No. HUM-MAJ-4-09**
(Barry/Petersen/Chism – Humboldt Hill Road extension)
For the meeting of July 14, 2011 in San Rafael

SYNOPSIS

I. Timeline for Commission Action

The Humboldt County Board of Supervisors locally approved the subject local coastal program (LCP) amendment on May 12, 2009 (Exhibit Nos. 10-13) and submitted the amendment for certification by the Commission on July 27, 2009. After receiving additional information from Humboldt County, the LCP Amendment was deemed submitted (filed) on April 16, 2010. On July 7, 2010 the Commission approved a one-year extension of the deadline by which the Commission must act on the proposal, changing the deadline for Commission action from July 15, 2010 to July 15, 2011.

II. Continued Public Hearing

The public hearing on the merits of LCP Amendment No. HUM-MAJ-4-09 was originally scheduled for the Commission meeting of April 13, 2011 in Santa Barbara. Both the April staff report published on April 1, 2011 and the current staff report recommend that the Commission deny the LCP amendment as submitted. After publication of the April 1, 2011 staff report and prior to the hearing, the County requested that the item be continued to a later meeting. In light of the staff recommendation for

denial, the property owners had asked the County to withdraw the LCP Amendment for certification. County staff requested the continuance to allow time for the property owners' request for the County's withdrawal of the LCP amendment to be considered by the Board of Supervisors.

As of the date of publication of the current staff report, the Humboldt County Board of Supervisors has not yet considered the request to withdraw the LCP Amendment. County staff indicates that the Board will likely take action on the request prior to the July 14, 2011 Commission hearing on the LCP Amendment. If the Board transmits a withdrawal of the LCP Amendment request prior to the July 14th hearing, the Commission hearing will be cancelled. If the LCP amendment request is not withdrawn prior to the July 14th hearing, the Commission must act on the amendment at the July 14th meeting to meet Coastal Act deadlines for action as noted above. Staff continues to recommend that the Commission deny the LCP amendment as submitted.

III. Amendment Description

The subject LCP amendment application transmitted by Humboldt County is known as the "Barry/Petersen/Chism" LCP amendment. As submitted, Humboldt County LCP Amendment No HUM-MAJ-4-09 would amend Section 3.22-B-3 of the certified land use plan (LUP, known as the Humboldt Bay Area Plan) to add a road connection between Humboldt Hill Road and Tompkins Hill Road south of Eureka to an LUP listing of permissible public roadway improvement projects. Exhibit No. 11 shows the specific language to be added as Section 3.22-B-3-j of the LUP, as follows (text to be added is shown as underlined):

3.22 *PUBLIC SERVICES-RURAL*

...

B. *DEVELOPMENT POLICIES*

...

3. *Public Roadway Projects*

Public roadway improvement projects shall not, either individually or cumulatively, degrade environmentally sensitive habitats or coastal scenic areas. Improvements (beyond repair and maintenance) shall be consistent with Sections 3.30 et seq. and shall be limited to the following:

- a. *Reconstruction and restoration of existing roadways, including bridge restoration and replacement, highway planting, construction of protective works such as rock slope protection and slope corrections, reconstruction of roadways following damage by storms or other disasters, and improvement of roadside rests.*
- b. *Operational improvements, such as traffic signals, guardrails and curve corrections, and intersection modifications such as the Elk River interchange improvements.*

- c. *Roadside enhancements, such as construction or improvement of roadside rests and vista points consistent with Section 3.40 and removal of roadside signs consistent with Section 3.40.*
- d. *Minor improvement projects, such as modifying encroachments or ramps, construction turnouts, and channelized intersections.*
- e. *Except in coastal scenic areas, climbing and passing lanes.*
- f. *Expansion of substandard roadway shoulders.*
- g. *Construction of bikeways.*
- h. *The Elk River Interchange.*
- i. *Relocation of New Navy Base Road to accommodate major coastal dependent industrial development on and adjacent to Samoa Airport site.*
- j. *Extension of Humboldt Hill Road to Tompkins Hill Road to implement policies in the 1995 Eureka Community Plan, and to improve public safety by providing a secondary access to residential development at the top of Humboldt Hill.*

The subject road extension is located approximately four miles south of Eureka, on the western side of Humboldt Hill, east of Highway 101, south of Humboldt Hill Road, and north of Tompkins Hill Road (Exhibit Nos. 1-2). The road extension, which would traverse open grasslands and closed-canopy Sitka spruce forest, would be approximately 1-mile in length. The proposed text of the LUP amendment (Exhibit No. 11) does not include a description of the specific route of the future new roadway and does not limit the dimensions or other construction details of the roadway. Thus, no single roadway plan is specified by the amendment, and a variety of alternative roadway routes and designs could be considered in the future under the proposed LUP amendment language. The landowners' engineer prepared a conceptual plan for a roadway providing a connection between Humboldt Hill Road and Tompkins Hill Road that illustrates how such a roadway connection might be built (Exhibit No. 6). The conceptual plan depicts a paved road that is 34 feet wide and includes two 12-foot travelways and two 5-foot bike lanes within a 50-60-foot-wide road right-of-way corridor. The area where the road extension would be developed currently is undeveloped except for an unimproved (dirt), approximately 10-foot-wide, 3,200-foot-long agricultural road that extends north from Tompkins Hill Road (Exhibit Nos. 4-5). A road extension as depicted in the conceptual plan would result in the conversion of approximately three acres of agricultural land in the coastal zone.

IV. Summary of Staff Recommendation

The staff recommends that the Commission, upon completion of a public hearing, **deny the LUP amendment request as submitted.**

The purpose of the proposed LUP amendment is to facilitate a future road connection between Humboldt Hill Road and the Tompkins Hill Road interchange with Highway 101 as called for in the Eureka Community Plan, a portion of the Humboldt County General Plan which has never been submitted to the Commission for certification as part of the LCP. The proposed secondary access road would traverse four parcels owned separately by Barry, Petersen, and Chism (Exhibit Nos. 3 and 5). In addition to serving as a secondary access road to the existing residential community of Humboldt Hill, a branch of the subject road extension would provide access to a future inland residential community (approximately 400 units) planned for the property immediately east of the subject site (the inland portion of the subject APN 307-041-07, owned by Barry), as called for in the Eureka Community Plan.

The area that is the subject of the proposed LCP amendment is located approximately four miles south of Eureka, on the western side of Humboldt Hill, east of Highway 101, south of Humboldt Hill Road, and north of Tompkins Hill Road (see Exhibit Nos. 1-2). The affected property extends from near the eastern shoreline of Humboldt Bay at the Tompkins Hill Road/Highway 101 interchange easterly up to the top of a coastal ridge at the current end of Humboldt Hill Road. The area is considered rural in that it's located outside of the urban limit line. The subject site consists of portions of four separate APNs under separate private ownerships (Barry, Petersen, and Chism) (Exhibit No. 3). One of the properties (APN 307-041-07 owned by Barry) straddles the coastal zone boundary along the ridgeline, with approximately half of the property (~86 acres) located inside the coastal zone and half located outside of and immediately adjacent to the coastal zone. The parcel is planned and zoned for exclusive agricultural uses (AE-60 acre minimum parcel size) on its coastal zone portion and for low density residential development uses (10,000-square-foot minimum parcel size) on its inland portion. The other three APNs that are the subject of the LUP amendment (APN 307-041-09, approximately 84 acres, and 307-051-04, approximately 7.5 acres, both owned by Petersen and APN 307-051-11, approximately 2 acres owned by Chism) extend down the slope of the ridge to the Tompkins Hill Road/Highway 101 interchange and are planned and zoned for rural residential agricultural uses (RA-5-acre minimum parcel size).

The road extension, which would traverse open grasslands, closed-canopy Sitka spruce forest, and various creeks and natural drainages, would be approximately 1-mile in length. The route of the future road alignment that would result from the proposed LUP amendment is, at this point, uncertain, although a preliminary engineering plan that has been developed depicts a paved road that is 34 feet wide and includes two 12-foot travelways and two 5-foot bike lanes within a 50-60-foot-wide road right-of-way corridor (see Exhibit No. 6). The area where the road extension would be developed currently is undeveloped except for an unimproved (dirt), approximately 10-foot-wide, 3,200-foot-long agricultural road that extends north from Tompkins Hill Road (Exhibit Nos. 4-5).

Approximately three acres of agricultural lands would be directly impacted by the footprint of the road that would be accommodated by the proposed LCP amendment. The County proposes to mitigate for the loss of three acres of agricultural land by requiring,

as part of the future subdivision of the adjacent Barry property inland of the coastal zone boundary, that three acres of agricultural land on the inland Barry property be rezoned from Residential Single Family to Agricultural Exclusive. In addition, the County proposes to require, as part of the future coastal development permit for the road extension project, a condition requiring the development of a public access facility that would provide for passive public recreational opportunities (e.g., scenic overlook and picnicking) on the inland portion of the Barry property (see Exhibit No. 5). It is important to note that these amenities and mitigation measures are not actually included in any of the proposed text of the LCP amendment (Exhibit Nos. 10-11). As the standard of review for coastal development permits is consistency with the certified LCP, it is possible that a CDP could be approved for the road extension in the future without such mitigation measures, if they are not mandated by the policies of the LCP.

The property that would be affected by LUP Amendment No. HUM-MAJ-4-09 does contain prime agricultural soils and livestock and/or crop productivity potential that would qualify portions of the site as prime agricultural land, although it is not clear that the currently unspecified future alignment of any road would result in the direct conversion of prime agricultural land. Nevertheless, any road that would be potentially allowable consistent with all other applicable LCP provisions would pass in close proximity to, if not directly through, prime agricultural lands, and the resulting agricultural land conversion would take place in an agriculturally productive area that contributes to the agricultural economy of the region.

Staff believes that the proposed LUP amendment does not achieve the Coastal Act Section 30241 mandate that the maximum amount of prime agricultural land be maintained in agricultural production in order to maintain the agricultural economy of the area. The proposed LUP amendment would amend Section 3.22-B of the Humboldt Bay Area Plan permissively to allow for a future public roadway improvement project that, even if consistent with all other applicable LCP provisions, would result in the direct conversion of up to three acres of land from agricultural to roadway-related uses and could indirectly lead to the conversion of additional agricultural lands. Coastal Act Section 30241 requires the protection of prime agricultural land and lists several standards for ensuring minimization of conflicts between agricultural land uses, whether on prime agricultural lands or not, and urban land uses. Staff believes that the LUP amendment as submitted does not maximize prime agricultural land preservation; rather the viability of prime agricultural land would be diminished. Staff further believes that it does not minimize conflicts between agricultural and urban land uses. In summary, as discussed at length in the findings below, staff believes that none of the criteria under Sections 30241 and 30242 are met. Therefore, staff believes that the amendment must be denied as submitted.

In addition, staff believes that the Commission has no basis for finding that the County's proposed agricultural mitigation plan to require, as part of the future subdivision of the adjacent Barry property inland of the coastal zone boundary, that three acres of agricultural land on the inland Barry property be rezoned from Residential Single Family

to Agricultural Exclusive would render the LUP amendment as submitted consistent with the Coastal Act. The Coastal Act prohibits impermissible conversions of agricultural land; it does not allow for conversions based on the provision of mitigation. In addition, no language is proposed to be added to the text of the LUP itself that would require the conditions discussed by the County in its findings. As the standard of review for coastal development permit applications within the area covered by the certified Humboldt County LCP is consistency with the LCP, a CDP approved for the road could be approved without such mitigation measures if they are not mandated by the policies of the LCP. Furthermore, staff believes that the agricultural and public access benefits that the County asserts this project offers are merely an ancillary component appended to the project to “create a conflict” rather than the very essence of the project itself. Staff believes that denial of the project would not result in any coastal zone effects that are inconsistent with any of the Chapter 3 policies of the Coastal Act, since there is no continuing degradation of a resource that the Commission is charged with protecting and/or enhancing. Therefore, staff believes that the proposed LUP amendment must be denied.

Furthermore, staff believes that the proposed LUP amendment as submitted is inconsistent with Section 30233 of the Coastal Act, as any otherwise permissible road at this location: (a) will increase capacity, (b) is not a limited expansion of an existing road, and (c) cannot be considered an allowable use under Section 30233(a)(4). Furthermore, staff believes that the LUP amendment as submitted does not provide feasible mitigation measures to minimize adverse environmental effects as Section 30233(a) of the Coastal Act requires. Finally, with respect to the requirement of Section 30233(a) that the project be the least environmentally damaging feasible alternative, the County’s LCP amendment submittal did not include an analysis of the least environmentally damaging feasible alternative and alternatives that would avoid wetland fill (at least with respect to coastal zone wetlands). Therefore, staff believes that the proposed LUP amendment as submitted is inconsistent with the Coastal Act’s wetland fill policies and must be denied.

Moreover, staff believes that the proposed LUP amendment could not be found consistent with Section 30240(a) the Coastal Act if the Sitka spruce forest on the subject site is ESHA. Staff believes that there is evidence to suggest that this particular forest stand, which lies in part on the subject properties, may qualify as ESHA under the Coastal Act. However, the Commission lacks sufficient information to determine with certainty whether the area is ESHA, because the County has not provided sufficiently detailed information regarding this issue. Section 30240 prohibits all but resource-dependent use in ESHA and only allows resource-dependent use if it does not significantly disrupt habitat values. The proposed LUP amendment could allow for a land use (i.e., public roadway development and related uses) that not only is not resource-dependent but that could be expected to result in direct removal of a significant acreage of forest ESHA and the fragmentation of the remaining ESHA such that the habitat values would be significantly disrupted and the areas significantly degraded.

Regardless of whether or not the Sitka spruce forest area is ESHA and whether the LUP amendment is consistent with Section 30240(a) of the LCP, staff believes that the proposed LUP amendment is inconsistent with other Coastal Act policies regarding the conversion of agricultural lands and the filling of wetlands and must be denied for these reasons. Staff also believes that the proposed LUP amendment is inconsistent with Coastal Act Section 30240(b), because any otherwise permissible road that would be allowed under the LUP amendment as submitted would not protect adjacent ESHAs (wetland seeps and natural drainages) and ensure their continuance.

Finally, staff believes that the LUP amendment as submitted would result in internal inconsistencies in the certified LUP, and the LUP amendment would not be consistent with the Coastal Act. Therefore, staff believes that the proposed LUP amendment must be denied.

As discussed herein, staff believes the proposed amendment is inconsistent with the agricultural resources, wetland fill, and ESHA protection policies of the Coastal Act. A feasible alternative is available, in the form of denying the LCP amendment, which would substantially lessen any significant adverse direct, indirect, and cumulative impacts that the LUP amendment may have on the environment. Therefore, staff believes that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA and therefore must be denied.

The motion to adopt the staff recommendation of denial is found on page 8.

V. Analysis Criteria

The relationship between the Coastal Act and a local government's local coastal program (LCP) can be described as a three-tiered hierarchy with the Coastal Act setting generally broad statewide policies. The land use plan (LUP) portion of the LCP incorporates and refines Coastal Act policies for the local jurisdiction, giving guidance as to the kinds, locations, and intensities of coastal development. The implementation program (IP) of an LCP typically sets forth zone districts and site development regulations through legally enforceable ordinances, which are the final refinements specifying how coastal development is to precede on a particular parcel. The LUP must be consistent with the Coastal Act. The IP must conform with and be adequate to carry out the policies of the LUP.

VI. Additional Information

For additional information about LCP Amendment No. HUM-MAJ-4-09, please contact Melissa Kraemer at the North Coast District Office at (707) 445-7833. Please mail correspondence to the Commission at the address shown at the top of page 1.

PART ONE:
**MOTION, STAFF RECOMMENDATION, &
RESOLUTION**
FOR LCP AMENDMENT NO. HUM-MAJ-4-09

MOTION: *I move that the Commission certify Land Use Plan Amendment No. HUM-MAJ-4-09 as submitted by the County of Humboldt.*

STAFF RECOMMENDATION TO APPROVE:

Staff recommends a **NO** vote. Passage of this motion will result in the rejection of the Land Use Plan Amendment as submitted and the adoption of the following resolution and findings. The motion to certify as submitted passes only by an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION TO DENY CERTIFICATION OF THE LAND
USE PLAN AS SUBMITTED:**

The Commission hereby **DENIES CERTIFICATION** of Amendment No. HUM-MAJ-4-09 to the County of Humboldt Land Use Plan (Humboldt Bay Area Plan) as submitted by the County and adopts the findings set forth below on the grounds that the land use plan amendment as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

PART TWO:
AMENDMENTS TO THE LAND USE PLAN

I. ANALYSIS CRITERIA

To approve the amendments to the land use plan (LUP), the Commission must find that the LUP, as amended, will remain consistent with the policies of Chapter 3 of the Coastal Act.

II. FINDINGS FOR DENIAL OF LUP AMENDMENT NO. HUM-MAJ-4-09 AS SUBMITTED

The Commission finds and declares the following for LCP Amendment No. HUM-MAJ-4-09:

As submitted, the proposed LUP amendment would not be fully consistent with the policies of the Coastal Act, as explained in the following sections:

A. BACKGROUND

The purpose of the proposed LUP amendment is to facilitate a future road connection between Humboldt Hill Road and the Tompkins Hill Road interchange with Highway 101 as called for in the Eureka Community Plan, a portion of the Humboldt County General Plan that has never been submitted to the Commission for certification as part of the LCP. The proposed secondary access road would traverse four assessor parcel number (APN) properties owned separately by Barry, Petersen, and Chism (Exhibit Nos. 3 and 5). In addition to serving as a secondary access road to the existing residential community of Humboldt Hill, a branch of the subject road extension would provide access to a future inland residential community (approximately 400 units) planned for the property immediately east of the subject site (the inland portion of the subject APN 307-041-07, owned by Barry), as called for in the Eureka Community Plan. The planned residential community would be located on agricultural lands just outside of the coastal zone. Thus, the impacts to agricultural lands in the coastal zone would be limited to the effects of the road itself. Approximately three acres of agricultural lands would be directly impacted by the road and roadway-related uses that would be accommodated by the proposed LCP amendment.

According to the staff report adopted by the County in its approval of the subject LUP amendment on May 12, 2009 (Exhibit No. 13), in September of 2007 the County considered an LCP amendment that would have redesignated the entire coastal portion of the Barry property from Agriculture Exclusive to Residential Single Family. During the Board of Supervisors hearing, "...public testimony on the potential impacts of the future subdivision, particularly potential traffic impacts, public safety impacts from earthquake fault hazards, and the loss of \pm 78 acres of agricultural lands to residential uses was considered. The Board was unable to support those amendments at that time...In response to the expressed concerns, the project was scaled back...With the change in scope, the amendments would directly impact only approximately 3 acres of agricultural land..."

B. AMENDMENT DESCRIPTION

The subject LCP amendment application transmitted by Humboldt County is known as the “Barry/Petersen/Chism” LCP amendment. As submitted, Humboldt County LCP Amendment No. HUM-MAJ-4-09 would amend Section 3.22-B-3 of the certified land use plan (known as the Humboldt Bay Area Plan) to add a road connection between Humboldt Hill Road and Tompkins Hill Road south of Eureka to an LUP listing of permissible public roadway improvement projects (Exhibit No. 11). Exhibit No. 11 shows the specific language to be added as Section 3.22-B-3-j of the LUP, as follows (text to be added is shown as underlined):

3.22 *PUBLIC SERVICES-RURAL*

...

B. *DEVELOPMENT POLICIES*

...

3. *Public Roadway Projects*

Public roadway improvement projects shall not, either individually or cumulatively, degrade environmentally sensitive habitats or coastal scenic areas. Improvements (beyond repair and maintenance) shall be consistent with Sections 3.30 et seq. and shall be limited to the following:

- a. *Reconstruction and restoration of existing roadways, including bridge restoration and replacement, highway planting, construction of protective works such as rock slope protection and slope corrections, reconstruction of roadways following damage by storms or other disasters, and improvement of roadside rests.*
- b. *Operational improvements, such as traffic signals, guardrails and curve corrections, and intersection modifications such as the Elk River interchange improvements.*
- c. *Roadside enhancements, such as construction or improvement of roadside rests and vista points consistent with Section 3.40 and removal of roadside signs consistent with Section 3.40.*
- d. *Minor improvement projects, such as modifying encroachments or ramps, construction turnouts, and channelized intersections.*
- e. *Except in coastal scenic areas, climbing and passing lanes.*
- f. *Expansion of substandard roadway shoulders.*
- g. *Construction of bikeways.*
- h. *The Elk River Interchange.*
- i. *Relocation of New Navy Base Road to accommodate major coastal dependent industrial development on and adjacent to Samoa Airport site.*
- j. *Extension of Humboldt Hill Road to Tompkins Hill Road to implement policies in the 1995 Eureka Community Plan, and to improve public*

safety by providing a secondary access to residential development at the top of Humboldt Hill.

The road extension, which would traverse open grasslands, closed-canopy Sitka spruce forest, and various creeks and natural drainages, would be approximately 1-mile in length. The route of the future road alignment that would result from the proposed LUP amendment is, at this point, uncertain. Although preliminary engineering analyses were completed to support the LCP amendment application and reviewed by the County Public Works Department, the Department, in a memo to County planning staff dated June 30, 2008 (referring to the subject LCP amendment, among others), recommended that the project materials clearly acknowledge the road alignment's conceptual nature "by adding notations similar to the following: *This is an undefined corridor for a future circulation route. The exact location of the route is to be determined at a later date based upon sound engineering principles. It is the intent of the LCP to allow for the construction of a future circulation route in which the exact engineered location has not yet been established...*" (Exhibit No. 9)

The landowners' engineer prepared a conceptual plan for a roadway providing a connection between Humboldt Hill Road and Tompkins Hill Road that illustrates how such a roadway connection might be built. The conceptual plan depicts a paved road that is 34 feet wide and includes two 12-foot travelways and two 5-foot bike lanes within a 50-60-foot-wide road right-of-way corridor (see Exhibit No. 6). The area where the road extension would be developed currently is undeveloped except for an unimproved (dirt), approximately 10-foot-wide, 3,200-foot-long agricultural road that extends north from Tompkins Hill Road (Exhibit Nos. 4-5).

The new road would serve as a secondary access to the existing, mostly inland residential community of Humboldt Hill, which currently has only a single access point near the South Broadway area south of Eureka, and would include a branch that would serve a future residential community (approximately 400 units) planned for the inland property outside the coastal zone immediately east of the subject site (the inland portion of the subject APN 307-041-07, owned by Barry). The County proposes to mitigate for the loss of three acres of agricultural land that would be impacted by the future road construction by requiring, as part of the future subdivision of the adjacent Barry property inland of the coastal zone boundary, that three acres of agricultural land on the inland Barry property be rezoned from Residential Single Family to Agricultural Exclusive. In addition, the County proposes to require, as part of the future coastal development permit for the road extension project, a condition requiring the development of a public access facility that would provide for passive public recreational opportunities (e.g., scenic overlook and picnicking) on the inland portion of the Barry property (see Exhibit No. 5). It is important to note that these amenities and mitigation measures are not actually included in any of the proposed text of the LCP amendment (Exhibit Nos. 10-11). As the standard of review for coastal development permits is consistency with the certified LCP, it is possible that a CDP could be approved for the road extension in the future without such mitigation measures, if they are not mandated by the policies of the LCP.

C. ENVIRONMENTAL SETTING

The area that is the subject of the proposed LCP amendment is located approximately four miles south of Eureka, on the western side of Humboldt Hill, east of Highway 101, south of Humboldt Hill Road, and north of Tompkins Hill Road (see Exhibit Nos. 1-2). The affected property extends from near the eastern shoreline of Humboldt Bay at the Tompkins Hill Road/Highway 101 interchange easterly up to the top of a coastal ridge at the current end of Humboldt Hill Road. The area is considered rural in that it's located outside of the urban limit line. The site consists of portions of four separate APNs under separate private ownerships (Barry, Petersen, and Chism) (Exhibit No. 3). One of the APNs (APN 307-041-07 owned by Barry) straddles the coastal zone boundary along the ridgeline, with approximately half of the property (~86 acres) located inside the coastal zone and half located outside of and immediately adjacent to the coastal zone. This parcel is planned and zoned for exclusive agricultural uses (AE-60 acre minimum parcel size) on its coastal zone portion and for low density residential development uses (10,000-square-foot minimum parcel size) on its inland portion. The other three APNs that are the subject of the LUP amendment (APN 307-041-09, approximately 84 acres, and 307-051-04, approximately 7.5 acres, both owned by Petersen and APN 307-051-11, approximately 2 acres owned by Chism) extend down the slope of the ridge to the Tompkins Hill Road/Highway 101 interchange and are planned and zoned for rural residential agricultural uses (RA-5-acre minimum parcel size).

Elevations in the area range from approximately 30 feet above mean sea level on the portion of the subject property near Tompkins Hill Road to 500 feet above mean sea level on the portion of the property near the top of Humboldt Hill. Slopes range from gentle to moderately steep with generally westerly aspects. Unobstructed views are available from much of the subject property to southern Humboldt Bay, the Humboldt Bay National Wildlife Refuge, Table Bluff, portions of the lower Eel River Valley, the ocean, and other coastal areas to the west, northwest, and southwest, though, as the property resides in private ownership, there currently are no public views available from the property to the coast. However, portions of the site are visible from public roadways west and southwest of the property (including from Highway 101, Tompkins Hill Road, and roads on Table Bluff) and north of the property (from the end of Humboldt Hill Road).

According to the preliminary biological review completed in support of the LCP amendment application by Mad River Biologists in 2008 (Exhibit No. 7), the project area contains three general habitat types: open grassland, mature Sitka spruce forest, and riparian habitat. The open grassland located near the top of Humboldt Hill is dominated by upland, mostly nonnative grasses and herbs including sweet vernal grass (*Anthoxanthum odoratum*), colonial bentgrass (*Agrostis capillaris*), soft chess (*Bromus hordeaceus*), silver hairgrass (*Aira caryophyllea*), orchard grass (*Dactylis glomerata*), intermediate oatgrass (*Danthonia intermedia*), pale flax (*Linum bienne*), and Douglas iris (*Iris douglasii*). The forested portion of the subject property is composed primarily of mature Sitka spruce (*Picea sitchensis*) trees (averaging 40-55 inches diameter at breast height (dbh)) with lesser amounts of mature grand fir (*Abies grandis*) trees (averaging 24-

55 inches dbh) and Douglas-fir (*Pseudotsuga menziesii*) trees (averaging 30-48 inches dbh). The overstory is closed-canopy, and the understory small tree/shrub layer consists mostly of native species. These include hazel (*Corylus cornuta*), salmonberry (*Rubus spectabilis*), cascara sagrada (*Rhamnus purshiana*), twinberry (*Lonicera involucrata*), evergreen huckleberry (*Vaccinium ovatum*), elderberry (*Sambucus racemosa*), and salal (*Gaultheria shallon*). Some small invasive holly trees (*Ilex aquifolium*) also are present in the understory layer. The herbaceous layer, which has an estimated cover of 50-75%, is composed mostly of native ferns and flowering plants (e.g., false Solomon's seal, *Smilacina stellata*, sword fern, *Polystichum munitum*, rattlesnake plantain, *Goodyera oblongifolia*, and others), except for one noted invasive species with limited distribution in the stand (foxglove, *Digitalis purpurea*). The report also notes the presence of three wetland seeps within the forest habitat. Dominant species noted in the seeps include (in part) Sitka spruce, cascara sagrada, slough sedge (*Carex obnupta*), skunk cabbage (*Lysichiton americana*), deer fern (*Blechnum spicant*), and lady fern (*Athyrium filix-femina*). The riparian habitat is documented as being present around the two drainages and one perennial creek located near the western end of the subject site. The drainages contain wetland-oriented plants such as soft rush (*Juncus effusus*) and small-flowered bulrush (*Scirpus microcarpus*).

According to the biological report, the mature forest habitat provides nesting and roosting habitat for various species of birds and raptors known to forage in the area, such as red-tailed hawk and red-shouldered hawk, and for various mammal species, including Sonoma tree vole (*Arborimus pomo*), which is a species of special concern listed in the Department of Fish and Game's California Natural Diversity Database (CNDDDB).

The entire area is undeveloped except for an unimproved (dirt) "agriculture accessory" road originating on the Petersen property (APN 307-051-04) at its intersection with Tompkins Hill Road and terminating in the middle of the Petersen property (APN 307-041-09) near the edge of the forested hillside. A coastal development permit was granted by Humboldt County in 2006 authorizing after-the-fact the development in 2004 of the agricultural accessory road and associated major vegetation removal (at least six large trees were removed). The single-lane dirt road accesses a pasture on the Petersen property (described as "meadows" in the above-referenced biological report) used for a small-scale horse grazing operation ("General Agriculture" is a principally permitted use in the rural residential agriculture (RA) zone). The agricultural lands at the top of the ridge on the Barry property (both inside and outside the coastal zone) are used for grazing by various ranchers on a periodic, seasonal basis to supplement larger operations that are based primarily on other pasture lands in the County.

D. CONSISTENCY WITH THE AGRICULTURAL RESOURCES PROTECTION POLICIES OF THE COASTAL ACT

As described above, LUP Amendment No. HUM-MAJ-4-09 affects portions of four separate APNs, which together total approximately 175 acres (considering portions within the coastal zone only). Assessor's Parcel No. 307-041-07 (Barry), which is approximately 125 acres in size, straddles the coastal zone boundary, with approximately

86 acres located inside the coastal zone. The parcel is planned and zoned for exclusive agricultural uses (AE-60 acre minimum parcel size) on its coastal zone portion and for low density residential development uses (10,000-square-foot minimum parcel size) on its inland portion. Regardless of the different zoning designations and the presence of the coastal zone boundary across the property, the open pastureland that straddles the inland and coastal portions of the property is leased in full to various ranchers on an as-needed basis for livestock grazing and hay production. Much of the property, especially the portion outside the coastal zone adjacent to the subject site, is mapped as having prime agricultural soils. The three other APNs that are affected by the LUP amendment are planned and zoned for rural residential agricultural uses (RA-5-acre minimum parcel size). “General agriculture” is considered a principally permitted use in the RA zone.

The proposed LUP amendment would permissively allow for the development of a “public roadway improvement project” involving a new road extending from the end of Humboldt Hill Road at the edge of the Barry property at the top of a coastal ridge through undeveloped agricultural, pasture, and forested lands down the slope of the ridge to Tompkins Hill Road near Highway 101 and the Humboldt Bay shoreline. The stated purpose of the new road, as worded in the proposed LUP amendment, would be “*to implement policies in the 1995 Eureka Community Plan [which was not certified by the Commission since it involves inland areas outside of the coastal zone], and to improve public safety by providing a secondary access to residential development at the top of Humboldt Hill.*” Preliminary road design and engineering plans that have been developed in support of the proposed LCP amendment estimate that up to three acres of agricultural land (zoned AE) on the Barry property within the coastal zone would be directly impacted by the future development of a road in this location. Additional agricultural land outside of and adjacent to the coastal zone on the Barry property also would be directly impacted by future road and residential development in the area, though as discussed above, this inland area is planned and zoned for low-density residential development and is beyond the scope of the Commission’s jurisdictional review.

1. Relevant Coastal Act Policies

Coastal Act Sections 30241 and 30242 require the protection of prime agricultural lands¹ and set limits on the conversion of all agricultural lands to non-agricultural uses. Coastal Act 30241 states as follows:

¹ Coastal Act Section 30113 defines “prime agricultural land” through incorporation-by-reference of paragraphs (1) through (4) of Section 51201(c) of the California Government Code. Prime agricultural land entails land with any of the follow characteristics: (1) a rating as class I or class II in the Natural Resource Conservation Service land use capability classifications; or (2) a rating 80 through 100 in the Storie Index Rating; or (3) the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; or (4) the ability to normally yield in a commercial bearing period on an annual basis not less than two hundred dollars (\$200) per acre of unprocessed agricultural plant production of fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years.

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.²

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Coastal Act 30242 states as follows:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

2. Consistency Analysis

(a) SIGNIFICANCE OF AGRICULTURAL LANDS IN HUMBOLDT COUNTY

Humboldt County has a total land area of approximately 2.3 million acres, and approximately one third of this land base (690,000 acres) is directed to some type of agricultural use. According to the Humboldt County Farm Bureau's website,³ about 67,000 acres of land is classified as being under intensive farming (e.g., harvested cropland and cropland used only for pasture), while an estimated 605,000 acres of land is

² The portion of referenced Section 30250 applicable to this project type and location [sub-section (a)] requires that "New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources."

³ <http://www.humboldtfarmbureau.org/>

used primarily for grazing-related purposes (e.g., pastureland and rangeland). Traditional agriculture in the county consists of grazing beef cattle on coastal rangeland; dairy cows on rich pasture bottomlands around Humboldt Bay; and row crops and orchards on terraced river floodplains. The region's mild and moist climate complements a growing nursery and bulb industry.

The high rainfall, deep, fertile soil, and marine climate make some of the County's agriculture land highly productive. Humboldt County agriculture products (excluding timber) had a market value of approximately \$131 million in 2008,⁴ with the top four crops, by value, excluding timber, consisting of nursery stock (cut flowers, ornamental tree production, etc.), milk and milk products, livestock (beef cattle, dairy cows, sheep, etc.), and field crops (alfalfa, silage, range, etc.). Although Humboldt County agricultural production does not compare in quantity or economic value with California's leading agricultural counties (e.g., local dairies produce only 1% of California's annual milk products⁵), dairy and ranch lands are "etched more deeply into Humboldt County's cultural and aesthetic landscape than economic data can convey."⁵ The ranches that spread out across the vast pastureland surrounding Humboldt Bay, the Eel River and Mad River deltas provide habitat for numerous wildlife and migrating waterfowl. These open spaces, both within the coastal zone and inland, represent a significant resource with a multitude of values.

According to the 2003 final report of the Humboldt County Agriculture Survey (pages 2-3):⁵

Humboldt County has been incrementally losing agricultural land to development and other non-agricultural uses. Between 1965 and 1982, county planners estimate that over 87,000 acres of timber, dairy and ranch lands were lost to agricultural production through the creation of rural residential subdivisions. While the market value of agriculture products increases, larger agricultural operations and the agricultural land base are declining. In the last five-year period studied by the U.S. Census of Agriculture (1992-1997), the number of full-time operating farms declined 13% to 792, and the total acreage in working farms and ranches decreased over 13,000 acres to 584,538 acres. The future of agricultural lands and the accompanying economic, aesthetic, wildlife and public benefits will be determined within the next several years, accentuated by Humboldt County general plan update... [which has not yet been completed.]

Although Humboldt County has not yet experienced the rapid loss of farmland to suburban sprawl currently affecting many California counties and the nation as a whole, studies and trends indicate that rural, coastal California counties are very prone to population and development

⁴ Humboldt County Department of Agriculture Crop Report 2008.

⁵ Morehead, B. 2003. *Humboldt County Agriculture Survey Final Report*. Humboldt County Farm Bureau, Eureka, CA.

pressures. Humboldt County was recently ranked first in the nation in terms of natural resource amenity values sought after by an increasing number of urban, baby-boomer retirees, and has already been called out by national magazines as a top retirement hot spot with a plethora of outdoor recreation, natural beauty, small town community values and cheap real estate. While population growth is low compared to California counties adjacent to larger urban cities, the pressure to convert land out of agricultural has dramatically increased over the past several years. The county's most productive soils are located along the coastal bottomlands surrounding Humboldt Bay and large river floodplains where the demand for residential housing, hobby farms, and public parks is greatest. Large ranches are being sold and subdivided for hobby farms and rural family retreats. Residential housing prices are at an all time high. Home sales in March 2003 were up 20 percent compared to 2002, up 40 percent from 1999 and over 100 percent compared to 1998. Community perception is that residential development and other non agricultural land uses are depleting agricultural resources.

The protection of the County's agricultural land in the coastal zone is a primary goal of the certified Humboldt County Local Coastal Program (LCP). There is an estimated 32,500 acres of agricultural land (i.e., land designated and zoned for agricultural uses) in the County's coastal zone. Approximately one third (10,600 acres) of this agricultural land is within the Humboldt Bay Area Plan (HBAP) planning area. [The HBAP is one of six planning areas identified in the County's certified LCP and is the LUP relevant to the subject LUP amendment]. This land is either in active agricultural use or has the potential for such use. Livestock grazing and forage production comprise the primary uses of agricultural land in the planning area.

The HBAP contains numerous policies requiring the protection of both prime and non-prime agricultural lands. In addition to Sections 30241 and 30242 of the Coastal Act, which are directly incorporated into Section 3.24 of the HBAP as development policies, Section 3.24-B-1 of the HBAP requires the protection of prime and non-prime agricultural lands outside the urban limit line (as is the case with the subject site) and specifically prohibits the division or development of agricultural lands that would "*lower the economic viability of continued agricultural operations on them.*" Section 3.24-B-1-b requires that rural agricultural lands that are not prime be planned for continued agriculture use, including such lands that "*are contiguous or intermixed smaller parcels on which non-compatible uses could jeopardize the agricultural use of adjacent agricultural lands...*" Section 3.24-B-1-c of the HBAP prohibits in part the conversion of non-prime agricultural land to other types of land use except in cases where "*the long-term economic unfeasibility of continued agricultural operation is shown to exist.*" Section 3.24-B-2 identifies uses compatible with agricultural land and requires that permitted uses on agricultural land not "*impair the economic viability of agricultural operations...*"

(b) PRIME AGRICULTURAL LAND DETERMINATION

“Prime agricultural land” (as defined in Section 30113 of the Coastal Act and Section 51201(c) of the California Government Code, cited above) has been mapped on the subject property, though it is not clear that the future new road, which would be permissible under the proposed LUP amendment if consistent with all other applicable LCP provisions, would result in the direct conversion of prime agricultural land.

Based on information derived from the County, the soils on the portion of the subject property that is zoned Agriculture Exclusive under the certified LCP (i.e., the portion of the Barry parcel within the coastal zone) are mapped as “Rohnerville Silt Loam – 8-16% slope” (Ro9) and “Rohnerville Silt Loam – 3-8% slope” (Ro6). According to the NRCS official soils series description,⁶ Rohnerville soils are a moderately extensive soil type, with over 12,000 acres occurring along the coast of California from San Francisco Bay north. Rohnerville soils typically occur on marine and river terraces with slopes of 0 to 15 percent, at elevations of 100 to 1000 feet, and in a cool humid, mesothermal climate with mean annual rainfall of 35 to 50 inches, warm summers, and cool wet winters. The average frost-free season is more than 300 days. Rohnerville soils are well to moderately well-drained with moderate to moderately slow permeability and medium runoff. In general, the soil type is used for dryland range, permanent pasture, and some row crops.

The NRCS land use capability classification for Ro9 soils is III and for Ro6 soils is II. Thus, according to the first criterion for the definition of prime agricultural soils contained in Section 51201(c) of the Government Code (i.e., prime agricultural land entails land with a rating as class I or class II in the NRCS land use capability classifications), the Ro6 soils at the project site are considered prime, whereas the Ro9 soils are not. There are approximately seven acres of mapped Ro6 soils on the Barry parcel (on the portion within the coastal zone) and approximately 35 acres of Ro9 soils. As noted above, the proposed LCP amendment does not specify an alignment for the proposed roadway that would be added to the list of public roadway projects permissible under the Humboldt Bay Area Plan. However, the preliminary road design developed by Omsberg & Preston in support of the proposed LCP amendment (Exhibit No. 6) shows the alignment of the future new road as traversing Ro9 soils (i.e., not prime agricultural land based on the NRCS land use capability classification).

Two important caveats should be noted with respect to mapped soil types and their relation to any potentially allowable road alignment through the area. First, it should be noted that the most recent soil information for the subject site, including soil types and assigned land use capability classifications, is old and possibly outdated. The mapped soil type is derived from a 1965 publication,⁷ and the corresponding NRCS land use capability classification is derived from a 1981 memorandum report prepared for the

⁶ Accessed at <http://soils.usda.gov/technical/classification/osd/index.html>.

⁷ McLaughlin, J. & F. Harradine. 1965. *Soils of Western Humboldt County*. University of California, Davis, CA.

Humboldt County Planning Division.⁸ According to management staff at the Arcata field office of the NRCS,⁹ an updated soil survey for the county, which includes updated land use capability classifications for each soil type, currently is being prepared by NRCS soil scientists but has not yet been completed for the subject site. Thus, as land use capability ratings are being reexamined for each new soil type, it is possible that when the updated NRCS soil survey is complete, more of the newly reclassified soil type(s) underlying the subject area will have an NRCS land use capability classification of I or II, which would render more of the area as prime agricultural land under the first prong of the Coastal Act's definition.

Second, it should be noted that the route of the potentially allowable road alignment through the area that could result from the proposed LUP amendment is, at this point, uncertain. Although preliminary engineering analyses were completed to support the LCP amendment application and reviewed by the County Department of Public Works, the Department, in a memo to County planning staff dated June 30, 2008 (referring to the subject LCP amendment, among others), recommended that the project materials clearly acknowledge its conceptual nature "...by adding notations similar to the following: *This is an undefined corridor for a future circulation route. The exact location of the route is to be determined at a later date based upon sound engineering principles. It is the intent of the LCP to allow for the construction of a future circulation route in which the exact engineered location has not yet been established...*" Thus, it is conceivable that final engineering plans for the potentially allowable road through the subject property would necessitate the alignment to be located atop mapped prime agricultural land (e.g., Ro6 soils) based on the first criterion for the definition of prime agricultural soils.

Land with a Storie Index Rating of 80 through 100 is considered prime agricultural land based on the second prong of the definition of prime agricultural soils contained in Section 51201(c) of the Government Code. The Storie Index Rating is based on soil characteristics that govern the land's potential utilization and productive capacity (e.g., characteristics of the soil profile, surface texture, slope, drainage, nutrient level, acidity, alkalinity, etc.) and is independent of other physical or economic factors that might determine the desirability of growing certain plants in a given location. According to *Soils of Western Humboldt County California*,⁶ the Storie Index Rating for Ro9 soils is 69, which, though not considered prime agricultural land, nonetheless is considered "good" and "suitable for most crops" with yields that are "generally good to excellent." Even so, according to the second criterion for the definition of prime agricultural soils, the Ro9 soils at the subject site do not meet the definition of prime under Government Code Section 51201(c)(2).

The third potential qualifying definition of prime agricultural land is the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal-unit per acre as defined by the United States Department

⁸ By Bill Broderson, Area Soil Scientist for the NRCS.

⁹ Sue Aszman, personal communication (phone conversation), February 9, 2011.

of Agriculture. An “animal unit month” is defined by the USDA as the amount of forage or feed required to feed one animal unit (one cow, one horse, one mule, five sheep, or five goats) for 30 days. Based on information from Deborah Giraud, County Farm and Community Advisor for the U.C. Cooperative Extension,¹⁰ the agricultural land on the subject site on average supports one animal unit per 1.5 acres. Therefore, the soils types on the subject site do not meet the single annual AUM requirement of Government Code Section 51201(c)(3). Ms. Giraud stressed, however, that the County’s upland coastal rangelands, whether classified as prime agricultural land or not, are especially significant in that they support grazing activities during the wet season (generally November through April), when the majority of the available grazing lands around Humboldt Bay, the Mad River, and the Eel River delta (much of which is classified as prime) are seasonally inundated and therefore unproductive for agricultural grazing purposes.

Finally, with regard to the fourth prong of the definition of prime agricultural soils contained in Section 51201(c) of the Government Code, which is the site’s potential qualification as prime agricultural land based upon its potential for commercial fruit, nut, or other crop production at specified minimal yields, again based on information from Deborah Giraud,¹⁰ County Farm and Community Advisor for the U.C. Cooperative Extension, an acre of agricultural land on the subject site is estimated to support, on average, approximately three to four tons of hay crop valued at \$60 per ton. This equates to an average normal yield of \$180 to \$240 per acre of unprocessed crop, which is right around the \$200 minimum threshold value necessary to qualify the area as prime agricultural land pursuant to Government Code Section 51201(c)(4).

In summary, based upon the conditions at the project site as discussed above in relation to the definition of “prime agricultural land” under the Coastal Act, the Commission finds that the property that would be affected by LUP Amendment No. HUM-MAJ-4-09 does contain prime agricultural soils and livestock and/or crop productivity potential that would qualify portions of the site as prime agricultural land, although it is not clear that the currently unspecified future alignment of any road that would be potentially allowable consistent with all other applicable LCP provisions would result in the direct conversion of prime agricultural land. Nevertheless, any road that would be potentially allowable consistent with all other applicable LCP provisions would pass in close proximity to, if not directly through prime agricultural lands, and the resulting agricultural land conversion would take place in an agriculturally productive area that contributes to the agricultural economy of the region, as discussed in more detail below.

(c) MAINTAINING THE MAXIMUM AMOUNT OF PRIME LAND

The proposed LUP amendment does not achieve the Coastal Act Section 30241 mandate that the maximum amount of prime agricultural land be maintained in agricultural production in order to maintain the agricultural economy of the area. As previously discussed, the proposed LUP amendment would amend Section 3.22-B of the Humboldt Bay Area Plan permissively to allow for a future public roadway improvement project

¹⁰ Deborah Giraud, personal communication (phone conversation), February 11, 2011.

that even if consistent with all other applicable LCP provisions would result in the direct conversion of up to three acres of land from agricultural to roadway-related uses and could indirectly lead to the conversion of additional agricultural lands. Coastal Act Section 30241 requires the protection of prime agricultural land and lists several standards for ensuring minimization of conflicts between agricultural land uses, whether on prime agricultural lands or not, and urban land uses.

Given the incompatibility of the future urbanized development in the area, following the development of an otherwise permissible road, and the agricultural use of the affected property, the proposed amendment is inconsistent with Coastal Act Section 30241 because it increases the potential to eliminate the viability of all the prime agriculture acreage on the subject property (which is known to be at least seven acres and possibly more, as discussed above), not just the acreage that would be converted by the road, thereby decreasing the viability of continued agriculture on the farmable portion of the remaining acreage of the subject property.

Though it is unclear, as discussed above, whether or not any otherwise permissible road that could be allowed consistent with all other applicable LCP provisions would result in the direct conversion of prime agricultural land, the Commission notes that even if the land in question were not itself defined as prime, Section 30241 still is relevant. The determination of whether the land in question is prime land is not the key to analyzing whether the proposed amendment is consistent with Section 30241. More significantly, the LUP amendment proposal is located in an area that makes a contribution to the agricultural economy of the region, as discussed above. In other words, the subject site is an agriculturally productive area. Preservation of this agricultural economy is the primary intent of Section 30241 of the Coastal Act. Non-prime land operations enlarge and strengthen the market area for agricultural services and assuring their availability for all users. In addition, the non-prime lands often physically buffer the more valuable prime lands from conflicts with other uses. Thus, protection of non-prime agricultural lands also serves to protect agricultural production on prime lands. Conversion and fragmentation of any agricultural land not only diminishes opportunities for economies of scale, but also increases the exposure of the remaining farm operations to conflicts with nearby urban users over such matters as noise, odor, pesticide use, smoke, and animals. The preservation of prime agricultural land therefore seeks to preserve the substrate that is inherently able to make a substantial contribution to this sector of the economy. Thus, the various subsections of Section 30241 apply to any amendment that would adversely affect agricultural use of the subject site. The inconsistencies of the proposed LCP amendment with the various subsections of Section 30241 are discussed below.

(d) LACK OF BUFFER BETWEEN URBAN AND AGRICULTURAL USES

Section 30241(a) of the Coastal Act requires that conflicts between urban and agricultural uses establish stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

The subject site is situated just outside of the urban limit line in a rural, mostly undeveloped area adjacent to an existing residential neighborhood known as Humboldt Hill, which is located mostly inland of the coastal zone boundary. Amending the LUP to permissively allow for a road extension through the rural agricultural area would increase conflicts between agricultural and urban land uses inconsistent with Section 30241(a), as any otherwise permissible road through the middle of productive agricultural land would neither establish a stable boundary separating urban and rural areas nor provide a clearly defined buffer between incompatible uses. No evidence has been presented showing that the agricultural conversion resulting from the construction of any otherwise permissible road would complete a logical, viable neighborhood in this largely undeveloped area or that it would contribute to a stable urban limit. Indeed, by introducing public roadway development side-by-side with agricultural uses, the conversion would destabilize the boundary between urban and rural areas.

Non-agricultural development on agricultural land has the potential to result in direct conflicts due to the inherent incompatibility of agricultural-related and other types of land uses. Typical incompatibility issues raised at urban-agricultural land use interfaces include trespass and trash accumulation on agriculture lands; road-access conflicts between agriculturally related machinery and automobiles; noise, dust, and odors from agricultural operations; limitations of pesticide application; and human encroachment from urban lands. Such incompatibilities can threaten continued agricultural production, when agricultural practices become branded as public nuisances as urban uses encroach upon them.

The County, in its LCP amendment application, asserts that the coastal zone boundary through the middle of the subject property (APN 307-041-07 owned by Barry) “establishes a very stable boundary between lands that are planned for urban (non-coastal lands) and rural areas (planned and zoned Agriculture Exclusive).” However, developing a new road through the area, as could be allowed under the proposed LUP amendment, would facilitate future residential development both to the immediate west (inside the coastal zone) and east (outside the coastal zone) of the subject agricultural land by providing part of the needed infrastructure to serve urban development on the site. The subject agricultural land then would be situated in the midst of land planned and zoned for residential uses on three sides, thereby potentially increasing future conflicts with urban uses, decreasing agricultural viability, and diminishing the productivity of prime agricultural land on the property. Given this location relative to adjoining land uses, development of a new road through this rural agricultural area would not serve to minimize conflicts between agricultural and urban land uses, would not establish a stable boundary separating urban and rural areas, and would not provide a clearly defined buffer between potentially incompatible uses.

The County indicates in its findings for approval and resolutions for the subject LUP amendment that it would impose certain conditions on a future coastal development permit (CDP) for the road that would attempt to protect agricultural uses of lands adjoining the road. However, no language is proposed to be added to the text of the LUP

itself that would require such measures. As the standard of review for CDPs in this area is consistency with the certified LCP, a CDP approved for any otherwise permissible road could be approved without such mitigation measures if they are not mandated by the policies of the LCP. Even if the County were to impose conditions of approval for a future CDP for any otherwise permissible road through the area that would require the installation of fences along the edges of the road to protect grazing livestock and the inclusion of crossing areas beneath the road to maintain maximum grazing use of lands on both sides of the bisecting road, the road itself would represent an unstable boundary between incongruent land uses (agricultural and roadway-related uses) with no clearly defined buffer area to sustain agricultural resources in the area and to minimize conflicts between conflicting uses. Furthermore, any otherwise permissible road through the agricultural area would lead to increased pressure to further convert the remaining agricultural lands in the fragmented area to nonagricultural uses by providing part of the needed infrastructure to serve urban development on the site.

In addition, future construction of a road in the subject area would temporarily convert additional adjoining agricultural lands to non-agricultural uses during the construction phase of the new road project. Significant areas of pasturelands that adjoin the specific (to-be-determined) road alignment area would be required during some or all of the construction cycle for access, materials storage, staging, construction, and related activities. Livestock would be excluded from the affected areas during project activities, and forage production within these areas would not be possible until the project completion. The County's LUP amendment submittal did not quantify the lands potentially affected by construction activities or the loss of agricultural productivity associated with this impact, nor did it address how the lands would be returned to pre-existing agricultural use following construction without long-term reduction in productivity or conversion of the subject lands to non-agricultural uses. The impacts associated with the temporary loss of agricultural use of the lands would be an economic loss to the County's agricultural economy.

Therefore, the Commission finds that the LUP amendment as submitted would not establish stable boundaries between urban and rural areas to minimize conflicts between agricultural and urban land uses, and is inconsistent with Section 30241(a) of the Coastal Act. Therefore, the proposed LUP amendment must be denied.

(e) LIMITING CONVERSIONS TO AREAS WITH COMPROMISED AGRICULTURAL VIABILITY

Section 30241(b) of the Coastal Act limits conversions of agricultural lands to the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development. This section of the Act applies to situations where urban uses are already compromising the agricultural viability of adjacent agricultural lands by conflicts with urban uses such as light, noise, human activity, stormwater runoff associated with developed areas, and other similar urban use conflicts.

The County, in its application for the subject LUP amendment, has not submitted any evidence demonstrating that the viability of the agricultural land has been compromised by urban conflicts. The agricultural lands on the site currently are used by different ranchers on a periodic basis who maintain larger operations elsewhere in the County. These upland agricultural lands are particularly valuable in the winter months to ranchers whose low-lying ranch lands in the bottomlands around Humboldt Bay and the Eel River may be seasonally inundated and unusable to livestock for forage. The proposed conversion of agricultural lands constitutes a conversion of agricultural land adjacent to a mostly rural, rather than urban, area where the viability of existing agricultural use does not appear to be severely limited. The agricultural land on the subject property is bordered by mostly undeveloped, forested, rural land to the west and north (zoned for rural residential agriculture uses), undeveloped rural agricultural land to the south (zoned for agriculture exclusive uses), and undeveloped, actively used agricultural land to the east (zoned for low-density residential development outside the coastal zone). Only the northeastern end of the subject property is adjacent to a developed, urbanized area (the primarily inland community known as Humboldt Hill).

Therefore, the Commission finds that there is no substantial evidence indicating that the LUP amendment as submitted would convert agricultural land where the economic viability of the agricultural operations at the site has already been compromised and is inconsistent with Section 30241(b) of the Coastal Act. Therefore, the proposed LUP amendment must be denied.

(f) DEVELOPING BEYOND COMPLETION OF A VIABLE NEIGHBORHOOD

In addition to limiting conversions of agricultural lands to the periphery of urban areas where the viability of existing agricultural use is already severely limited by urban land use conflicts, Section 30241(b) of the Coastal Act also directs that agricultural conversions shall be limited to situations where the conversion would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development. As discussed above, no evidence has been presented showing that the agricultural conversion would complete a logical, viable neighborhood in this largely undeveloped area or that it would contribute to a stable urban limit. Although the subject LUP amendment could facilitate additional residential development on the inland portion of the subject Barry property as called for in the Eureka Community Plan (where, following completion of the new road that is the subject of this LUP amendment, approximately 400 residential units could be developed), development of this inland rural area would not complete a logical and viable neighborhood, as the new residential area would be separated from the Humboldt Hill residential area by the intervening agricultural lands through which the proposed road would extend. The conversion of these lands to urban uses would not serve to complete a logical and viable neighborhood and would only serve to extend residential development further into agricultural and other rural lands. Furthermore, as discussed above, the proposed conversion of approximately three acres of grazing lands in the coastal zone would not establish a stable limit on the encroachment of urban development into the subject agricultural areas and, to the

contrary, would increase pressure to convert other adjoining agricultural lands to urban uses.

Therefore, the Commission finds that the LUP amendment as submitted is inconsistent with Section 30241(b) of the Coastal Act, as the amendment would not serve to complete a logical and viable neighborhood, but only extend it further into agricultural and other rural lands, and the proposed LCP amendment would not create a stable urban boundary. Therefore, the proposed LUP amendment must be denied.

(g) CONVERSION OF RURAL AGRICULTURAL LAND INCONSISTENT WITH SECTION 30250

Section 30241(c) of the Coastal Act permits the conversion of agricultural lands surrounded by urban uses where the conversion of the land would be consistent with Section 30250 of the Coastal Act. Section 30250(a) of the Coastal Act requires in part that new development be concentrated in and around existing developed areas with adequate development capacities. Where such areas are not available, development must be located where adequate public services exist, and where the development will not have significant adverse effects, either individually or cumulatively, on coastal resources. Generally, public works such as water, roads, and sewer systems must be sized to serve planned development.

As discussed above, the approximately three acres of agricultural land that could be converted as a result of the proposed LUP amendment does not constitute agricultural land *surrounded by urban uses* (as is referenced in Section 30241(c) of the Coastal Act), as the surrounding area is mostly rural and undeveloped, except for on the northeast side (where it abuts the mostly inland residential community of Humboldt Hill). Instead, the proposed LUP amendment could allow for the future construction of an otherwise permissible road through a viable rural agricultural area. Preliminary engineering and traffic analyses completed for the future new road in support of the subject LCP amendment have determined that an otherwise permissible road would require a 50- to 60-foot-wide right-of-way with a paved width of approximately 34 feet (Exhibit No. 6). Such a road would necessarily fragment mature Sitka spruce forest, traverse various natural drainages, and be sited within and adjacent to wetland habitats, where it would cause significant adverse effects, both individually and cumulatively, on coastal resources. Furthermore, the proposed LUP amendment allowing for an otherwise permissible road would increase the development potential of the surrounding area. Thus, the proposed LUP amendment could potentially result in significant adverse impacts on coastal resources.

Therefore, the Commission finds that the LUP amendment as submitted is inconsistent with Section 30241(c) of the Coastal Act, as the amendment would not result in the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250 of the Coastal Act. Therefore, the proposed LUP amendment must be denied.

(h) OTHER LAND AVAILABLE FOR CONVERSION NOT BEING PURSUED

Section 30241(d) of the Coastal Act requires the development of available lands not suited for agriculture prior to the conversion of agricultural lands. The LUP amendment as submitted could convert agricultural lands for a secondary access road serving the Humboldt Hill community prior to developing available lands not suited for agriculture.

Although the County has limited options to site a secondary access road for the Humboldt Hill community, there are other possibilities available that do not involve agricultural land. For example, the Commission has reviewed the alternatives presented in the LCP amendment application packet and notes that the connection of an extension across inland areas from Humboldt Hill Road to Berta Road (see Exhibit Nos. 5 and 13) appears to be a viable alternative to converting coastal zone agricultural land. The County's alternatives analysis notes that "This alternative was considered during the update of the Eureka Community Plan and not adopted owing primarily to neighborhood opposition of the persons living along Berta Road. This alternative appears to be a good circulation component of the Eureka Plan, even if the road was restricted for emergency use only."

Therefore, the Commission finds that the LUP amendment as submitted would convert agricultural lands prior to developing available lands not suited for agriculture, inconsistent with Section 30241(d) of the Coastal Act. Therefore, the proposed LUP amendment must be denied.

(i) NONAGRICULTURAL DEVELOPMENT AND OTHER IMPAIRMENTS OF AGRICULTURAL VIABILITY

Section 30241(e) of the Coastal Act requires that public service and facility expansions and nonagricultural development not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

The proposed LUP amendment could result in the future development of public services (roadway and adjoining right-of-way) directly on and adjacent to agricultural lands. Thus, it is feasible that the agricultural conversion could result in the development of infrastructure that would be financed through assessments against the adjoining agricultural properties. Furthermore, the proposed conversion of grazing lands for the future new road that would be allowed with the proposed LUP amendment could result in emissions or discharges that would degrade air and water quality, thereby impacting the agricultural viability of the surrounding agricultural lands.

The proposed amendment makes an incomplete attempt to ensure that agricultural viability is not impaired through increased assessments or degraded air and water quality as required by Section 30241(e). In its findings for approval of the subject amendment, the County staff report states the following with respect to the amendment's consistency with Section 30241(e): "The approval of the amendment to accommodate the road is conditioned upon the prohibition of any increased assessment costs from the road construction. Further it is conditioned to provide that no increases in stormwater runoff

from the future development of the non coastal lands to the lands located within the coastal zone (excepting the new roadway) are to be allowed.” However, the proposed amendment as submitted for review and certification by the Commission (as summarized above) would simply amend the land use plan to permissively allow for a future public roadway improvement project to be constructed between Humboldt Hill Road and Tompkins Hill Road. No language is proposed to be added to the text of the LUP itself that would require the conditions discussed by the County in its findings. As the standard of review for coastal development permit applications within the area covered by the certified Humboldt County LCP is consistency with the LCP, a coastal development permit approved for any otherwise permissible road could be approved without such mitigation measures if they are not mandated by the policies of the LCP. Therefore, the LUP amendment as submitted would not provide the assurances required by Section 30241(e).

The proposed LUP amendment as submitted also could result in increased traffic along the new road through the middle of the remaining agricultural lands in the area, increasing auto exhaust emissions, which in turn could impair the agricultural viability of the area inconsistent with Section 30241(e) of the Coastal Act. In addition, the future road through the agricultural area could result in increased stormwater runoff onto surrounding agricultural lands, diminishing the viability of the lands for productive agricultural use. In an April 15, 2009 letter to the County written by the staff from the North Coast Regional Water Quality Control Board regarding the subject LUP amendment, Board staff commented as follows (in part):

The proposed Humboldt Hill Road Extension Project (as well as resulting development along the road) will be required to treat storm water runoff. The health of receiving waters is correlated to the extent of impervious areas from storm drain systems and routing to vegetated areas. We strongly support infiltrating treated storm water runoff into the ground as a means of treating it and recharging ground water supplies...

Recent studies have confirmed that increased impervious surfaces within a watershed will lead to alteration of the natural hydrology expressed as higher peak flows and lower summer/fall flows (base flows). Alteration of the natural flow regime (hydromodification) can result in increased stream temperatures, alteration of the channel morphology (e.g. widening or incising of stream channel), stream and riparian habitat degradation, adverse impacts to native riparian vegetation and reduction in ground water recharge capabilities. The design and construction of new development projects using LID techniques can protect natural flow regimes and reduce the impacts of hydromodification and thus help prevent adverse impacts to stream and wetland systems.

All newly installed impervious surfaces (roads, roofs, sidewalk, etc.) must incorporate post-construction storm water best management practices

(BMPs) to remove pollutants and to attenuate peak flows, before discharge to waters of the State...

Thus, as a condition of the Board's approval of the General Construction Activity Storm Water Permit that would be required for the development of any otherwise permissible road through the area, runoff from the road likely will be required to be directed to surrounding vegetated lands to infiltrate pollutant-laded stormwater into the ground as a means of treating it. This treatment of road runoff in this manner would degrade the quality and value of the adjoining agricultural lands for productive agricultural use.

Therefore, the Commission finds that the LUP amendment as submitted would not assure that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality, inconsistent with Section 30241(e) of the Coastal Act. Therefore, the proposed LUP amendment must be denied.

**(j) DEVELOPMENT ADJACENT TO PRIME AGRICULTURAL LAND
DIMINISHING ITS PRODUCTIVITY**

Section 30241(f) of the Coastal Act requires in part that development adjacent to prime agricultural lands not diminish the productivity of such prime agricultural lands. Maintaining the maximum amount of prime land in agricultural use is of utmost importance to protecting the agricultural economy. The linkage between prime land production and the local agricultural economy is directly stated in the first clause of Section 30241: "*The maximum amount of prime agricultural land shall be maintained in agricultural production...to assure the protection of the area's agricultural economy.*" This precept reflects the fact that the productivity of prime land is often a key economic factor in the overall agricultural viability of an area. The relatively high economic yield of prime land attracts agricultural support services such as storage and processing facilities, maintenance and repair services, transportation, veterinarians, and labor pools, making these services available to less profitable farm operations.

As discussed above, the roadway development that could be facilitated by the proposed LUP amendment would convert viable and productive agricultural land to urban uses, destabilize the boundary between urban and rural areas, and increase the potential for conflicts between agricultural and urban land uses. By fragmenting approximately 80 acres of productive, viable agricultural land with a bisecting road, the proposed amendment increases the potential to eliminate the viability of the prime agriculture acreage on the subject property (which is known to be at least seven acres and possibly more, as discussed above).

Therefore, the Commission finds that the LUP amendment as submitted would not assure that development adjacent to prime agricultural lands would not diminish the land's productivity, inconsistent with Section 30241(f) of the Coastal Act. Therefore, the proposed LUP amendment must be denied.

(k) INCONSISTENCY WITH SECTION 30242 OF THE COASTAL ACT

Coastal Act Section 30242 protects lands suitable for agricultural use that are not prime agricultural lands or agricultural lands on the periphery of urban areas from conversion to non-agricultural use, unless continued agricultural use is not feasible, or such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250.

With regard to the estimated three acres of agricultural land that could be directly converted to roadway and roadway-related uses as a result of the proposed LUP amendment, the County has not submitted any evidence demonstrating that continued or renewed agricultural use of these lands is not feasible. To the contrary, according to the County, the area currently is leased to various local ranchers on an as-needed basis for grazing and hay production, and these practices will continue on the remaining surrounding agricultural lands in the future. In addition, the County Farm and Community Advisor for the U.C. Cooperative Extension relayed⁸ that the subject site is agriculturally valuable as upland rangeland, since much of the agricultural land in the low-lying bottomlands becomes inundated in the rainy season and unavailable for agricultural use. Furthermore, as discussed above, the agricultural conversion resulting from the proposed LUP amendment would not preserve prime agricultural land or concentrate development consistent with Section 30250 of the Coastal Act. Also as discussed above, the conversion would not be compatible with continued agricultural use on surrounding lands, as any otherwise permissible road would represent an unstable boundary between incongruent land uses with no clearly defined buffer area to sustain agricultural resources in the surrounding area and to minimize conflicts between conflicting uses. Furthermore, the future new road through the agricultural area would lead to increased pressure to further convert the remaining agricultural lands in the fragmented area to nonagricultural uses.

For these reasons, conversion of approximately three acres of agricultural lands in the project area resulting from the proposed amendment would be inconsistent with the requirements of Coastal Act Section 30242. Therefore, the proposed LUP amendment must be denied.

(l) CONCLUSION

In conclusion, the proposed amendment is clearly inconsistent with the Coastal Act's agricultural policies for two overarching reasons. First, it does not maximize prime agricultural land preservation; rather the viability of prime agricultural land would be diminished. Second, it does not minimize conflicts between agricultural and urban land uses. In summary, none of the criteria under Sections 30241 and 30242 are met. Therefore, the amendment must be denied as submitted.

The County, in its findings for consistency of the LCP amendment with Section 30241(d), states that "The conversion of agricultural lands will be directly offset through a change in the Plan designation and zoning of a portion of the site (outside the Coastal

Zone) that is presently planned and zoned for residential development back to Agriculture Exclusive. This would minimize the area of conversion, offset that acreage converted through the installation of the road and provide additional public views from the roadway.” The County has submitted a letter dated February 14, 2011 from Gary Markegard, Certified Rangeland Manager, purporting the benefits of this mitigation plan, since the mitigation area soils are considered “prime” and support a higher grazing capacity than the soils that would be impacted by the future new road (as shown in the conceptual road alignment plan).

The Commission has no basis for finding that the proposed agricultural mitigation plan would make the LUP amendment as submitted consistent with the Coastal Act. The Coastal Act prohibits impermissible conversions of agricultural land; it does not allow for conversions based on the provision of mitigation. In addition, no language is proposed to be added to the text of the LUP itself that would require the conditions discussed by the County in its findings. As the standard of review for coastal development permit applications within the area covered by the certified Humboldt County LCP is consistency with the LCP, a coastal development permit approved for the road could be approved without such mitigation measures if they are not mandated by the policies of the LCP. Furthermore, the Commission finds that the agricultural and public access benefits that the County asserts this project offers are merely an ancillary component appended to the project to “create a conflict” rather than the very essence of the project itself. The Commission finds that denial of the project would not result in any coastal zone effects that are inconsistent with any of the Chapter 3 policies of the Coastal Act, since there is no continuing degradation of a resource that the Commission is charged with protecting and/or enhancing. Therefore, the proposed LUP amendment must be denied.

E. CONSISTENCY WITH THE WETLAND PROTECTION POLICIES OF THE COASTAL ACT

1. Relevant Coastal Act Policies

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

- (a) *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:*
 - (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
 - (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
 - (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the*

placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

- (4) *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.*
 - (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
 - (6) *Restoration purposes.*
 - (7) *Nature study, aquaculture, or similar resource dependent activities.*
- ...
- (c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...*

2. Consistency Analysis

The subject site contains numerous creeks, natural drainages, and other wetlands, as described in various documents on file and submitted with the LUP amendment application materials:

- According to the Initial Study and draft Mitigated Negative Declaration completed by the County in 2006 for the after-the-fact CDP that was processed for the approximately 10-foot-wide, 3,200-foot-long agricultural road constructed across a portion of the subject site in 2004:

“...the [agricultural] road building included the installation of 6 culverts ranging in size from 12” – 30” diameter. According to the engineer’s map...the two main watercourses travel under the new [agricultural] road ± 150 yards away from each other, from east to west. The other 4 culverts appear to represent smaller drainages not large enough to be considered under the riparian protections of the HBAP...”

As previously discussed, the County granted an after-the-fact CDP for the agriculture road and its associated major vegetation removal. As shown in the LUP amendment application materials, the footprint of the new road extension that could be facilitated by the subject LUP amendment coincides, in part, with the alignment of this existing agricultural road on the property.

- As noted above, the proposed LCP amendment does not specify an alignment or design for the proposed roadway that could be added to the list of public roadway projects allowed under the Humboldt Bay Area Plan. However, a preliminary road design and a geotechnical feasibility study conducted by Busch Geotechnical Consultants in 2007 of the road that would be accommodated by the proposed LCP amendment (Exhibit No. 8) lists a number of conclusions regarding the preliminary road alignment, including the following two conclusions (#5 and #7):

- “5. The proposed alignment crosses four drainages. Slope gradients in these drainages vary in steepness up to about 60% (where investigated)...It is feasible to cross these drainages and address soil creep hazards using standard road construction practices. Drainage control will be an important aspect of design. It is possible, if not likely, that soil pipes (underground tunnels) are present in localized areas such as valley bottoms in fine sand. A detailed road alignment study is likely to identify any potentially critical soil pipe areas. It is possible to mitigate the risk associated with soil pipes using standard techniques....
7. If the project goes forward, the proposed alignment should be cleared of brush (not trees) for about 100 feet on each side of the centerline. When a preliminary grading plan has been developed, the alignment should be re-evaluated. The evaluation should include subsurface investigations.”
- The biological review of the site completed in 2008 by Mad River Biologists (Exhibit No. 7) documented two intermittent drainages, one perennial creek, and three forest seeps within or immediately adjacent to the proposed road extension alignment. The biological report notes that the two intermittent drainages contain wetland-oriented plants such as soft rush, pennyroyal, and small-flowered bulrush, and riparian habitat was documented as being present around the perennial creek. The forest seeps are characterized by Sitka spruce, cascara sagrada, slough sedge, skunk cabbage, and ferns. The report includes a recommendation to conduct “DFG/County-approved and permitted culvert repair work” outside of the rainy season incorporating “best management practices as identified by the resource agencies.” The road layout drawn by Omsberg & Preston (Exhibit No. 6) shows the road right-of-way alignment to be located less than 30 feet from the documented wetland seeps.

It is unclear why the different reports each cite a different number of natural drainages bisecting the preliminary road alignment (six, four, and three respectively). Perhaps it's because the different investigations took place in different years at different seasons of the year when ephemeral drainage features may not have been readily apparent. Alternatively, the discrepancies may be due to hydrologic changes that have taken place in the area since the installation of the agriculture road in 2004. Regardless of the reasons for the discrepancies, Commission staff visited the site and noted at least three watercourses on the property that would have to be bisected by a new or expanded road through the area.

The proposed LUP amendment could allow for the installation of a new road through the area extending from Humboldt Hill Road down to Tompkins Hill Road across the subject site. This new road would necessitate placing fill in creek and drainage wetland habitats (e.g., culverts and associated fill material) for a number of crossings that would be needed to span the various watercourses. The placement of such fill could only be

approved if the development was found to be consistent with Section 30233 of the Coastal Act, which regulates the filling, diking, and dredging of wetlands in the coastal zone. Section 30233 sets forth a number of different limitations on what types of projects may be allowed in coastal wetlands. For analysis purposes, the limitations applicable to the subject project can be grouped into three general categories or tests. These tests require that projects that entail the dredging, diking, or filling of wetlands demonstrate that:

- (a) The purpose of the wetland filling, diking, or dredging must be for one of the seven uses allowed under Section 30233;
- (b) The project must have no feasible less environmentally damaging alternative; and
- (c) Feasible mitigation measures must be provided to minimize adverse environmental effects.

The County has not provided an estimate of how much temporary and permanent wetland fill would be associated with constructing a new approximately 34-foot-wide paved road and widening portions of the existing 10-foot-wide dirt road on the property. Nevertheless, based on the fact that (1) the existing 10-foot-wide agricultural road on the subject site, the bulk of which is shown within the footprint of the future new road alignment, necessitated the installation of six culverts to span the various creeks draining the forested hillslope of the area, (2) the 2007 geotechnical feasibility (Exhibit No. 8) study cites the fact that the future new road would need to cross at least four drainages, and drainage along the alignment would need to be controlled to mitigate “soil creep hazards,” and (3) the 2008 biological review of the site included specific recommendations for “culvert repair work,” the Commission concludes that any otherwise permissible road project that could be facilitated by the subject LUP amendment would clearly result in a significant amount of additional wetland fill.

Under the first of the three tests cited above, a project must qualify as one of the seven stated uses allowed under Section 30233(a). The only use remotely related to wetland fill associated with the construction of a new public road is Section 30233(a)(4), which authorizes wetland fill for “*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.*”

The Commission has never considered a new road to be an incidental public service. In past Commission actions, the Commission has found that fill for the expansion of existing roadways and bridges may be considered to be an “incidental public service purpose” only if: (1) the expansion is limited; and (2) the expansion is necessary to maintain existing traffic capacity. This historic interpretation was supported in the case of *Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County* (1999) 71 Cal.App.4th 493, 517, and the court found that:

... we accept Commission's interpretation of sections 30233 and 30240... In particular we note that under Commission's interpretation, incidental public services are limited to temporary disruptions and do not usually include permanent roadway expansions. Roadway expansions are permitted only when no other alternative exists and the expansion is necessary to maintain existing traffic capacity.

The proposed roadway does not qualify as a project designed to maintain existing traffic capacity. Instead, any otherwise permissible roadway would serve as a secondary access road to the Humboldt Hill neighborhood and other (existing and future planned) inland residential communities. The existing residential communities in the area are served by Humboldt Hill Road, a dead-end road that originates in the South Broadway area south of Eureka. If anything, traffic volume along Humboldt Hill Road would increase following the construction of any otherwise permissible road through the area since (1) through traffic would be able to use Humboldt Hill Road and its extension as an alternative route to the highway to go between Tompkins Hill Road (near College of the Redwoods) and the South Broadway area south of Eureka, and (2) construction of any otherwise permissible road would allow for the development of approximately 400 residential units on the inland portion of the Barry property and adjacent properties.

In addition, the project does not qualify as a limited expansion of an existing road. The Commission has generally used this definition for activities maintaining an existing road along its same alignment. Although the preliminary road design would align approximately half of any otherwise permissible approximately mile-long road within the footprint of the existing agricultural road across the subject site, the remaining half of any otherwise permissible road would consist of completely new construction, and the width of the new road along its alignment would be approximately triple the width of the existing agricultural road. As the proposed road extension essentially constitutes new road construction and significantly widened road construction along a portion of the existing agricultural road alignment, the proposed road extension therefore does not qualify as a limited expansion of an existing road.

The Commission therefore concludes that any otherwise permissible road at this location: (a) will increase capacity, (b) is not a limited expansion of an existing road, and (c) cannot be considered an allowable use under Section 30233(a)(4). Therefore, the proposed LUP amendment must be denied.

With respect to the 30233(a) requirement that feasible mitigation measures must be provided to minimize adverse environmental effects, little information has been provided regarding the scope of temporary and permanent impacts that would result from the road construction that the subject LUP amendment could allow for. The County, in its staff report findings for approval of the subject LUP amendment (Exhibit No. 13), states that various mitigation measures will be incorporated into the future road construction project (at the time that the permits are processed) to avoid nesting bird habitat, address polluted stormwater runoff, minimize wetland impacts, and avoid sensitive species. However, none of these mitigation measures are incorporated as standards into the proposed LUP

amendment as submitted. As the standard of review for coastal development permit applications within the area covered by the certified Humboldt County LCP is consistency with the LCP, a CDP approved for the road could be approved without such mitigation measures if they are not mandated by the policies of the LCP. Furthermore, no mitigation has been proposed for permanent wetland fill impacts to avoid a net loss of wetlands. Moreover, there does not appear to be a sufficient buffer between the wetland seeps identified in the biological report (Exhibit Nos. 6 and 7) and the proposed new road, which would leave the environmentally sensitive habitat exposed to indirect impacts from the road, polluted runoff, and edge effects. Finally, the geotechnical feasibility study conducted by Busch Geotechnical Consultants in 2007 (Exhibit No. 8), recommends vegetation clearing for 100 feet on each side of the centerline and then reevaluating the alignment, including conducting subsurface investigations. This clearing would significantly impact riparian and wetland vegetation associated with the creeks and natural drainages in the area. The County proposes to minimize vegetation removal associated with the future road construction only “to the extent that it is possible while maintaining adequate visibility and road clearances.”

Therefore, the Commission finds that the LUP amendment as submitted does not provide feasible mitigation measures to minimize adverse environmental effects as Section 30233(a) of the Coastal Act requires. Therefore, the proposed LUP amendment must be denied.

Finally, with respect to the requirement of Section 30233(a) that the project be the least environmentally damaging feasible alternative, the County’s LCP amendment submittal did not include an analysis of the least environmentally damaging feasible alternative and alternatives that would avoid wetland fill (at least with respect to coastal zone wetlands).

CONCLUSION

In conclusion, the Commission finds that any otherwise permissible road extension that could result from the proposed LUP amendment: (1) is not an allowable use under Section 30233(a)(4) and does not qualify under any of the other allowable uses in Section 30233(a); and (2) does not provide feasible mitigation measures to minimize adverse environmental effects. The Commission therefore finds the proposed LUP amendment inconsistent with Section 30233(a) of the Coastal Act. In addition, the Commission lacks sufficient information to determine whether it meets the second (least environmentally damaging feasible alternative) test of Section 30233(a), because the County has not provided sufficiently detailed information regarding this issue. Finally, the County has not provided a functional analysis to the Commission demonstrating that the proposed new road would at a minimum maintain the functional capacity of the wetlands in the impacted area, as the wetland policies of the Coastal Act require. The Commission therefore concludes that the proposed LUP amendment as submitted is inconsistent with the Coastal Act’s wetland and water quality policies and must be denied.

F. CONSISTENCY WITH THE ESHA PROTECTION POLICIES OF THE COASTAL ACT

The Coastal Act establishes a rigorous standard for protection of areas that are identified as environmentally sensitive habitat areas (ESHA). Only resource-dependent development, such as habitat restoration, is allowed within an ESHA, and all development within or adjacent to an ESHA must be sited and designed to prevent significant impacts to the ESHA. In contrast to environmental laws that may allow development in an environmentally sensitive area if the impacts can perhaps be mitigated to a less than significant level through restoration or conservation of other habitat areas, the Coastal Act requires that new development avoid identified ESHAs and that ESHAs be appropriately buffered from potential development impacts. Impermissible development is prohibited and is not allowed in exchange for mitigation.

1. Relevant Coastal Act Policies

Coastal Act Section 30240 states the following with respect to environmentally sensitive habitat areas (ESHA):

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

Coastal Act Section 30107.5 defines “environmentally sensitive habitat area” as:

...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

2. Consistency Analysis

The proposed LUP amendment could allow for the development of a “public roadway improvement project” involving a new road extending from the end of Humboldt Hill Road at the edge of the Barry property, through undeveloped agricultural, pasture, and forested lands, to Tompkins Hill Road near Highway 101. Section 30240(a) of the Coastal Act limits uses within ESHA to only those uses that are dependent on the resources of the ESHA (e.g., habitat restoration and nature study). The development of a public roadway through ESHA is not a resource-dependent use that is allowable under Section 30240.

As described above, according to the preliminary biological review completed in support of the LCP amendment application by Mad River Biologists in 2008 (Exhibit No. 7), the project area contains (among other habitat types) a relatively large (approximately 50-

acre) mature Sitka spruce forest that provides nesting and roosting habitat for various species of birds and raptors known to forage in the area, such as red-tailed hawk and red-shouldered hawk, and for various mammal species, including Sonoma tree vole, a sensitive species. The report also notes the presence of three wetland seeps within the forest habitat. Dominant species noted in the seeps include (in part) wetland-oriented slough sedge, skunk cabbage, and ferns. There also is riparian habitat with wetland-oriented plants around the two drainages and one perennial creek that bisect the subject site.

Any otherwise permissible road that could be allowed under the proposed LUP amendment would necessarily bisect mature Sitka spruce forest. The forest community on the subject properties is part of a larger (more than twice the size) band of undeveloped forest habitat that extends primarily southeastward and eastward from the subject site across other large parcels (the undeveloped forest habitat also extends northward from the subject site, though in the latter direction the forest habitat is bisected by roads and encroached upon by rural residential development as well as surrounded by dense suburban development). Certain evidence suggests that this particular forest stand, which lies in part on the subject properties, may qualify as ESHA under the Coastal Act. However, the Commission lacks sufficient information to determine with certainty whether the area is ESHA, because the County has not provided sufficiently detailed information regarding this issue.

As defined above, Section 30107.5 of the Coastal Act sets up a two part test for determining an environmentally sensitive habitat area. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5.

(a) WHAT CONSTITUTES “RARE?”

There are several types of rarity, but each is fundamentally related to threats to the continued existence of species or habitats that naturally occur in larger or more widespread populations or areas. Increasing numbers of species and habitats have become absolutely rare, having been reduced to a few hundreds or thousands of individuals or acres. Examples include species such as Pacific pocket mouse and habitats such as Torrey pine stands. The prognosis for such absolutely rare species and habitats is, in many cases, very poor. Another common pattern is for species or habitats to be globally rare but “locally” abundant. Populations of such species only occur at a few places either as a result of natural processes or human perturbations. Some species are characterized as “narrow endemics” because they have evolved adaptations to a very limited range of environmental variables (e.g., soil type, temperature, presence of fog, etc.), which restrict their spatial distribution. Many other species have restricted distributions as a result of human activities, especially agricultural and urban development that results in habitat loss. Many natural endemics have also suffered such habitat loss – compounding the risk

to them. All these species may be abundant in the few areas where they still occur. However, regardless of the cause of their restricted distribution, the survival of these species is at elevated risk because localized impacts may affect a large proportion of the population with devastating effects. At the other end of the spectrum of rarity are species or habitats that are geographically widespread, but everywhere are in low abundance. Some species naturally occur in this pattern and have life-history characteristics that enable them to persist. However, naturally abundant species that have been reduced to low density throughout their range are at heightened risk of extinction, although their wide distribution may increase their opportunities for survival.

(b) WHAT CONSTITUTES “ESPECIALLY VALUABLE?”

All native plants and animals and their habitats have significant intrinsic value. However, the “especially valuable” language in the Coastal Act definition of ESHA makes clear that the intent is to protect those species and habitats that are extraordinary and special, even though they may not necessarily be rare. As in all ESHA determinations, this requires a case-by-case analysis. Common examples of habitats that are especially valuable due to their role in the ecosystem are those that support rare, threatened, or endangered species, and those that provide important breeding, feeding, resting or migrating grounds for some stage in the life cycle of animal species and that are in short supply. Habitats may also be especially valuable because of their special nature. Examples include those rare instances of communities that have remained relatively pristine, areas with an unusual mix of species, and areas with particularly high biological diversity.

(c) ARE ALL EXAMPLES OF RARE HABITATS OR ALL AREAS SUPPORTING INDIVIDUALS OF RARE SPECIES ESHA?

The reason ESHA analyses are all site-specific is that there is no simple rule that is universally applicable. For example, a plot of a rare habitat type that is small, isolated, fragmented, and highly degraded by human activities may not meet the definition of ESHA, because such a highly impacted environment may be so altered that it no longer fits the definition of its historical habitat type. Larger, less isolated, more intact areas that are close to or contiguous with other large expanses of natural habitat are more likely to have a special nature or role in an ecosystem and hence meet the ESHA definition, but “large,” “isolated,” “intact,” and “close to” all are terms that are relative to the particular species or habitat under consideration. What is spatially large to a Pacific pocket mouse is small to a mountain lion or bald eagle. What is isolated for a dusky footed woodrat may not be for a California gnatcatcher. Similarly, an area supporting one or a few individuals of a rare species might not meet the definition of ESHA, because scattered individuals might be common and not significant to the species. However, this is relative to the actual distribution and abundance of the species in question. If a few individuals of a species previously thought to be extinct were found, the area clearly would meet the definition. However, if the same number of individuals of a species with a population of 25,000 were found in an isolated, degraded location, the area may not meet the definition. A conclusion of whether an area meets the definition of ESHA thus is based on a site-

and species-specific analysis that generally includes a consideration of community role, life-history, dispersal ability, distribution, abundance, population dynamics, and the nature of natural and human-induced impacts. The results of such an analysis can be expected to vary for different species; for example, it may be different for pine trees than for understory orchids.

(d) IDENTIFYING ESHA OVER TIME

Case-by-case analysis of ESHA necessarily occurs at discrete moments in time. However, ecological systems and the environment are inherently dynamic. One might expect, therefore, that the rarity or sensitivity of species and their habitats will change over time. For example, as species or habitats become more or less abundant due to changing environmental conditions, they may become more or less vulnerable to extinction. In addition, our scientific knowledge and understanding of ecosystems, specific species, habitat characteristics, and so forth is always growing. We discover large numbers of new species every year.¹¹ The California Native Plant Society's *Inventory of Rare, Threatened, and Endangered Plants of California* grew from approximately 1,400 listings in 1974 to over 2,200 listings in 2010.¹² New legal requirements, such as the numerous environmental laws enacted in the 1970s, may be adopted that reflect changes in our values concerning the current conditions of natural resources. Consequently, ESHA evaluations may change over time. Areas that once were not considered ESHA may become ESHA.¹³ It also is possible that rare species or habitats might become less so, to the extent that these habitats may no longer be considered ESHA.¹⁴ Because of this inherent dynamism, the Commission must evaluate resource conditions as they exist at the time of the review, based on the best scientific information available.

(e) RARITY OF SITKA SPRUCE FOREST AT THE SUBJECT SITE

Although Sitka spruce (*Picea sitchensis*) as a species is not considered to be rare or sensitive at either the global or state levels, the Department of Fish and Game considers the Sitka spruce forest natural community type, which is endemic to the Pacific Northwest from Alaska to northern California, to be, in some cases, imperiled at the state level. The California Natural Diversity Database (CNDDDB) is a DFG program that inventories the status and locations of rare species and natural communities in California. The CNDDDB uses a global and state ranking system for these species and communities, where the global rank is a reflection of the overall condition of a species or natural community throughout its global range, and the state rank applies in the same way but is specific to the species or community type in California. The latest edition of the

¹¹ See, generally, E.O. Wilson, *The Diversity of Life* (W.W. Norton, New York, 1992).

¹² CNPS (<http://www.rareplants.cnps.org/>).

¹³ See, for example, California Coastal Commission, staff report Changed Circumstances and Project Amendments, A-4-STB-93-154-CC and A-2 (Arco Dos Pueblos Golf Links).

¹⁴ See, for example, California Coastal Commission staff report for CDP Application No. 1-06-032 (Shuttleworth) at <http://documents.coastal.ca.gov/reports/2007/7/F6a-7-2007.pdf>.

CNDDDB¹⁵ classifies Sitka spruce forest as a rare natural community, with a G1 global rank and an S1.1 state rank. These ranks indicate that both globally and within California there either are fewer than six viable “element occurrences” or less than 1,000 individuals or less than 2,000 acres (G1 and S1). Furthermore, the community is considered “very threatened” (S1.1). There is no higher degree of rarity (or threat) in the CNDDDB global or state rankings.¹⁶ In addition, under the Department’s most recently published list of terrestrial vegetation types,¹⁷ the Sitka spruce forest alliance is considered globally “secure” (G5) but “imperiled” (S2) at the state level. Regionally, staff from the Northern Region of DFG has commented on multiple CEQA documents for projects in Humboldt and Del Norte Counties attesting to the conservation value of large, mature Sitka spruce forest stands in the region and recommending the conservation and protection of such stands.¹⁸

In addition to the assigned rarity rankings and the aforementioned DFG comments, DFG provides guidance for ascertaining whether or not a particular stand of a rare vegetation type (i.e., S1-S3 rank) can be considered a “high-quality” occurrence of the given natural community. Specifically, DFG recommends the following¹⁹:

“The judgment of whether a stand is high quality or not involves a flexible set of criteria such as the range of existing sustainable occurrences of this element or vegetation type based on site quality, defensibility, size, and surrounding landscapes. These criteria vary based on the type of vegetation or natural community and the range of existing occurrences known. For example, it is likely that although there are many individual stands (or occurrences) and many thousands of acres of Douglas-fir/Vine maple/Oregon grape association...in northwestern California, there are only a few that reflect the most exemplary qualities of natural vegetation including:

- lack of invasive exotic species,

¹⁵ RareFind 4 (online version) and RareFind Application Version 3.1.1, Government Version dated January 1, 2011, data expire July 1, 2011.

¹⁶ Ranks range from 1 (“critically imperiled”) through 5 (“secure”) using NatureServe’s standard heritage program methodology (<http://www.natureserve.org/explorer/ranking.htm#interpret>). The protocol for assigning a conservation status rank is based on scoring an element against 10 conservation status factors, which are grouped into three categories based on the characteristic of the factor: rarity (six factors), trends (two factors), and threats (two factors). Once assigned, scores for the individual factors within each of these categories are pooled, and the resulting three summary scores are combined to yield an overall numeric score, which is translated into a calculated rank.

¹⁷ See DFG’s September 2010 *List of California Terrestrial Natural Communities* at <http://www.dfg.ca.gov/biogeodata/vegcamp/pdfs/natcomlist.pdf>.

¹⁸ E.g., Comments from Gary B. Stacey, Regional Manager, DFG Northern Region, Redding to (1) Michael Wheeler, Senior Planner, Humboldt County Planning Division, dated March 20, 2008 regarding Initial Study and Proposed Mitigated Negative Declaration for the Beau Pre Heights Subdivision, McKinleyville, Humboldt County; and (2) Jim Bernard, Airport Manager, Border Coast Regional Airport Authority, dated October 21, 2008 regarding Draft Environmental Assessment and Environmental Impact Report (SCH #2006112120) for the Terminal Replacement Project, Del Norte County.

¹⁹ From http://www.dfg.ca.gov/biogeodata/vegcamp/natural_comm_background.asp.

- no evidence of human-caused disturbance such as roads or excessive livestock grazing, or high-grade logging,
- evidence of reproduction present (sprouts, seedlings, adult individuals of reproductive age), and
- no significant insect or disease damage, etc.

For this community, these characteristics exemplify high quality, sustainable, old growth characteristics...”

Certain evidence suggests that the Sitka spruce forest on the subject site represents high quality stand of the rare Sitka spruce forest natural community type that indeed warrants the sensitive ranking status assigned to it by DFG. First, the biological report submitted with the LUP application (Exhibit No. 7) and a site visit by Commission staff noted the forest community as composed primarily of large, mature Sitka spruce trees (averaging 40-55 inches diameter at breast height [dbh]) with intermixed large, mature grand fir and Douglas-fir trees (averaging 24-55 inches and 30-48 inches dbh, respectively). Stands of Sitka spruce described as “old-growth” in the CNDDDB (e.g., at Patricks Point State Park) document trees of similar girth. Other characteristics suggesting the forest on the subject site meets the criteria for classification as a “late succession forest stand”²⁰ include its dense canopy closure with multiple canopy layers, the presence of downed logs, and its size (greater than 20 acres). Second, according to both Sawyer *et al.*²¹ and DFG, large, contiguous stands of mature Sitka spruce forest are rare in California due to the species’ limited range (restricted primarily to low elevations within the coastal fog belt of Del Norte and Humboldt Cos.) and because agricultural and residential development in coastal areas have resulted in the removal of these forests. In addition, timberland silvicultural practices have converted Sitka spruce to more economically valuable forest types such as redwood and Douglas-fir. Thus, the size, age, and species composition of the forest habitat on the subject site (over 50 acres of mature forest dominated by large Sitka spruce trees with lesser amounts of large grand fir and Douglas-fir trees) appears to represent a significant, high quality stand of the natural community type in the region. Third, the forest vegetation in both overstory and understory layers is composed primarily of native species. Invasive exotic species diversity and density are quite low in this particular stand, and the forest understory layers contain a diversity of native species (e.g., dogwood, salmonberry, cascara, twinberry, evergreen huckleberry, elderberry, salal, false Solomon’s seal, California blackberry, rattlesnake plantain, hedge nettle, ferns, sedges, and various other species). Fourth, no evidence of human-caused disturbance within the forest habitat, such as roads or excessive livestock grazing or high-grade logging, was observed or documented. The intact, non-fragmented nature of the forest habitat on the subject site is apparent on recent aerial photos of the area (Exhibit No. 4). Fifth, according to the biological report and comments on the project submitted by DFG staff, the mature forest habitat provides important ecosystem functions such as nesting

²⁰ Title 14, California Code of Regulations, Section 895.

²¹ Sawyer, J.O., T. Keeler-Wolf, and J.M. Evens. 2009. *A Manual of California Vegetation*. Second Edition. California Native Plant Society, Sacramento, CA.

and roosting habitat for various species of birds and raptors known to forage in the area and for various mammal species, including Sonoma tree vole, a DFG “species of special concern” listed in the CNDDDB (G3/S3).^{15 16} DFG staff documented a vole nest within the forest habitat, though no determination was made on the vole species. Moreover, the biological report (Exhibit No. 7) documented at least three “seepage areas” that qualify as wetlands within the forest understory, which demonstrates the diversity of habitats and range of ecosystem functions contained in this particular forest stand. Finally, aside from its overall statewide status (imperiled), the location of this occurrence of the forest type at the geographic edge of its distribution (the continuous distribution of Sitka spruce ranges from Alaska to just south of Humboldt Bay a mere few miles from the project site, except for a disjunct population of the species that occurs near Fort Bragg in Mendocino County) equates to these trees likely having a genetic structure different from the more central populations to the north. The relatively rare genes harbored by these populations may help the species cope with environmental shifts, such as those resulting from the current global warming and concomitant climate change.^{22 23} For all of these reasons the Commission finds that the Sitka spruce forest stand that would necessarily be bisected by any otherwise permissible road through the area may represent a rare “high quality” occurrence of the rare natural community in California.

Therefore, the Commission finds that there is evidence to suggest that this particular forest stand, which lies in part on the subject properties, may qualify as ESHA under the Coastal Act. However, the Commission lacks sufficient information to determine with certainty whether the area is ESHA, because the County has not provided sufficiently detailed information regarding this issue.

The County, in its submittal of the subject LUP amendment application, did not recognize the Sitka spruce forest stand that would necessarily be fragmented by the future new road through the area as being rare or environmentally sensitive, even though the biological report prepared in support of the LCP amendment application documents the forest stand as a “sensitive community type” (Exhibit No. 7, page 4). In addition, the County did not address the question of whether the Sitka spruce forest on site constitutes a “high quality” occurrence of a sensitive natural community. The County did, however, recommend measures (to be included as conditions of approval of the coastal development permit for the future new road construction project) to protect sensitive bird nesting habitat that may be present in the area, such as conducting pre-construction surveys and avoiding any documented nests until after the nesting season.

(f) SUSCEPTIBILITY OF SITKA SPRUCE FOREST HABITAT TO DISTURBANCE

The Commission next considers the second part of the ESHA test – i.e., whether the rare forest habitat could be easily disturbed or degraded by human activities and development.

²² Lessica, P. & F.W. Allendorf. 1995. When are peripheral populations valuable for conservation? Conservation Biology, Vol. 9, No. 4, pp. 753-760.

²³ Gapare, W.J., S.N. Aitken, & C.E. Ritland. 2005. Genetic diversity of core and peripheral Sitka spruce (*Picea sitchensis* (Bong.) Carr) populations: implications for conservation of widespread species. Biological Conservation 123: 113-123.

Because the forest habitat continuously spans the length of the hillside that lies between Humboldt Hill Road and Tompkins Hill Road, there is no way to develop a road extension through the area without fragmenting the forest habitat itself. In general, road development contributes to habitat fragmentation because it divides a larger landscape into smaller patches and converts interior habitat into edge habitat. Populations of some species may become isolated, increasing the risk of local extirpations or extinctions and leading to a loss of biodiversity. Not only would road fragmentation of the forest habitat on the subject site lead to a direct loss of rare habitat, but also it would reduce the effective (usable) habitat near the road for certain species (e.g., deer) and potentially lead to the direct mortality of forest fauna. Biologists generally agree that fragmented forest stands typically are more susceptible to disease, disturbance, and degradation than larger ones. In addition, the development of a new road through the area would serve as a means of dispersal for and establishment of a suite of invasive species. This, in turn, would lead to an increase in habitat alteration, replacement of native species, and alteration of ecosystem processes. Therefore, the Commission finds that the Sitka spruce forest habitat on the subject site could be easily disturbed and degraded by human activities and development.

(g) CONCLUSION ON LUP AMENDMENT CONSISTENCY WITH SECTION 30240(A)

In conclusion, the Commission finds that the proposed LUP amendment could not be found consistent with Section 30240(a) the Coastal Act if the Sitka spruce forest on the subject site is ESHA. Section 30240 prohibits all but resource-dependent use in ESHA and only allows resource-dependent use if it does not significantly disrupt habitat values. The proposed LUP amendment could allow for a land use (i.e., public roadway development and related uses) that not only is not resource-dependent but that could be expected to result in direct removal of a significant acreage of forest ESHA and the fragmentation of the remaining ESHA such that the habitat values would be significantly disrupted and the areas significantly degraded.

In order to confirm that the Sitka spruce forest stand on the subject site truly represents a rare “high quality” occurrence of a rare habitat type that would qualify as ESHA under the Coastal Act, additional site specific and regional information is needed on the Sitka spruce forest, such as information on stand regeneration, crown diameter, the presence of snags and other special habitat elements, approximate size and age of the stand, sensitive species survey results, relationship of the state to wildlife habitat value (e.g., WHR classification), locations and sizes of other mature Sitka spruce forest stands in the region, and potentially other information.

The Commission need not determine with certainty that the Sitka spruce forest area is ESHA and whether the LUP amendment is consistent with the ESHA protection policies of the LCP in that respect, because the Commission has already determined that the proposed LUP amendment is inconsistent with other Coastal Act policies regarding the conversion of agricultural lands and the filling of wetlands and must be denied for these reasons, as discussed above.

(h) DEVELOPMENT ADJACENT TO ESHA

Section 30240(b) of the Coastal Act requires that development adjacent to ESHA not significantly degrade ESHA. The County has not submitted evidence demonstrating that the subject road that could be allowed under the proposed LUP amendment would be developed in a way that could adequately protect adjacent ESHA and ensure its continuance.

In addition to mature Sitka spruce forest, the biological report completed in support of the proposed LUP amendment notes the presence of forest wetlands (described and mapped as three wetland seeps) dominated by wetland-oriented plants such as slough sedge, skunk cabbage, and different species of ferns. In addition, several natural drainages, including some with riparian habitat, occur on the site. The Humboldt County LCP considers all wetlands and riparian habitat to be environmentally sensitive.

The road layout drawn by Omsberg & Preston (Exhibit No. 6) shows the preliminary road right-of-way alignment to be located less than 30 feet from the documented wetland seeps and would cross through several natural drainages considered to be ESHA elsewhere along the preliminarily proposed road alignment. It is not clear how the development of the new road would affect the hydrology and vegetation composition of the forested hillside where the seeps are located and the areas where the drainages would be crossed. Moreover, runoff from a new road through these areas would collect oil and grease drippings from vehicles as well as sediment other contaminants deposited on the roadway. Grading, soil disturbance, and vegetation removal can result in the discharge of sediment into site runoff, which, upon entering coastal waters and wetlands, degrades habitat quality and adversely affects sensitive species that depend on the wetland habitat. Sediment is considered a pollutant that affects visibility through open water (such as streams), and affects plant productivity, animal behavior (such as foraging) and reproduction, and the ability of animals to obtain adequate oxygen from the water. With respect to potential effects on fish and fish habitat, sediment is often a major pollutant of concern, because fine sediments have been well documented to fill pore spaces between larger gravel and cobble, eliminating the relatively coarse sediments required for egg and fry survival of many freshwater-spawning fish. In addition, sediment is the medium by which many other pollutants are delivered to wetland and aquatic environments, as many pollutants are chemically or physically associated with the sediment particles.

The County did not complete an analysis of how wide a buffer between roadway development and adjacent ESHA would need to be to ensure the protection and continuance of the ESHA. Such an analysis should be based on an examination of various factors, such as the biological significance of lands adjacent to the ESHA and the degree to which they are functionally related to ESHA resources; the sensitivity of species to disturbance such that the most sensitive species will not be disturbed significantly by the permitted development; the susceptibility of the land to erosion; the use of natural topographic features to buffer habitat areas; the type and scale of development proposed; and/or other factors. The County, in its staff report findings for approval of the subject

LUP amendment, did state that various mitigation measures will be incorporated to the future road construction project (at the time that the permits are processed) to address polluted stormwater runoff, minimize wetland impacts, and avoid sensitive species. However, none of these mitigation measures are incorporated into the proposed LUP amendment as submitted. As the standard of review for coastal development permit applications within the area covered by the certified Humboldt County LCP is consistency with the LCP, a CDP approved for any otherwise permissible road could be approved without such mitigation measures if they are not mandated by the policies of the LCP. Moreover, the geotechnical feasibility study conducted by Busch Geotechnical Consultants in 2007, recommends vegetation clearing for 100 feet on each side of the centerline and then reevaluating the alignment, including conducting subsurface investigations. This would significantly impact riparian and wetland vegetation associated with the seeps and natural drainages in the area. The County proposes to minimize vegetation removal associated with the future road construction only “to the extent that it is possible while maintaining adequate visibility and road clearances.”

Therefore, the Commission concludes that the proposed LUP amendment is inconsistent with Coastal Act Section 30240(b) because any otherwise permissible road that would be allowed under the LUP amendment as submitted would not protect adjacent ESHA and ensure its continuance. Therefore, the proposed LUP amendment must be denied.

(i) CONCLUSION

In summary, the Commission cannot determine at this time whether or not the proposed LUP amendment is consistent with Section 30240(a) of the Coastal Act, as the Commission cannot conclude with certainty that the Sitka spruce forest habitat that exists in areas that would be traversed by the proposed roadway constitutes ESHA. If the Sitka spruce forest habitat does constitute ESHA, the amendment would be inconsistent with Section 30240(a), as the amendment could facilitate the development of a use that is not dependent on the resource. The Commission does conclude, however, that the proposed amendment is inconsistent with Section 30240(b) of the Coastal Act, as development of any otherwise permissible road through the area would not protect adjacent wetland ESHA (forest seep areas and natural drainages) and ensure their continuance, as is required by Section 30240(b). Therefore, the proposed LUP amendment as submitted is inconsistent with the Coastal Act’s ESHA protection policies and must be denied.

G. INTERNAL CONSISTENCY WITH THE LAND USE PLAN

As described above, the proposed amendment would permissively allow for a future road improvement project (“beyond repair and maintenance”) by adding it to the list of permissible projects identified in subsection (j) to Section 3.22-B of the Humboldt Bay Area Plan. According to the existing certified language of Section 3.22-B, the future road improvement project “*shall be consistent with Sections 3.30 et seq...*” of the HBAP. Section 3.30 et seq. of the HBAP contains various polices related to the protection of natural resources in the planning area. These policies include, among others, Sections 30230, 30231, 30233, and 30240 of the Coastal Act and various development policies

related to environmentally sensitive habitats, wetland buffers, road construction within watersheds containing wetlands, and riparian corridors (see Exhibit No. 12 for a copy of the relevant policies contained within HBAP Section 3.30).

Amending the LUP as proposed to permissively allow for a new road extension between Humboldt Hill Road and Tompkins Hill Road would be inconsistent with Sections 30233 and 30240 of the Coastal Act for the various reasons discussed above. Therefore, the LUP amendment as submitted would result in internal inconsistencies in the certified LUP, and the LUP amendment would not be consistent with the Coastal Act. Therefore, the proposed LUP amendment must be denied.

PART THREE: CALIFORNIA ENVIRONMENTAL QUALITY ACT

On May 12, 2009, the County of Humboldt, as the lead agency in the discretionary review of the proposed LUP amendment, found that the project was not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code (PRC) Section 21080.9 and 14 Cal. Code Regs. 15265(B), as the Commission's certification of the subject amendment is the functional equivalent of environmental review. The County also noted that the future road construction that would result from the approval of the subject LUP amendment would be subject to CEQA review through the County's permitting process.

In addition to making a finding that the amendment is in full compliance with the Coastal Act, the Commission must make a finding consistent with PRC Section 21080.5(d)(2)(A), which requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

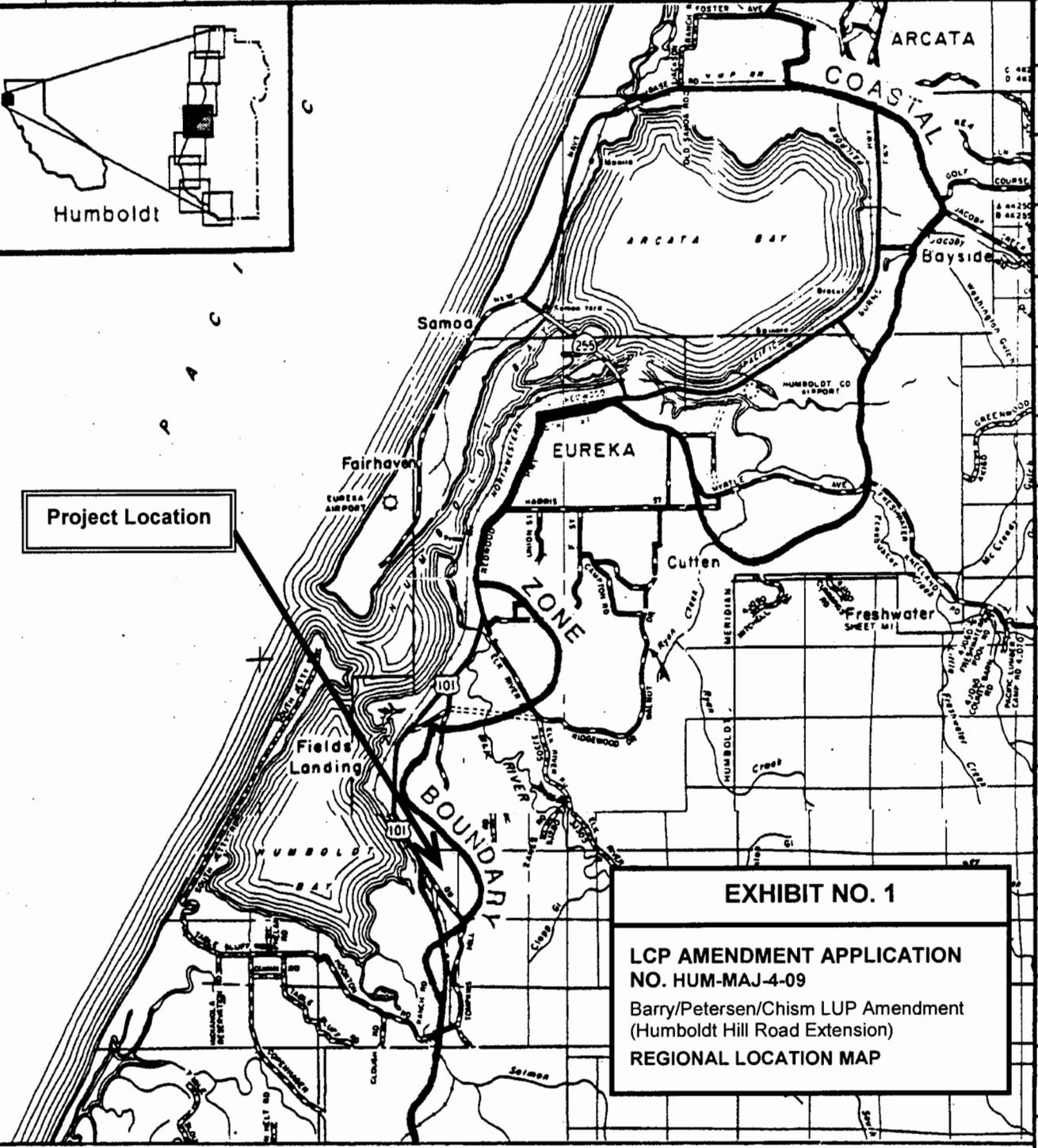
The Commission incorporates its findings on LUP and Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, the proposed amendment is inconsistent with the agricultural resources, wetland fill, and ESHA protection policies of the Coastal Act. A feasible alternative is available, in the form of denying the LCP amendment, which would substantially lessen any significant adverse direct, indirect, and cumulative impacts that the LUP amendment may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA. Therefore, the proposed LUP amendment must be denied.

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Parcel Map
4. 2010 Aerial Photo
5. Conceptual Site Plan
6. Conceptual Road Plans Exh. 6, part 1 Exh. 6, part 2
7. Preliminary Biological Report
8. Preliminary Geologic Report
9. Preliminary Feedback from County Public Works
10. Board of Supervisors Resolution of Transmittal for HUM-MAJ-4-09
11. Proposed Text Changes to Section 3.22 of the LUP (Humboldt Bay Area Plan)
12. Excerpt from Section 3.30 of the LUP Relevant to Section 3.22
13. County Staff Report and Findings for Approval of the Subject LUP Amendment
14. Correspondence

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Project Location

EXHIBIT NO. 1

**LCP AMENDMENT APPLICATION
NO. HUM-MAJ-4-09**

Barry/Petersen/Chism LUP Amendment
(Humboldt Hill Road Extension)

REGIONAL LOCATION MAP



LOCATION MAP



County of Humboldt

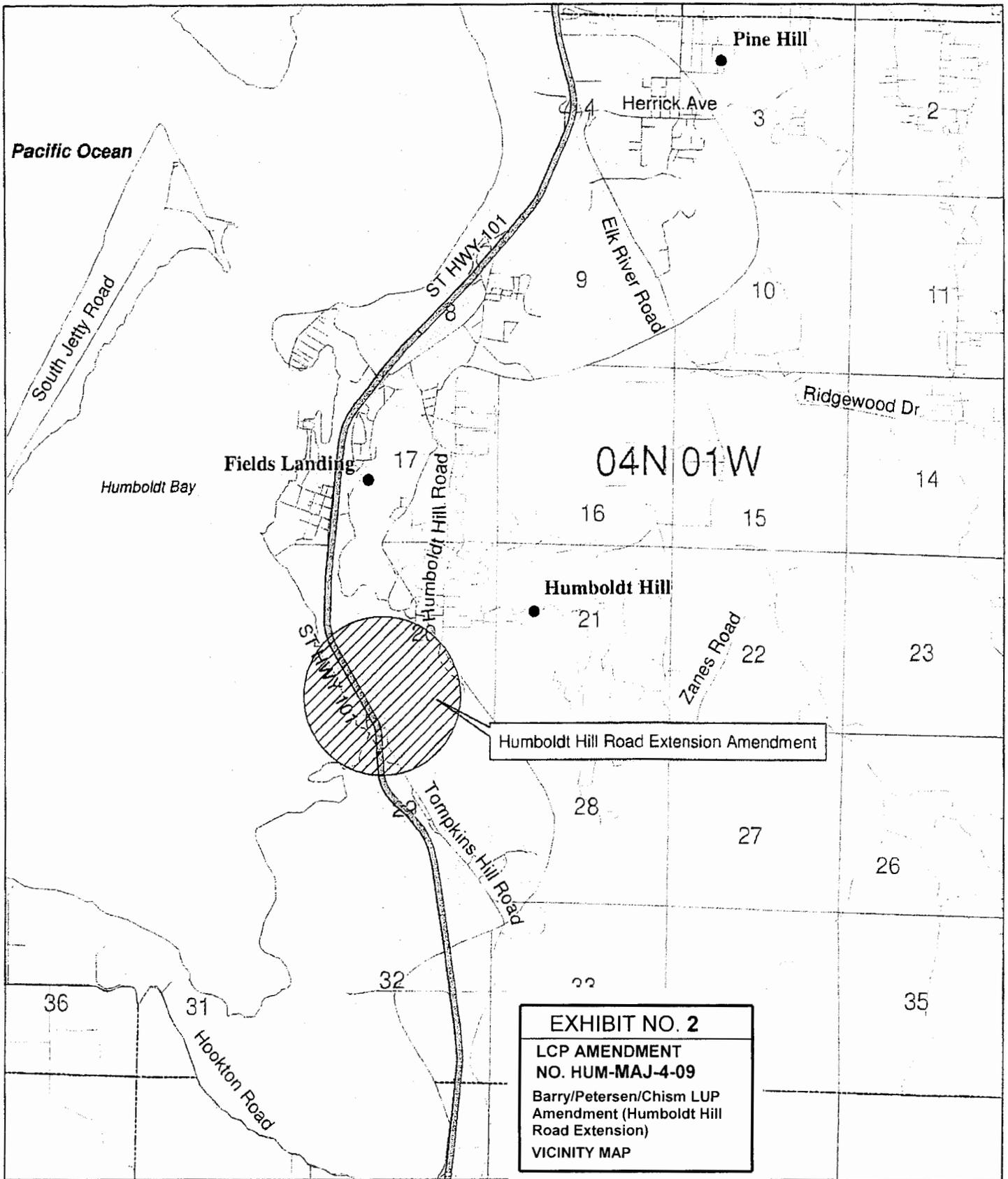


EXHIBIT NO. 2
LCP AMENDMENT
NO. HUM-MAJ-4-09
 Barry/Petersen/Chism LUP
 Amendment (Humboldt Hill
 Road Extension)
 VICINITY MAP

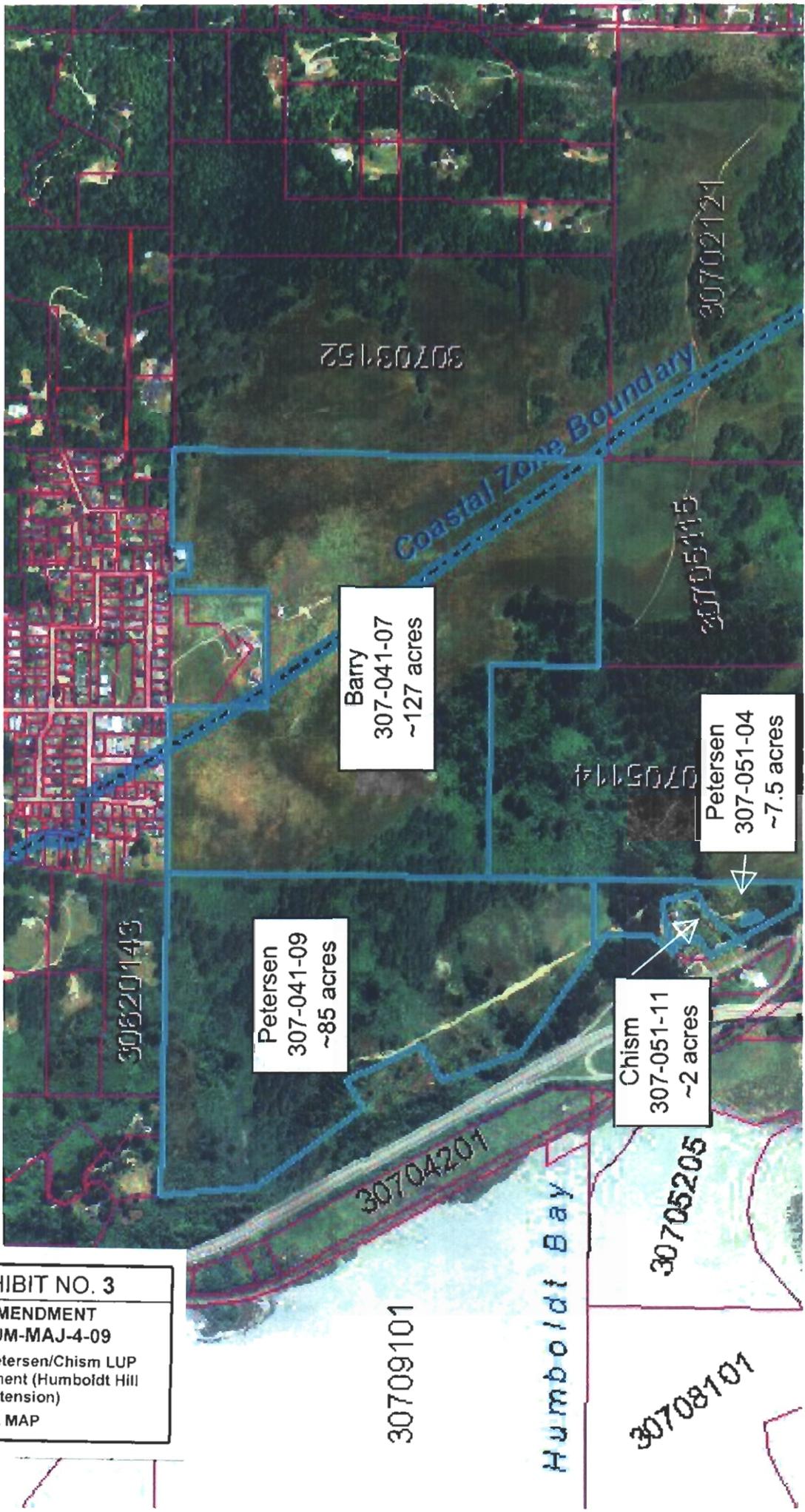
Humboldt County Coastal Plan Update
 Humboldt Bay Area Plan Amendment

Location Map

1 inch equals 3,659 feet

 Humboldt Bay Area Planning Area





Barry
307-041-07
~127 acres

Petersen
307-051-04
~7.5 acres

Petersen
307-041-09
~85 acres

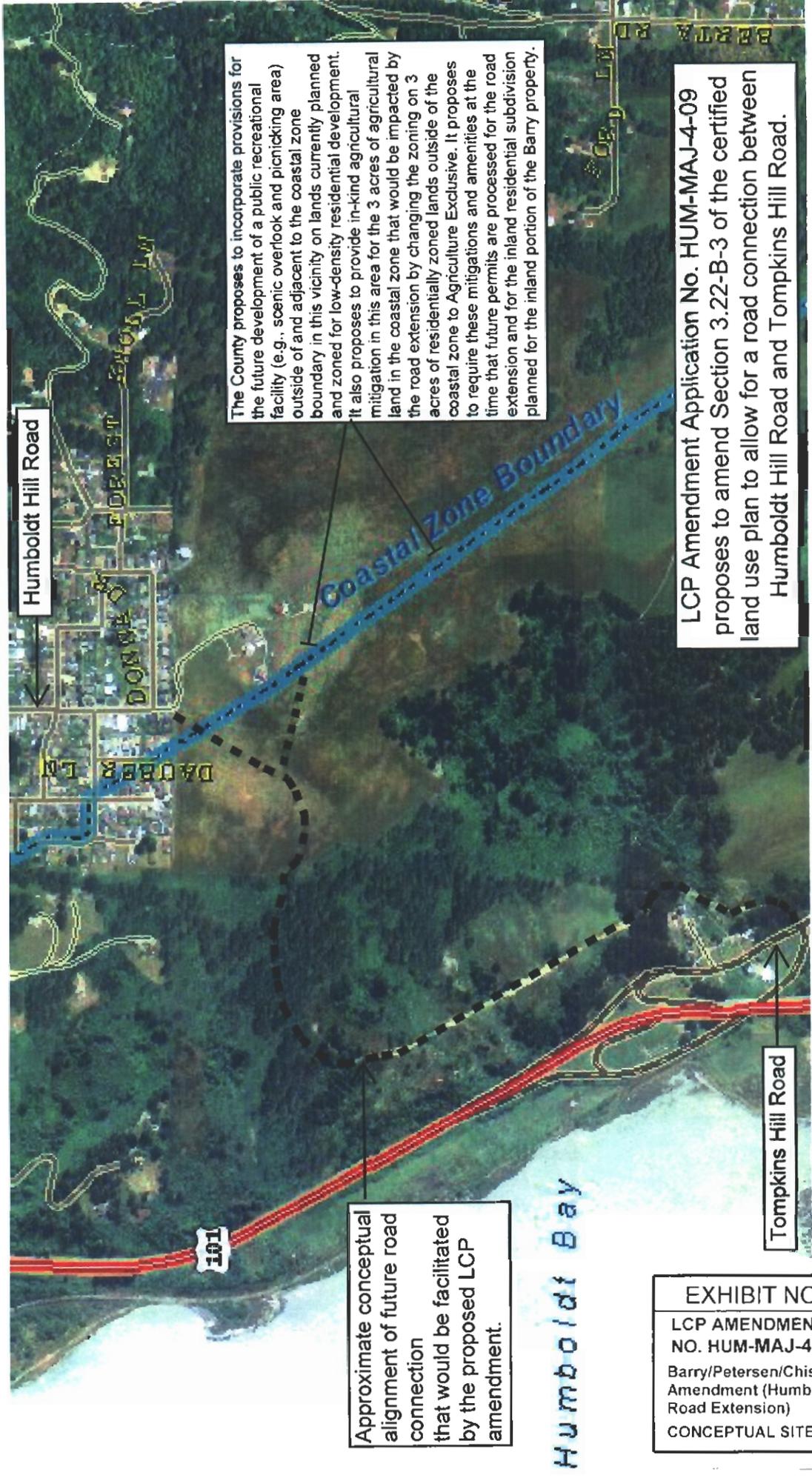
Chism
307-051-11
~2 acres

EXHIBIT NO. 3
 LCP AMENDMENT
 NO. HUM-MAJ-4-09
 Barry/Petersen/Chism LUP
 Amendment (Humboldt Hill
 Road Extension)
 PARCEL MAP



Darker vegetation on the subject property generally represents mature Sitka spruce and other conifer trees.

EXHIBIT NO. 4
LCP AMENDMENT
NO. HUM-MAJ-4-09
Barry/Petersen/Chism LUP
Amendment (Humboldt Hill
Road Extension)
2010 AERIAL PHOTO



Humboldt Hill Road

DAVERS LN
DOWNEY ST
FOREST

Coastal Zone Boundary

The County proposes to incorporate provisions for the future development of a public recreational facility (e.g., scenic overlook and picnicking area) outside of and adjacent to the coastal zone boundary in this vicinity on lands currently planned and zoned for low-density residential development. It also proposes to provide in-kind agricultural mitigation in this area for the 3 acres of agricultural land in the coastal zone that would be impacted by the road extension by changing the zoning on 3 acres of residentially zoned lands outside of the coastal zone to Agriculture Exclusive. It proposes to require these mitigations and amenities at the time that future permits are processed for the road extension and for the inland residential subdivision planned for the inland portion of the Barry property.

LCP Amendment Application No. HUM-MAJ-4-09 proposes to amend Section 3.22-B-3 of the certified land use plan to allow for a road connection between Humboldt Hill Road and Tompkins Hill Road.

Approximate conceptual alignment of future road connection that would be facilitated by the proposed LCP amendment.

Tompkins Hill Road

Humboldt Bay

101

EXHIBIT NO. 5
LCP AMENDMENT
NO. HUM-MAJ-4-09
Barry/Petersen/Chism LUP
Amendment (Humboldt Hill
Road Extension)
CONCEPTUAL SITE PLAN