

**CALIFORNIA COASTAL COMMISSION**

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90 <sup>th</sup> Day:	Extended to July 5, 2003
Staff:	Randall Stemler
Staff Report:	May 23, 2003
Hearing Date:	June 13, 2003
Commission Action:	

**TO:** Commissioners and Interested Parties

**FROM:** Peter M. Douglas, Executive Director  
Charles Damm, Interim District Director  
Robert S. Merrill, North Coast District Manager  
Randall Stemler, Coastal Planner

**SUBJECT:** City of Fort Bragg LCP Amendment No. FTB-MAJ-1-02, (Aquaculture)

**SYNOPSIS:****Amendment Description:**

The City of Fort Bragg is proposing to amend its Land Use Plan and corresponding Implementation Plan to allow aquaculture as a conditionally permitted use in specified areas of the City's coastal zone. On February 25, 2002, the Fort Bragg City Council adopted resolution No. 2545-2002 approving the submittal of such an LCP Amendment (LCPA 1-01). Specifically the City Council adopted Ordinance No. 833-2001, which modifies the definition of aquaculture and adds aquaculture as a conditionally permitted use in both the Heavy Industrial District and the Harbor District zones of the City's certified LCP. The Heavy Industrial District sites generally flank the city's entire oceanfront coastline within areas previously devoted to lumber mill use while the Harbor District sites are located along portions of the Noyo River.

The proposed amendment would also add as a conditional use in the Heavy Industrial Zone any use similar to those specified as conditional uses for the zone which the Planning Commission finds would conform with the purpose and intent of the Heavy Industrial Zone and would be compatible and appropriate to the district in which it is proposed.

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### Deadline for Commission Action:

On March 18, 2002, the Commission received the proposed amendment from the City of Fort Bragg. On April 6, 2002, the Executive Director determined that the City's LCP amendment submittal was in proper order and legally adequate to comply with the requirements of Section 30510 of the California Coastal Act and Sections 13551-13552 of the Commission's regulations. Pursuant to Section 30512 of the California Coastal Act, LCP Amendment No. FTB-MAJ-1-02 must be scheduled for public hearing and the Commission must take action within 90 days after receipt of a complete transmittal. The 90<sup>th</sup> day after the submittal was determined to be complete was July 5, 2002, therefore necessitating Commission review at or before the Commission's June 11-14, 2002 hearings. After further review of the City's LCP amendment request, and because the amendment raises complicated issues regarding measures necessary to best safeguard coastal resources from the impacts of aquaculture development on water quality and sensitive intertidal habitat, Commission staff determined that additional time would be necessary to both analyze consistency of the proposed amendment with the Coastal Act and prepare a staff recommendation to the Commission. Coastal Act Section 30517 states that the Commission may extend for good cause the 90-day time limit for Commission action for a period not to exceed one year. Pursuant to this statute, on June 13, 2002, the Commission extended the 90-day time limit for Commission action by one year to July 5, 2003. The deadline for Commission action cannot be extended again. Therefore, the Commission must take action at the June 10-13, 2003 meeting, the last Commission meeting before the July 5, 2003 deadline.

### Summary of Staff Recommendation:

The staff recommends that the Commission, upon completion of a public hearing, **deny the proposed amendment and certify the amendment request with suggested modifications.** The city's proposal to amend both the Land Use Plan and the Implementation Program of Fort Bragg's certified Local Coastal Program to allow aquaculture as a conditionally permitted use in the Harbor District and the Heavy Industrial District of the coastal zone can be found consistent with the policies of the Coastal Act only if modified.

The Coastal Act recognizes aquaculture as a form of agriculture. Section 30222 affords agriculture, and by extension aquaculture, priority over residential, general industrial, or general commercial development. Therefore, adding aquaculture as a conditional use within a local coastal program is generally consistent with the Coastal Act priority use policies. However, aquaculture development can result in significant adverse impacts on coastal resources, and any proposed LCP amendment that would allow for aquaculture development must include provisions to ensure that future aquaculture development would be sited and designed in a manner that is consistent with Coastal Act Chapter 3 policies that address the protection of such coastal resources. The proposed LUP amendment does not include substantive policies that could be used in the review of aquaculture development to ensure that coastal resources are adequately protected. Such policies are needed for: (1) the protection of environmentally sensitive habitat and conformance with Section 30240 of the Coastal Act, (2) the protection of visual resources and conformance with Section 30251, (3) the protection of public access and

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conformance with the public access policies of the Coastal Act, (4) the protection of water quality and marine resources and conformance with Sections 30230 and 30231, (5) ensuring that future aquaculture development will not contribute to geologic and flood hazards and conformance with Section 30253 of the Coastal Act, and (6) conformance with the priority use policies of the Coastal Act. Therefore, staff is recommending several suggested modifications that would add such substantive policies to the LUP.

With regard to the protection of environmentally sensitive habitat, the certified LUP designates coastal bluffs and the intertidal and marine areas that flank the I-H lands west of Highway One as ESHA. The certified LUP points out that the rocky intertidal areas contain extremely biologically rich tide pools, rocks, nesting grounds, bluffs, and kelp beds and attributes their relatively pristine condition in part to the fact that the bluffs and the former adjacent industrial activity have formed an effective buffer protecting the habitat from human disruption. Recent surveys document that the rocky intertidal area and its immediate environs are of high ecological value. Aquaculture development in the HD or I-H districts could engender proposals to construct seawater intake and outfall lines to serve the aquaculture facilities within the coastal bluff and rocky intertidal ESHA and within the Commission's area of retained permit jurisdiction. However, the aquaculture development that would be allowed by the proposed LUP amendment is not a resource dependent use that could be developed within the coastal bluff, rocky intertidal, or any other ESHA consistent with Section 30240(a) of the Coastal Act, and above ground pipeline development could have significant adverse effects on the ESHA. Therefore, Suggested Modification No. 4 would preclude the installation of above-ground pipelines through the coastal bluff and rocky intertidal ESHA. Adoption of this suggested modification would mean that any aquaculture facilities developed in the Heavy Industrial designated lands would have to use alternatives to constructing intake and discharge lines on the face of the coastal bluff habitat and on top of the rocky intertidal habitat such as: (1) utilizing directional drilling to extend pipelines underneath the coastal bluff and rocky intertidal habitat to open ocean waters; (2) using a closed loop system for re-circulation of a fixed amount of ocean water initially supplied from an approved location to fill the tanks; (3) routing of pipelines north or south from the aquaculture facility to other ocean areas that do not exhibit rocky intertidal habitat, and (4) culturing freshwater species that are not dependent on the use of ocean water.

In comparison, within the Harbor District, ESHA resources do not flank the entire shoreline. Above ground intake and discharge lines could be constructed in a manner consistent with Section 30240. However, installation of above ground intake and discharge lines could have other kinds of impacts on recreation, public access, visual resources, and other priority uses. Therefore Suggested Modification would add a policy to the LUP allowing intake and discharge lines to be placed aboveground within the Harbor District only if other alternatives have been demonstrated to be infeasible or more environmentally damaging. If pipelines must be placed above ground, impacts to coastal resources would have to be mitigated.

With regard to the protection of water quality and marine resources, Suggest Modification No. 4 would add policies requiring the implementation of Best Management Practices (BMPs) to ensure that the number and quantity of pollutants discharged from an aquaculture facility will be minimized to the maximum extent feasible.

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Other recommended suggested modifications would clarify the description of the LUP amendment, eliminate internal inconsistencies, and add a definition of aquaculture to the LUP. Staff recommends that the Commission find that the City's Land Use Plan, as modified, conforms with the requirements of Chapter 3 of the Coastal Act pursuant to Sections 30512 and 30512.2 of the Coastal Act.

In certain respects, the IP amendment as submitted would not conform with or be adequate to carry out the LUP as amended. The IP amendment includes changes to the City's LCP Manual, which is not actually part of the certified LCP. In addition, a proposed new provision for the Heavy Industrial District areas of the coastal zone that would allow any use determined by the Planning Commission to be similar to other uses in the district to be allowed as conditional uses does not conform to and implement the land use types listed in the LUP as secondary uses in the Heavy Industrial District land use classification. Furthermore, the IP amendment also does not include provisions requiring that certain information be submitted at the time of filing of coastal development permit applications for aquaculture developments to enable the permitting authority to evaluate the development's consistency with substantive aquaculture policies included in the LUP as amended. Finally, the IP amendment does not include provisions requiring that a BMP Plan, MMP Plan, and CP be required as conditions of approval of permits for aquaculture development. These plans and other similar information are essential for ensuring that the number and quantity of pollutants discharged from an aquaculture facility will be minimized to the maximum extent feasible as required by LUP Policy X-16. However, if modified with Suggested Modifications 7, 8, and 9 to: (1) delete the changes to the LCP Manual; (2) delete the proposed conditional use for the Heavy Industrial District that does not implement and conform to a corresponding secondary use in the LUP; and (3) add permit application filing requirements and requirements for applicants for aquaculture development to submit BMP Plans, MMP Plans, and CPs, the IP as modified would conform with and be adequate to carry out the requirements of the LUP as amended.

Therefore, staff recommends that the Commission find that consistent with Section 30513 of the Coastal Act, the Implementation Program, as modified, conforms with and is adequate to carry out the requirements of the certified Land Use Plan as amended.

The appropriate motions and resolutions to adopt the staff recommendation are found on pages 6 through 8 of this report.

### Analysis Criteria:

To certify the amendment to the Land Use Plan (LUP) portion of the City of Fort Bragg Local Coastal Program, the Commission must find that the LUP, as amended, is consistent with the policies of Chapter 3 of the Coastal Act. To certify the amendment to the Implementation Program (IP) portion of the LCP, the Commission must find that the IP, as amended, conforms with and is adequate to carry out the amended LUP.

Additional Information:

For additional information about the LCP Amendment, please contact Randall Stemler at the North Coast District Office at (707) 445-7833. Please mail correspondence to the Commission at the above address.

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**PART ONE: RESOLUTIONS AND SUGGESTED MODIFICATIONS**

**I. MOTIONS, STAFF RECOMMENDATIONS, AND RESOLUTIONS FOR LCP AMENDMENT NO. FTB-MAJ-1-02**

**A. DENIAL OF LUP AMENDMENT NO. FTB-MAJ-1-02, AS SUBMITTED:**

**MOTION I:**     *I move that the Commission certify Land Use Plan Amendment No. FTB-MAJ-1-02 as submitted by the City of Fort Bragg.*

**STAFF RECOMMENDATION TO DENY:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and 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 I TO DENY CERTIFICATION OF THE LAND USE PLAN AS SUBMITTED:**

The Commission hereby denies certification of the Land Use Plan Amendment No. FTB-MAJ-1-02 as submitted by the City of Fort Bragg and adopts the findings set forth below on the grounds that the land use plan amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the land use plan amendment may have on the environment.

**B. CERTIFICATION OF LUP AMENDMENT NO. FTB-MAJ-1-02 WITH SUGGESTED MODIFICATIONS:**

**MOTION II:**     *I move that the Commission certify Land Use Plan Amendment No. FTB-MAJ-1-02 for the City of Fort Bragg if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:**

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following

resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

**RESOLUTION II TO CERTIFY WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies Land Use Plan Amendment No. FTB-MAJ-1-02 for the City of Fort Bragg if modified as suggested and adopts the findings set forth below on the grounds that the land use plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the land use plan amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the land use plan amendment may have on the environment.

**C. DENIAL OF IMPLEMENTATION PROGRAM AMENDMENT NO. FTB-MAJ-1-02, AS SUBMITTED:**

**MOTION III:**     *I move that the Commission reject Implementation Program Amendment No. FTB-MAJ-1-02 for the City of Fort Bragg as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a YES vote. Passage of this motion will result in rejection of the implementation program amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION III TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program Amendment No. FTB-MAJ-1-02 submitted for the City of Fort Bragg and adopts the findings set forth below on grounds that the implementation program amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified land use plan as amended. Certification of the implementation program 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 implementation program amendment as submitted.

D. APPROVAL OF IMPLEMENTATION PROGRAM AMENDMENT NO. FTB-MAJ-1-02 WITH SUGGESTED MODIFICATIONS:

MOTION IV: *I move that the Commission certify Implementation Program Amendment No. FTB-MAJ-1-02 for the City of Fort Bragg if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:**

Staff recommends a YES vote. Passage of this motion will result in certification of the implementation program amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION IV TO CERTIFY THE IMPLEMENTATION PROGRAM WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the implementation program amendment for the City of Fort Bragg if modified as suggested and adopts the findings set forth below on grounds that the implementation program amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified land use plan as amended. Certification of the implementation program amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the implementation program amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. **SUGGESTED MODIFICATIONS**

Key for Modifications to City Language:

The attached Exhibit No. X presents the complete land use plan and zoning code amendments as proposed by the City, showing in ~~strikeout~~ and underline how the proposal would alter the existing zoning code text. In this Section, the resulting revised text proposed by the city is shown in ~~strikeout~~ and underline, while additions suggested by the Commission are in ***bold italics*** and suggested deletions are in ~~double-strikethrough~~.

A. **SUGGESTED MODIFICATIONS TO THE LAND USE PLAN:**

**SUGGESTED MODIFICATION NO. 1:**

Delete proposed changes to LCP Manual, which is not part of the certified LCP.



~~LCP 1-01: Amendment to the LCP Manual, Chapter XVII, Subsection D, Land Use Classifications, Section 10, HD-Harbor District: under subparagraph c: Secondary Uses, adding aquaculture as a conditional use. Section 12, IH Heavy Industrial: under subparagraph c: Secondary Uses, adding aquaculture as a conditional use.~~

**SUGGESTED MODIFICATION NO. 2:**

Modify Chapter XVII (D) - Land Use Classifications - Section 10, HD-Harbor District, and Section 12, I-H Heavy Industrial District of the certified Land Use Plan as follows to add aquaculture as secondary uses.

XVII—Map Explanations and Land Use Summary

D. Land Use Classifications

Section 10 HD-Harbor District

- a. Intent. This land classification is characterized by the unique mix of commercial and industrial activities occurring in the Noyo River Basin. The intent of this plan is to provide for the continuation of that mix of activities in support of its functioning as a commercial fishing village and to protect and reserve parcels on, or adjacent to, the sea for coastal dependent and coastal related uses which require such siting in order to function at all. Support commercial that is allowed is intended to be subordinate to the marine commercial and industrial uses, not to preempt them.
  - b. Primary Uses. Commercial fishing facilities, fish processing plants, ship building and boat repair, public docks, and marine services.
  - c. Secondary Uses. Cold storage facilities, fishing piers, boat launching facilities, marine hardware, *aquaculture*, other minor harbor related uses such as offices supporting coastal dependent uses, public utilities installations not including offices when supportive to the uses in the Harbor District, small grocery stores, bars and restaurants.
  - d. Other Provisions. Secondary uses must be limited in size, subordinate to the marine commercial and industrial uses and not be the primary use on a waterfront site.
- ...

**Section 12 IH-Heavy Industrial**

- a. Intent. The heavy industrial classification is currently limited to the Georgia-Pacific lumber mill and a few adjacent properties. A continuation of the heavy industrial activity currently underway on those sites is intended.
- b. Primary Uses. Allowed are: manufacturing, fabrication, repair, agricultural and forest products processing, storage, and distribution industries; as well as research and development laboratories, and living quarters for caretakers or watchmen, auto body repair and painting; sales, service and rental of construction, farming and logging equipment. A complete list of uses is in the City's zoning provisions. All primary uses in the IL – Light Industrial Designation.
- c. Secondary Uses. Those are: specified uses with outdoor operations; industrial support commercial, sand gravel and rock yards; concrete and asphalt products; *aquaculture*, and similar uses found appropriate by the Planning Commission and as listed in the City's zoning provisions.

**SUGGESTED MODIFICATION NO. 3:**

Modify Chapter X – Agriculture as follows to add a definition of aquaculture to the land use plan:

**X. Agriculture**

**A. *Introduction***

...

**B. *Definition of Aquaculture***

*Section 30100.2 of the Coastal Act states that: (1) aquaculture means a form of agriculture as defined in Section 17 of the Fish and Game Code; (2) aquaculture products are agricultural products; and (3) aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit-issuing decisions governed by the Coastal Act. The City of Fort Bragg further limits "aquaculture" to only include facilities which are located onshore and which involve the cultivation of aquatic organisms in tanks.*

**SUGGESTED MODIFICATION NO. 4:**

Modify Chapter X – Agriculture as follows to add substantive policies on aquaculture to the land use plan:

X. Agriculture

...

C. *Aquaculture Policies*

- X-1 All aquaculture development or facilities shall require a coastal development permit and shall satisfy all policies and standards of the certified LCP, including but not limited to LUP Policies III-15(Public Access), VI-3,VI-4 and VI-5/XI-2 (Water and Marine Resources), VII-1 (Dredging, Filling, and Diking), IX-1 through IX-7 (Environmentally Sensitive Habitat Areas), XIII-1 and XIII-2 (archaeological resources), and any relevant Special Review Area Procedures contained in Chapter XVII, Section E.*
- X-2 Aquaculture development or facilities in the Noyo Harbor Flats Area of Deferred Certification is not governed by this certified LCP and requires a Coastal Development Permit from the California Coastal Commission.*
- X-3 Aquaculture development or facilities other than facilities which are located onshore and which involve the cultivation of aquatic organisms in tanks are prohibited.*
- X-4 No intake or discharge lines shall be placed above ground in the Heavy Industrial District in any Environmentally Sensitive Habitat Areas as defined in Section 30107.5 of the Coastal Act, including but not limited to, along any coastal bluff or within a rocky intertidal habitat area.*
- X-5 No intake or discharge lines shall be placed above ground within the Harbor District or the adjoining tidelands and submerged lands of the Noyo River unless all other alternatives have been demonstrated to be infeasible or more environmentally damaging. Alternatives to be evaluated shall include, but not be limited to, placing lines under ground through use of directional drilling or trenching, using closed-loop aquaculture systems that do not require offshore intake and discharge lines, and connecting discharge lines to the existing sanitary sewer system. If all other alternatives have been demonstrated to be infeasible or more environmentally damaging and intake or discharge lines must be placed above ground within the Harbor District and the adjoining tidelands and submerged lands of the Noyo River, the lines shall be placed in the least environmentally damaging feasible location and in a manner that will not interfere with Noyo River navigation, existing recreational boating facilities and coastal dependent industry, especially commercial fishing facilities.*

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- X-6** *Any intake or discharge lines allowed to be placed above ground within the Harbor District and the adjoining tidelands and submerged lands of the Noyo River shall be removed upon abandonment of the aquaculture development or facility it was installed to serve.*
- X-7** *All aquaculture development or facilities shall be sited and designed to be visually compatible with the character of surrounding areas, and shoreline facilities shall be screened.*
- X-8** *All aquaculture development or facilities shall be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas, as defined in section 30107.5 of the Coastal Act, and shall be compatible with the continuance of biological and ecological values in those habitat areas.*
- X-9** *All aquaculture development or facilities shall be sited and designed to avoid encroachment of aquaculture operations into adjacent recreational areas.*
- X-10** *No aquaculture development or facilities shall interfere with the public's right of access to the sea. All aquaculture development or facilities shall ensure adequate provision of lateral and vertical access.*
- X-11** *All aquaculture development or facilities shall be sited and designed to: (1) minimize risks to life and property from geologic and flood hazards, including but not limited to bluff erosion, slope stability, seismic events, liquefaction, tsunamis, floods, and wave attack; and (2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*
- X-12** *Availability of adequate water to serve all aquaculture development or facilities shall be demonstrated prior to approval of such aquaculture development or facilities.*
- X-13** *All aquaculture development or facilities shall be sited and designed to minimize the chances for release of non-native species, pathogens, and parasites into the aquatic environment.*
- X-14** *All aquaculture development or facilities shall be sited and designed to ensure that waste discharges will comply with all applicable water quality regulations, including, but not limited to, any applicable regulations contained within (1) the State Water Resources Control Board's "Water Quality Control Plan, Ocean Waters of California" Ocean Plan, (2) the State Water Resources Control Board's "Water Quality Control Plan for Control of Temperature in the Coastal*

*and Interstate Waters and Enclosed Bays and Estuaries of California” (Thermal Plan), and (3) the North Coast Regional Water Quality Control Board’s (RWQCB) “Water Quality Control Plan for the North Coast Region” (Basin Plan).*

- X-15** *All aquaculture development or facilities shall be sited and designed to minimize the discharge of pollutants to water, including but not limited to substances in concentrations toxic to human, animal, plant, or aquatic life.*
- X-16** *All aquaculture development or facilities shall implement Best Management Practices (BMPs) to ensure the number and quantity of pollutants discharged or potentially discharged from the facility shall be minimized to the maximum extent feasible. BMPs shall specifically address adequate cleaning, feeding, transfer and importation of species, husbandry practices, removal of dead species, storage and handling of raw material, drugs and chemicals, and disposal of solid waste.*
- X-17** *All aquaculture development or facilities shall be carried out in a manner that will sustain the biological productivity of coastal waters, protect human health and maintain healthy populations of all species of marine organisms for long-term commercial, recreational, scientific and educational purposes.*

**SUGGESTED MODIFICATION NO. 5:**

Modify Chapter X – Agriculture to add the following policy on the siting of new aquaculture facilities within the Harbor District relative to other priority uses:

X. Agriculture

...

**Policy X-18.** *Aquaculture facilities sited within the Harbor District shall not interfere with existing recreational boating facilities and existing coastal-dependent industry, including fishing.*

**SUGGESTED MODIFICATION NO. 6:**

Joint Policy VIII-2/XVI-1 found in Chapter VIII, Commercial Fishing and Recreational Boating, and Chapter XVI, Industrial and Energy Development Policies, shall be revised as follows:

Policy VIII-2/XVI-1: Land Use of the North Bank of the Noyo. All lands on the north bank of the Noyo River, within the City limits and below 25 feet above mean sea level;

shall be reserved for commercial fishing, ~~and~~ other coastal dependent industry, *and aquaculture* except for lands:

- a. Required to be maintained for riparian habitat values.
- b. Needed to meet access requirements set out in Chapter III.

**B. SUGGESTED MODIFICATIONS TO THE FORT BRAGG MUNICIPAL CODE**

**SUGGESTED MODIFICATION NO. 7:**

Delete proposed changes to LCP Manual.

~~Amendment to the LCP Manual, Chapter XVII, Subsection F, Zoning Classifications, Section 12. HD Harbor District: under subparagraph c. Secondary Uses, adding aquaculture as a conditional use. Section 12. HH Heavy Industrial: under subparagraph e. Secondary Uses, adding aquaculture as a conditional use.~~

**SUGGESTED MODIFICATION NO. 8:**

Modify Chapter 18.34 – I-H - Heavy Industrial Zone, as follows to (1) distinguish aquaculture from other agriculture uses in the listing of principally permitted uses in the coastal zone, and (2) to delete from the proposed amendment “any use similar to those specified above which the Planning Commission finds to conform with the purpose and intent of this Chapter and to be compatible and appropriate to the district in which it is proposed,” as a conditional use, as reflected in the chart contained within Section 18.34.20.

Chapter 18.34 – I-H - Heavy Industrial Zone

Sections:

- 18.34.010 General purpose and intent.
- 18.34.020 Uses.
- 18.34.030 Development standards.

18.34.010 GENERAL PURPOSE & INTENT

The purpose of the Heavy Industrial or I-H Zone is to protect the health, safety and general welfare of the public by providing an industrial district or districts for the location of heavy industrial uses which are generally large in scale, require large outdoor storage areas, or open operations as discussed in the General Plan. It may also provide for the location of uses which the City Council finds to be incompatible with other zones and related uses.

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It is the intent of this section to provide for the location of uses which may be large in scale as to size and generally heavy in their intensity of use, or whose character is found to be out of keeping with uses in or the character of other zones and districts. It also provides less stringent development standards compatible to such uses, but provides regulations as are needed to control nuisances and protect surrounding non-industrial uses and highly used public rights-of-way or areas.

The regulations in this chapter and the provisions of Chapters 18.71 and 18.72 shall apply in all Heavy Industrial, or I-H, zones.

**18.34.020      USES**

Permitted uses allowed in the Heavy Industrial Zone are listed in the table hereunder. Principal permitted uses are designated by a "P" (permitted) and conditional uses are designated by "UP" (use permit). Separate headings are provided for the Heavy Industrial Use District in general and that part of the District which is located in the coastal zone and therefore subject to the provisions of the Local Coastal Program.

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Land Uses	I-H	I-H - CZ
All principal permitted uses in the I-L zone	P	P
Manufacturing, General – indoor operations, except as noted requiring use permits	P	P
Fabrication, General – indoor operation	P	P
Construction, farming and logging equipment sales and service, including rental	P	P
Repair, Equipment	P	P
Lumber yards for retail sales, not including mills	P	P
Agricultural ( <i>excluding aquaculture</i> ) and forest products processing, inside operation only	P	P
Storage operations	P	P
Distribution industries, including wholesaling	P	P
Research and development laboratories	P	P
Any above building enclosed permitted use when outdoor storage is desired or required	UP	
Caretaker or watchman living quarters	P	P
Animal hospitals	P	UP
Kennels	P	UP
Industrial support facilities	P	UP
Limited retail sales in conjunction with permitted distribution/wholesale	UP	
Autobody repair and painting	UP	
Animal products processing plants, feed and auction yards	UP	
Feed and fuel yards	UP	
Contractor's and corporation yards	UP	
Amusement parks	UP	
Lumber Mills	UP	UP
Recreational enterprises	UP	
Manufacture of concrete, ceramic or asphaltic paving products, including batch plants	UP	UP
Drilling, quarrying	UP	
Manufacturing, refining and storage by manufacturers or wholesale petroleum, petro. products, acids, cement, gas, glue, gypsum and flammable fluids or gases.	UP	
Dry cleaning and laundry	UP	
Motels, if direct access to a state highway	UP	
Sand gravel and rock yards	UP	
Adult entertainment	UP	
Smelting or reduction of metallic ores	UP	
<u>Aquaculture</u>		<u>UP</u>
Any use similar to those specified above which the Planning Commission finds to conform with the purpose and intent of this Chapter and to be compatible and appropriate to the district in which it is proposed	UP	<u>UP</u>



**SUGGESTED MODIFICATION NO. 9:**

Modify Chapter 18.61, CZ-Coastal Zone Combining Code, as follows, to add the following requirements for aquaculture projects concerning conformance with the amended LCP, permit application filing requirements, and requirements for preparation and implementation of Best Management Practices Plans and related Monitoring and Maintenance Plans and Contingency Plans

Chapter 18.61

CZ – COASAL ZONE COMBINING ZONE

18.61.10      Generally

This combining zone classification is intended to be applied to land areas which are in the coastal zone as defined in Chapter 18.07 and as designated by the land use plan of the Local Coastal Program, and on a finding that they meet criteria for such classification and require the particular protection provided by the regulations of this Chapter to preserve their unique resource qualities and public interest therein.

18.61.20      Application of existing zone designations – additional regulations.

In any zone with which the CZ classification is combined, the regulations of the basic zone shall apply subject to the following additional zone regulations.

18.61.21      Public Shoreline Access

...

***18.61.031      Aquaculture Development or Facilities***

- A.      Conformance to LCP. In addition to satisfying all other policies and standards of the certified LCP, all aquaculture development or facilities shall be governed by the Aquaculture Policies contained in Chapter 10, Section C and any relevant Special Review Area Procedures contained in Chapter XVII, Section E.***
- B.      Application Submittal Requirements. Applications for aquaculture development or aquaculture facilities shall conform with the requirements of Section 18.61.062(A) and shall contain the following specific information to enable the reviewing authority to evaluate the conformance of the proposed development or facility with the aquaculture policies and standards of the certified LCP:***

1. *An area map(s) identifying the location of the development or facility, and any proposed intake structure(s) and outfall(s). The map(s) should be based upon an official map of the U.S. Geologic Survey (USGS) with a scale appropriate to the geographic surroundings.*
2. *Plans of the development or facility drawn to scale and including (a) a site plan of the development or facility depicting all structures, ponds, raceways, holding tanks, water containing or conveyance structures, work areas, paving, fencing, property lines, (b) a map identifying surrounding uses and delineating existing improvements and property lines, (c) grading and drainage plans, (d) floor plans, (e) building elevations, and (f) landscaping plans.*
3. *A general description of the development or facility, indicating the total number of ponds, raceways, holding tanks, and other similar water containing or conveyance structures.*
4. *A flow diagram of the development or facility that contains all sub-flows, inputs, and outputs to the facility, with discharge rates expected at different times.*
5. *The projected number of operating days for the facility on a monthly basis throughout a calendar year.*
6. *A list of species of aquatic animals and plants held and fed, or introduced to the facility. For each species, the application shall specify the total weight produced by the facility per year in pounds of harvestable weight, and the maximum weight present at any one time. The values given should be representative of normal operation.*
7. *The total pounds of food fed during the calendar month of maximum feeding, based upon normal operation.*
8. *A list of the projected types, maximum daily amounts, and maximum concentration of all drugs, disinfectants, and other chemicals that will be used at the facility that could ultimately be discharged to coastal waters. Material Safety Data Sheets shall be submitted for each such product that could be discharged. The basis of calculations and/or a comparison of the reported concentrations with analytical method detection limits should be included.*
9. *A copy of a complete Best Management Practices (BMPs) Plan conforming to the requirements of Section 18.61.031(C) below. BMPs are schedules of activities, prohibitions of practices, cleaning and*

*maintenance procedures, employee training, treatment methods, etc. that are employed to control discharge of pollutants.*

10. *A copy of a Monitoring and Maintenance Plan (MMP). The MMP shall detail inspection and maintenance activities for structural BMPs and lay out a procedure for periodic evaluations of nonstructural BMPs.*
11. *A description of the number and nature of any outfall(s) from the facility to the receiving water, using a sketch, diagram or photograph to depict the facility, intake(s), outfall(s), and receiving water. The maximum daily, maximum 30-day average, and long-term (greater than six months) average flow (gpd) from each outfall shall be provided.*
12. *An alternatives analysis of whether there are feasible less environmentally damaging alternatives for any proposal to place intake or discharge lines above ground within the Harbor District and the adjoining tidelands and submerged lands of the Noyo River. Alternatives to be evaluated shall include, but not be limited to, placing lines under ground through use of directional drilling or trenching, using closed-loop aquaculture systems that do not require offshore intake and discharge line, connecting discharge lines to the existing sanitary sewer system, and minimizing impacts through alternative locations.*
13. *A visual analysis of whether the aquaculture development or facility would be visually compatible with the character of the surrounding area.*
14. *A survey of biological resources of the development site that includes a narrative description and map of the biological resources, an analysis of the potential impacts of the proposed development on the identified habitat or species, project alternatives designed to avoid and minimize impacts to sensitive resources, and mitigation measures that would minimize or mitigate residual impacts that cannot be avoided through project alternatives.*
15. *All aquaculture development or facilities, including any intake or discharge lines, located in or near an area subject to the geologic or flood hazards, including but not limited to bluff erosion, slope stability, seismic events, liquefaction, tsunamis, floods and wave attacks, shall be required to submit a geologic/soils/geotechnical study report prepared by a Registered Geologist, a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) that identifies any geologic hazards affecting the development site and any necessary mitigation measures. The geologic/soils/geotechnical report shall include a statement by the consultant that the development will be safe from*

*geologic hazards and that the development will in no way contribute to instability on or off the subject site.*

16. *Evidence demonstrating the availability of adequate water and sewer services to serve the aquaculture development or facility.*

**C. *Best Management Practices Plan***

1. *Applicants for aquaculture development or facilities shall develop and implement a Best Management Practices (BMP) Plan that ensures all development will be carried out in a manner that sustains the biological productivity of coastal waters, protects human health and maintains healthy populations of all species of marine organisms. A complete BMP Plan shall be submitted with the permit application. The BMP Plan shall document specific BMPs and their standard operating procedures. An approved BMP Plan shall be fully implemented prior to commencement of any discharges associated with the development.*
2. *At a minimum, structural and/or non-structural BMPs shall be proposed, to the maximum extent feasible, to:*
  - a. *Minimize the reintroduction of solids removed through the treatment of the water supply.*
  - b. *Minimize excess feed entering the aquatic animal production system.*
  - c. *Minimize the discharge of unconsumed food.*
  - d. *Minimize discharge of feeds containing high levels of fine particulates and/or high levels of phosphorus.*
  - e. *Minimize discharges to surface waters of blood, viscera, fish carcasses, or transport water containing blood associated with the transport or harvesting of fish.*
  - f. *Clean raceways, ponds, tanks or settling ponds at frequencies that minimize the disturbance and subsequent discharge of accumulated solids during routine activities, such as harvesting and grading of fish, and ensure adequate retention volume for the settling ponds.*
  - g. *Maintain in-system technologies to prevent the overflow of any floating matter and subsequent by-pass of treatment technologies.*
  - h. *Ensure the safe storage of drugs and chemicals to avoid inadvertent spillage or release into the aquatic animal production facility.*
  - i. *Settle, screen, or filter effluent to minimize or eliminate the discharge of waste solids to the greatest extent practicable.*

- j. *Collect aquatic animal mortalities on a regular basis. Store and dispose of aquatic animal mortalities to prevent discharge to surface waters.*
  - k. *Minimize the potential escape of non-native species by, for example, installing physical barrier such as effluent screens. No animals of a non-native species shall be intentionally released under any circumstances.*
- 3. *The facility staff shall be familiar with the BMP Plan and adequately trained in the specific procedures that the BMP Plan requires.*
  - 4. *A copy of the BMP Plan shall be maintained at all times at the aquaculture development or facilities.*

**D. Best Management Practices Monitoring and Maintenance**

- 1. *Applicants for aquaculture facilities shall develop and implement a Monitoring and Maintenance Plan (MMP) that ensures that all development continues to be carried out in a manner that sustains the biological productivity of coastal waters, protects human health, and maintains healthy populations of marine organisms.*
- 2. *A complete MMP shall be submitted to the permitting authority with the permit application. An approved MMP shall be fully implemented within three months of the commencement of development operations.*
- 3. *The MMP shall describe inspection and maintenance activities to be performed for structural BMPs and the associated activity frequencies. Structural BMPs include practices, methods, and measures of a mechanical or biological nature. Major observations to be made during inspections include: (1) locations of discharges from the development; (2) BMPs that are in need of maintenance; (3) BMPs that are not performing, failing to operate, or inadequate; and (4) locations where additional BMPs are needed.*
- 4. *The MMP shall include a procedure for periodic evaluations of structural and nonstructural BMPs needed to achieve compliance with the requirements of the certified LCP. The MMP shall also include written reporting requirements that provide for the submittal of monitoring reports at a frequency acceptable to the permitting authority, but not less frequent than once per year.*

**E. Noncompliance**

1. *Applicants for aquaculture facilities shall develop a Contingency Plan (CP) to be immediately enacted should the MMP results show noncompliance with the requirements of the certified LCP. The CP shall include instructions to notify the permit issuing authority, determine the source of the noncompliance, eliminate the source, and monitor the discharge to verify that the noncompliance has been eliminated. Such instructions shall be consistent with subsection 3 below. Key operating and site management personnel shall be familiar with the contents of the CP.*
2. *A complete CP shall be submitted to the permitting authority for approval prior to issuance of the CDP.*
3. *Where corrective CP measures would not constitute development under Section 30106 of the Coastal Act, the permittee shall implement such corrective CP measures consistent with the requirements of the CP immediately following discovery of noncompliance with the approved permit or the certified LCP requirements. Where corrective CP measures would constitute development under Section 30106 of the Coastal Act, implementation of such corrective measures shall require an amendment to the original coastal development permit.*

**F. Permit Amendment**

*Coastal development permits for aquaculture development or facilities shall be conditioned to require a permit amendment whenever there is a proposed change in the facility or the operation of the facility, including changes in the nature of the discharges from the facility.*

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**PART TWO: INTRODUCTION**

**I. AREA DESCRIPTION/HISTORY**

The City of Fort Bragg is located along the Mendocino County coastline about halfway between Humboldt County to the north and Sonoma County to the south. As an urban/industrial center, it is Mendocino's largest coastal city, with a population of more than 7,000 people. Fort Bragg covers approximately 2.7 square miles, or approximately 1,728 acres, and extends along approximately 2.5 miles of coastline. The primary business and residential area is to the east of Highway One, and is generally located between Pudding Creek to the north, and the Noyo River to the south. Fort Bragg contains a very large historic timber mill site located on the coastal

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terrace west of Highway One and the city center. This 400+-acre site is designated in the land use plan and zoned in the implementation plan as Heavy Industrial District (I-H) and is intended for heavy industrial use. The Noyo Harbor, located along the lower ½-mile of the Noyo River east of Highway One, is the locus of a large commercial and recreational fishing port, most of which is outside the city limits in unincorporated County areas. The coastal zone encompasses all of the HD-zoned land, a majority of the I-H-zoned land, and residentially and commercially zoned lands north and south of the I-H lands west of Highway One. Most of the residential and commercial-zoned area of the city lies to the east and north of the coastal zone boundary.

### **II. BACKGROUND ON FORT BRAGG LAND USE PLAN / IMPLEMENTATION PROGRAM**

The Commission certified the Land Use Plan in part in February, 1982. The IP was certified with suggested modifications by the Commission on February 11, 1983. The city resubmitted a total LCP (LUP and IP) on June 22, 1983, and the Commission certified it as submitted on July 14, 1983. The City of Fort Bragg assumed permit-issuing authority on August 1, 1983.

The Commission did not certify the geographic area known as the Noyo Flats, instead creating the Noyo Flats Area of Deferred Certification. This area includes about 13 acres on the north bank of the Noyo River. The denial of certification of this area was based on inadequate protection of wetlands in that area. A re-submittal of a plan for this area was denied on September 8, 1987, and the area remains uncertified. The Noyo Flats Area of Deferred Certification mostly includes lands zoned as Harbor District. Concurrent with its action to adopt the current LCP amendment concerning aquaculture, the City adopted a General Plan amendment that added aquaculture as a conditional use in all of the City's Harbor District lands outside the coastal zone which are not governed by the certified LCP. However, as the General Plan amendment for this area does not govern the issuance of CDPs for areas that are or will be governed by the certified LCP, the Coastal Commission continues to administer coastal development permits in the Noyo Flats area of deferred certification using the Coastal Act Chapter 3 policies as the standard of review.

The first amendment to the certified LCP to change the land use and zoning maps to allow for the development of harbor-related land uses in support of the commercial fishing industry was approved without modifications on January 9, 1985. During October, 1985, LUP Amendment 2-85 was submitted to add four newly annexed areas, totaling 466 acres, into the city's certified LCP. The Noyo Flats Area of Deferred Certification is not one of these newly annexed areas. The four geographic areas annexed included: 1) the North Highway One/Pudding Creek area; 2) the Noyo Point area, which includes a portion of the I-H lands; 3) the Todd Point area; and 4) the Highway 20 area. On January 10, 1986, the Commission certified with modifications Amendment 2-85. A new submittal incorporating new zoning classifications and dealing in part with the Implementation Program portion of Amendment 2-85 was effectively certified by the Commission on February 26, 1988.

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Other amendments have been approved as well. The Commission has certified a total of nine LCP amendments since certification of the resubmitted LCP in 1983. The following list summarizes the status of the various LCP amendments submitted by the city to the Commission.

<u>LCP Amendment</u>	<u>Status of Approval</u>	<u>Certification Date</u>	<u>Suggested Modification</u>	<u>Executive Director Check Off</u>
No. 1-84 (Major)	Approved	1/9/1985	No	
No. 2-85 (Major)	Approved	1/10/1986	Yes	2/26/1988
No. 1-88 (Major)	Approved	7/14/1988	No	10/13/1988
No. 1-89 (Major)	Approved	8/9/1989	No	10/10/1989
No. 1-91 (Major)	Approved	12/11/1991	Yes	2/21/1992
No. 1-91 (Minor)	Approved	1/15/1992	No	
No. 2-91 (Major)	Approved	2/21/1992	Yes	5/14/1992
No. 1-92 (Major)	Approved	9/10/1992	Yes	none
No. 1-95 (Major)	Approved	8/11/1995	No	

The certified LCP consists of the original LUP and IP certified by the Commission as the LCP on July 14, 1983, maps, and various LCP amendments submitted by the city and certified by the Commission over the years since 1983.

The LUP provides general goals and policies governing development throughout those portions of the city within the coastal zone. The plan document follows a structure set out in the State's *Local Coastal Program Manual*, and is based on "policy groups" drawn from the California Coastal Act. The plan contains fourteen policy group chapters and a final chapter giving a summary explanation of the use of accompanying maps, setting out the land use classification system, and describing a special review system for developments in sensitive coastal areas.

The Fort Bragg LCP Implementation Program (IP), entitled "Fort Bragg Municipal Code" comprises Title 18—Zoning—Chapters 18.0-General through 18.8-Enforcement Provisions of the city's Municipal Code. The zoning regulations provide definitions for the numerous land use and development terminology, prescribes use and development standards applied city-wide, in specified areas and in the various zoning districts, identifies the processes by which proposed development is reviewed and permitted, and sets procedures for appeals, variances and exceptions, and amendments.

### **III. COMPREHENSIVE LCP UPDATE AND PLANNING FOR HEAVY INDUSTRIAL LANDS**

In addition to the proposed LCP Amendment addition of aquaculture as a conditional use within Heavy Industrial and Harbor District areas of the City, the City is presently undertaking an update to its entire Local Coastal Program. The Commission awarded an LCP planning grant to the City to update the LCP in 1999. In 2002, the City adopted a comprehensive General Plan



and LUP update and is currently working on revising the zoning ordinance. Among other things, the LCP update includes new provisions that would affect future planning of the Heavy Industrial lands within the Georgia Pacific mill site west of Highway One where aquaculture is proposed as a conditional use under the current LCP amendment. Submission of the proposed City-wide LCP Update to the Commission for certification review is tentatively set for later this year. In addition, City staff has indicated in conversations with Commission staff that the City is in the process of initiating a new planning process to comprehensively address the entire area previously devoted to industrial uses west of Highway One.

#### **IV. BACKGROUND ON PROPOSED AQUACULTURE LCP AMENDMENT**

In 1998, the City of Fort Bragg began pursuing a number of amendments to its LUP General Plan and Municipal Code to allow aquaculture on properties classified and designated Heavy Industrial Zone (I-H), Limited Industrial Zone (I-L), and Harbor District (HD).

The City initially submitted an LCP amendment that proposed to allow aquaculture facilities as a permitted rather than conditional use in the Heavy Industrial and Harbor District land use classifications and zones. The amendment was combined with other proposed changes to the LCP that would allow wells for domestic use under certain circumstances.

After submittal of the amendment, Coastal Commission staff identified the need for substantial additional information relating to the "wells" portion of the amendments in the form of a comprehensive groundwater analysis. On June 25, 2001, the Council determined that the comprehensive groundwater analysis requested by Commission staff would require considerable staff effort and that the city should pursue the amendments pertaining to aquaculture separately from the amendments pertaining to the use of wells. To separate the amendments, the city needed to adopt a new Resolution and Ordinance withdrawing the previous amendment and adopting a new LCP amendment pertaining only to the aquaculture amendments.

On August 27, 2001, the City Council conducted a public hearing on proposed new LCP and Zoning Ordinance amendments to add aquaculture as a permitted use in the Harbor District and Heavy Industrial District and as a conditionally permitted use in the Limited Industrial District. Several members of the public voiced concerns about potential adverse impacts of aquaculture projects and urged the city to require a conditional use permit for aquaculture facilities in the Harbor District and Heavy Industrial District. Concerns were also raised about the adequacy of the previous environmental review. The Council directed staff to re-notice the amendments to identify aquaculture as a conditional use in both the Harbor District and Heavy Industrial District.

At the December 10, 2001 meeting, the Fort Bragg City Council conducted a public hearing on General Plan, Local Coastal Program, and Zoning Ordinance amendments and a draft Negative Declaration to allow aquaculture facilities as a conditionally permitted use in the Harbor District and the Heavy Industrial District. After much discussion, the Council continued the hearing.

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On February 11, 2002, the City Council held a continued public hearing and adopted a Negative Declaration for the proposed General Plan, Local Coastal Program and Zoning Ordinance Amendments to allow aquaculture facilities as a conditionally permitted use in the Harbor District and the Heavy Industrial District in the coastal zone and to change the definition of "aquaculture" to only include onshore, tank-farming type operations. The Council also introduced Ordinance No. 833-2001. On February 25, 2002, the City Council adopted Resolution No. 2545-2002 repealing the previously submitted LCP amendment and approving General Plan Amendment 1-01, LCP Amendment 1-01, and FBMC Amendment No. 1-01 to allow "aquaculture" as a conditionally permitted use in the Harbor District and the Heavy Industrial District in the coastal zone, and change the definition of aquaculture as described in FBMC Section 18.07.060 to read: "'Aquaculture' means a form of agriculture that is devoted to the culture and husbandry of aquatic organisms, including but not limited to finfish, shellfish, mollusks, crustaceans, kelp and algae. This definition is further limited to only include facilities which are onshore and which involve the cultivation of aquatic organisms in tanks."

On March 18, 2002 the Coastal Commission received the city's LCP Amendment application for certification. On April 6, 2002, the Executive Director determined that the city's LCP amendment submittal was in proper order and legally adequate to comply with the requirements of Section 30510 of the California Coastal Act, and Sections 13551-13552 of the Commission's regulations.

Pursuant to Section 30512 of the California Coastal Act, LCP Amendment No. FTB-MAJ-1-02 must be scheduled for public hearing and the Commission must take action within 90 days after receipt of a complete transmittal. The 90<sup>th</sup> day after the submittal was determined to be complete was July 5, 2002, therefore necessitating Commission review at or before the Commission's June 11-14, 2002 hearings. After further review of the city's LCP amendment request, and because the amendment raises complicated issues regarding measures necessary to best safeguard coastal resources from the impacts of aquaculture development on water quality and sensitive intertidal habitat, Commission staff determined that additional time would be necessary to analyze consistency of the proposed amendment with the Coastal Act and prepare a staff recommendation to the Commission. Coastal Act Section 30517 states that the Commission may extend for good cause the 90-day time limit for Commission action on the LCPA for a period not to exceed one year. Pursuant to this regulation, on June 13, 2002, the Commission extended the 90-day time limit for Commission action on the LCPA for one year to July 5, 2003.

### **A. Impetus for LCP Amendments.**

The proposed LCP amendment was inspired, in part, by the submittal to the City of Fort Bragg of development applications by Pacific Marine Farms, Inc. to construct an aquaculture facility on a 33-acre blufftop site within the Heavy Industrial District west of Highway One that is leased by Pacific Marine Farms from the Georgia-Pacific Corporation. The objectives of this proposed project are to produce the following products for commercial sale:

- 1) Red Abalone (*Haliotis rufescens*). At full production as many as two million commercially-sized abalone would be sold each year.

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- 2) White Shrimp (*Litopenaeus vannamei*). At full production 360,000 pounds would be sold each year.
- 3) Donaldson Trout (*Oncorhynchus mykiss*). At full production 900,000 pounds of this rainbow trout hybrid would be sold each year.

As aquaculture is not currently an allowable use in the coastal zone of the City, the project depends on an LCP amendment being certified that would add aquaculture as an allowable use in the Heavy Industrial District.

On January 2, 2002, the City of Fort Bragg issued a Notice of Preparation for an Environmental Impact Report for the Pacific Marine Farms Aquaculture Project. Commission staff commented on the NOP and has participated in EIR scoping sessions. Staff commented that a number of issues needed to be explored in depth in the EIR. The issues included, among others, the need to address water quality concerns and alternatives to the proposed installation of seawater intake and discharge pipelines along the bluff face, across the shoreline, and on top of rocky intertidal habitat areas. Such installation of the pipelines would raise a variety of habitat, geologic stability, public access, and visual resource concerns. The environmental review of the project is still in process.

Aquaculture development in the HD or I-H districts could also result in the need for intake and outfall lines in the Commission's area of retained permit jurisdiction generally located seaward of the mean high tide line. Potential adverse impacts to coastal resources would also be considered by the Commission in its review of any CDP application for aquaculture development in the Commission's area of retained permit jurisdiction. Such development in the Commission's area of retained permit jurisdiction is also subject to the limitations of the Chapter 3 policies of the Coastal Act.

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**PART THREE: AMENDMENT TO LAND USE PLAN**

**I. ANALYSIS CRITERIA**

To approve the amendments to the Land Use Plan (LUP), the Commission must find the LUP, as amended, will remain consistent with the policies of Chapter 3 of the Coastal Act.

As submitted, the proposed LUP amendment is not fully consistent with the policies of the Coastal Act, but if modified as suggested, will be consistent.

**II. FINDINGS FOR DENIAL OF LUP AMENDMENT NO. FTB-MAJ-1-02 AS SUBMITTED, AND APPROVAL IF MODIFIED**

The Commission finds and declares as following for Amendment No. FTB-MAJ-1-02:

**A. Amendment Description**

**1. Amendment Description as Submitted:**

The proposed LUP amendment is intended by the City to add aquaculture as a conditional use in the Heavy Industrial District as well as in the Harbor District. As submitted, however, the proposed amendment would only amend the City's Local Coastal Program Manual to add aquaculture as a conditional use in both the Harbor District and Heavy Industrial land use classifications as proposed below:

**LCP 1-01:** Amendment to the LCP Manual, Chapter XVII, Subsection D, Land Use Classifications, Section 10. HD-Harbor District: under subparagraph c: Secondary Uses; adding aquaculture as a conditional use. Section 12. IH-Heavy Industrial: under subparagraph c. Secondary Uses, adding aquaculture as a conditional use.

The LCP Manual is not a part of the certified LCP. The LCP Manual is simply a document that the city produced a number of years ago after certification of Amendment No. 2-85 incorporating material from both the Land Use Plan and Fort Bragg Municipal Code.

**2. Need for Modification of Amendment Description:**

The following Suggested Modifications make corrections in the content and format of the LUP amendment submittal, rather than suggested changes for the purpose of finding consistency with the Coastal Act. As noted above, the City's submittal proposes to amend the "LCP Manual," but this document is not a part of the certified LCP. The proposal to add aquaculture as a conditional use to the Harbor District and Heavy Industrial District should be an amendment to the certified LUP, not to the uncertified LCP Manual. The proposed amendment to the uncertified LCP Manual should be deleted and replaced with an amendment to the certified LUP. Therefore, as submitted, the amendment does not specify the correct changes to the LUP to add aquaculture as a conditional use in certified LCP areas designated as Heavy Industrial and Harbor District. To amend the LUP as the City intended, the Commission adds Suggested Modification Nos. 1 and 2.

Suggested Modification No. 1 would delete the proposed changes to the LCP Manual from the LUP amendment submittal.

**SUGGESTED MODIFICATION NO. 1:**

Delete proposed changes to LCP Manual, which is not part of the certified LCP.

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~~LCP 1-01: Amendment to the LCP Manual, Chapter XVII, Subsection D, Land Use Classifications, Section 10. HD-Harbor District: under subparagraph c: Secondary Uses, adding aquaculture as a conditional use. Section 12. IH Heavy Industrial: under subparagraph c: Secondary Uses, adding aquaculture as a conditional use.~~

Suggested Modification No. 2 would specifically add "aquaculture" to the list of conditional uses in the Heavy Industrial and Harbor District classification descriptions of the certified LUP.

**SUGGESTED MODIFICATION NO. 2:**

Modify Chapter XVII (D) - Land Use Classifications - Section 10, HD-Harbor District, and Section 12, I-H Heavy Industrial District of the certified Land Use Plan as follows to add aquaculture as secondary uses.

**XVII—Map Explanations and Land Use Summary**

**D. Land Use Classifications**

**Section 10 HD-Harbor District**

- a. Intent. This land classification is characterized by the unique mix of commercial and industrial activities occurring in the Noyo River Basin. The intent of this plan is to provide for the continuation of that mix of activities in support of its functioning as a commercial fishing village and to protect and reserve parcels on, or adjacent to, the sea for coastal dependent and coastal related uses which require such siting in order to function at all. Support commercial that is allowed is intended to be subordinate to the marine commercial and industrial uses, not to preempt them.
- b. Primary Uses. Commercial fishing facilities, fish processing plants, shipbuilding and boat repair, public docks, and marine services.
- c. Secondary Uses. Cold storage facilities, fishing piers, boat launching facilities, marine hardware, *aquaculture*, other minor harbor related uses such as offices supporting coastal dependent uses, public utilities installations not including offices when supportive to the uses in the Harbor District, small grocery stores, bars and restaurants.
- d. Other Provisions. Secondary uses must be limited in size, subordinate to the marine commercial and industrial uses and not be the primary use on a waterfront site.

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Section 12 IH-Heavy Industrial

- a. Intent. The heavy industrial classification is currently limited to the Georgia-Pacific lumber mill and a few adjacent properties. A continuation of the heavy industrial activity currently underway on those sites is intended.
- b. Primary Uses. Allowed are: manufacturing, fabrication, repair, agricultural and forest products processing, storage, and distribution industries; as well as research and development laboratories, and living quarters for caretakers or watchmen, auto body repair and painting; sales, service and rental of construction, farming and logging equipment. A complete list of uses is in the City's zoning provisions. All primary uses in the IL – Light Industrial Designation.
- c. Secondary Uses. Those are: specified uses with outdoor operations; industrial support commercial, sand gravel and rock yards; concrete and asphalt products; *aquaculture*, and similar uses found appropriate by the Planning Commission and as listed in the City's zoning provisions.

As modified, the proposed LUP amendment is proposed in a manner consistent with the intent of the City to add aquaculture as a conditional use in the Heavy Industrial and Harbor Districts.

Besides modifying the proposed amendment to ensure that aquaculture is added as a conditional use in certain certified LCP districts as intended, it is also necessary to modify the LUP to eliminate an inconsistency between adding aquaculture as a conditional use in the Harbor District and the existing certified limitations of Joint Policy VIII-2/XVI-1 found in Chapter VIII of the LUP, Commercial Fishing and Recreational Boating, and Chapter XVI, Industrial and Energy Development Policies. These policies currently reserve all lands on the north bank of the Noyo River below 25 feet above mean sea level for commercial fishing and other coastal dependent industry. Aquaculture is not commercial fishing and as discussed in Finding II-B-2 below, the aquaculture uses to be allowed under the proposed LCP amendment are not coastal dependent. There are two small areas that are classified as Harbor District within the City area covered by the certified LCP. The most usable portions of these areas are the lower portions of the sites, and precluding use of all land area of these parcels below 25-feet above mean sea level would likely make use of the lands for aquaculture infeasible. Therefore, to avoid the potential conflict between allowing aquaculture as a conditional use in the Harbor District and the provisions of Joint Policy VIII-2/XVI-1 that would limit the ability of aquaculture to locate in the Harbor District, the Commission attaches **Suggested Modification No. 6**. The modification would simply add aquaculture as a third use besides commercial fishing and coastal dependent industry as uses for which land below 25 feet above mean sea level shall be reserved. As discussed below in Finding II-B-2, **Suggested Modification No. 5** will impose limitations on the siting of aquaculture facilities within the Harbor District to ensure that such facilities will not interfere with existing priority uses including commercial fishing and other coastal dependent industry.

**SUGGESTED MODIFICATION NO. 6:**

Joint Policy VIII-2/XVI-1 found in Chapter VIII, Commercial Fishing and Recreational Boating, and Chapter XVI, Industrial and Energy Development Policies, shall be revised as follows:

Policy VIII-2/XVI-1: Land Use of the North Bank of the Noyo. All lands on the north bank of the Noyo River, within the City limits and below 25 feet above mean sea level; shall be reserved for commercial fishing, ~~and~~ other coastal dependent industry, **and aquaculture** except for lands:

- a. Required to be maintained for riparian habitat values.
- b. Needed to meet access requirements set out in Chapter III.

The LUP amendment as modified would eliminate potential inconsistencies between adding aquaculture as a conditional use in the Harbor District classified lands and the limitations of Joint Policy VIII-2/XVI-1.

**B. LUP AMENDMENT CONSISTENCY ANALYSIS**

**1. Definition of Aquaculture.**

Coastal Act Section 30100.2 states:

"Aquaculture" means a form of agriculture as defined in Section 17 of the Fish and Game Code. Aquaculture products are agricultural products, and aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit-issuing decisions governed by this division.

As submitted, the LUP amendment proposes to allow for limited forms of aquaculture to be established as conditional uses within the Heavy Industrial and Harbor District land use classifications of the City of Fort Bragg's certified Local Coastal Program. In the Implementation Plan portion of the LCP amendment intended to implement the proposed LUP amendment, the City defines aquaculture as follows:

"Aquaculture" means a form of agriculture that is devoted to the culture and husbandry of aquatic organisms, including but not limited to finfish, shellfish, mollusks, crustaceans, kelp and algae. This definition is further to only include facilities which are located onshore and which involve the cultivation of aquatic organisms in tanks.

This definition does not conflict with the Coastal Act definition found in Section 30100.2 in the sense that all of the allowed activities would qualify as aquaculture under 30100.2. However, the proposed Fort Bragg definition is more limiting in that it applies only to the smaller subset of aquaculture operations that can locate facilities in tanks onshore. For example, oyster culture operations where oysters are raised in tidelands such as at Tomales Bay in Marin County or in



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Arcata Bay in Humboldt County would not be included or allowed by the City's proposed LCP amendment.

Furthermore, as discussed in Finding II-B-2 below, the kind of aquaculture included within the City's LCP amendment is not coastal dependent, and therefore does not have the same priority for locating along the shoreline in comparison to coastal dependent uses such as certain commercial fishing facilities.

The LUP amendment does not propose to add a parallel definition of aquaculture in the LUP as would be added by the Implementation Plan amendment to the zoning ordinance. As the manner in which the City proposes to limit aquaculture greatly affects the scope of development that would be allowed, the range of potential environmental impacts of the development that would be allowed, and the relative priority of the use proposed to be allowed over other uses that could be proposed along the shoreline, it is important that the LUP include a definition of aquaculture. Inclusion of an LUP definition of aquaculture would better enable the City and the Commission to evaluate whether the substantive policies of the LUP are appropriate for the kind of use proposed. The need for a definition within the LUP is particularly important in that the Implementation Plan must conform with and carry out the certified LUP. The LUP must establish the specific kinds of aquaculture use to be allowed under the LCP in order for adequate standards and procedures to be established in the Implementation Plan to facilitate and regulate such use.

Therefore, the Commission attaches **Suggested Modification No. 3**. The modification would add to the certified LUP the Section 30100.2 definition of aquaculture to clarify what is meant by aquaculture under the Coastal Act and also add the limitations to the type of aquaculture which can occur in the City that the City proposes in the Implementation Plan amendment.

### **SUGGESTED MODIFICATION NO. 3:**

Modify Chapter X – Agriculture as follows to add a definition of aquaculture to the land use plan:

#### **X. Agriculture**

##### **A. Introduction**

...

##### **B. Definition of Aquaculture**

*Section 30100.2 of the Coastal Act states that: (1) aquaculture means a form of agriculture as defined in Section 17 of the Fish and Game Code; (2) aquaculture products are agricultural products; and (3) aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit-issuing*



*decisions governed by the Coastal Act. The City of Fort Bragg further limits "aquaculture" to only include facilities which are located onshore and which involve the cultivation of aquatic organisms in tanks.*

As modified, the LUP amendment narrows the scope of aquaculture use to be allowed consistent with the definition of aquaculture contained in Section 30100.2 of the Coastal Act to only include onshore facilities.

2. Priority Uses

Coastal Act Section 30101 states:

*"Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.*

Coastal Act Section 30101.3 states:

*"Coastal-related development" means any use that is dependent on a coastal-dependent development or use.*

Coastal Act Section 30221 states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Coastal Act Section 30222 states:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Coastal Act Section 30222.5 states:

*Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.*

Coastal Act Section 30234 states:

*Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no*

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*longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

Coastal Act Section 30255 states:

*Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.*

The Coastal Act establishes certain priority uses, which must be protected in favor of allowing other competing uses without such priority status. Generally, these priority land uses include uses that by their nature must be located on the coast to function, such as ports, and commercial fishing facilities, or uses that encourage the public's use of the coast, such as various kinds of visitor-serving facilities, and uses that protect existing coastal resources such as wetlands and other sensitive habitat and coastal agriculture. The Coastal Act requires that adequate land be reserved for such uses in the local coastal programs adopted for each coastal city and county. For example, Section 30222 of the Coastal Act states:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

To evaluate the proposed amendment against the priority use policies of the Coastal Act, it is necessary to determine whether the new aquaculture uses that would be allowed under the proposed amendment are priority uses and whether the new aquaculture uses would potentially displace other priority uses.

Aquaculture as a Priority Use. The definition of aquaculture contained in Section 30100.2 of the Coastal Act indicates that aquaculture is a form of agriculture and that aquaculture land uses shall be treated as agricultural land uses in all planning and permit-issuing decisions governed by the Coastal Act. Thus, as a form of agriculture, aquaculture is afforded certain priority status over other uses pursuant to Section 30222 of the Coastal Act, quoted above. Section 30222 gives agriculture priority over another priority use, visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation, as well as over private residential, general industrial, or general commercial development.

Aquaculture is also addressed by Coastal Act Section 30222.5 – Oceanfront lands; aquaculture facilities; priority:

*Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those*

*sites shall be given priority, except over other coastal dependent development or uses.*

As indicated above, Section 30255 of the Coastal Act states that coastal-dependent developments shall have priority over other developments on or near the shoreline.

As discussed in Finding B(1) above, the aquaculture uses allowed under the definitions proposed by the City in the Implementation Plan Amendment are limited to only include facilities which are located onshore and which involve the cultivation of species in tanks. As limited by the City in its aquaculture definition contained in the proposed Implementation Plan amendment, such definition also incorporated into the LUP under Suggested Modification No. 3, the aquaculture use that is proposed to therefore be allowed by the City in the Heavy Industrial and Harbor District classified lands would not be coastal dependent.

Section 3010I of the Coastal Act defines "coastal dependent development or use" as any development or use which requires a site on, or adjacent to, the sea to be able to function at all. The onshore aquaculture operations proposed by the LCP amendment are fundamentally different than many other forms of aquaculture in which species are cultivated directly in the marine environment such as most oyster culture operations where oysters are raised partially submerged in water, typically in bays and estuaries. These oyster culture operations are coastal dependent in that the oysters are raised within the marine environment and depend directly on the sustenance provided by the marine environment. Unlike these operations, the aquaculture activities allowed under the proposed amendment would involve cultivation of species in the artificial environment of an onshore tank or similar facility removed from the marine environment.

The City's proposed definition of aquaculture, also incorporated into the LUP by Suggested Modification No. 3, does not limit the species raised to marine species. The cultivation of any aquatic organism, including freshwater species that are never found in the marine environment would qualify under the City's proposed definition of aquaculture. Such freshwater aquaculture operations could be located far from the coast and do not need a location adjacent to the sea to function.

Even those operations allowable under the proposed aquaculture amendment that would cultivate marine species and utilize water drawn from the sea do not meet the Coastal Act definition of "coastal dependent." To be coastal dependent, a use must require a location on or adjacent to the sea to be able to function at all. Aquaculture operations that use seawater in the cultivation of species do not necessarily have to be located on or even adjacent to the sea. Pipelines can transmit seawater from an ocean collection point to a point distant from the shoreline. The aquaculture operation itself could be separated by numerous intervening parcels, roadways, and other development and still function as the seawater would be brought to the operation at an inland location. In addition, potential alternatives that do not require offshore intake and discharge lines exist, such as closed loop aquaculture systems and connecting discharge lines to the existing sanitary system. Therefore, the Commission finds that the aquaculture activities that would be allowed under the proposed LUP amendment are not coastal dependent.

In summary, the aquaculture use that would be allowed under the proposed LUP amendment is a priority use that has priority for coastal locations over certain kinds of land use pursuant to Section 30222 of the Coastal Act, including visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation, private residential, general industrial, or general commercial development. However, the proposed aquaculture use is not considered a coastal dependent use that would have priority over all uses except other coastal dependent uses pursuant to Sections 30222.5 and 30255 of the Coastal Act.

In assessing the position of the proposed aquaculture use in the hierarchy of uses established under the Coastal Act, it is also important to recognize that other policies of the Coastal Act establish protections for certain uses over other uses regardless of whether the use proposed to displace the protected use is a priority use or coastal dependent use. One such policy with relevance to the proposed amendment is Section 30234 of the Coastal Act. This section addressed the protection of commercial fishing and recreational boating facilities and states:

*Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

Under this section, existing facilities serving commercial fishing and recreational boating must be protected.

As discussed previously, the proposed LCP amendments would add aquaculture as a conditional use in the Heavy Industrial District and Harbor District. As described in the certified LUP and zoning ordinance, the purpose of the Heavy Industrial District is to provide a location for uses that are generally large in scale and heavy in their intensity of use, require large outdoor storage areas or open operations, and which may be incompatible with other zones and related uses because the character of use is found to be out of keeping with the uses in, or the character of, other zones and districts. It also provides less stringent development standards compatible to such uses. The district is not reserved for coastal dependent industry or other priority uses. Therefore, adding aquaculture as a conditional use would not conflict with priority uses or other uses allowed in the Heavy Industrial District and allowing the priority use of aquaculture within this general industrial district is consistent with the land use priorities established by Section 30222 of the Coastal Act.

As described in the certified LUP and zoning ordinance, the purpose of the Harbor District is to provide for the continuation of a mix of activities which support the Noyo River Basin's functioning as a commercial fishing village and to protect and reserve parcels on, or adjacent to the sea for coastal-related uses and coastal-dependent uses which require such siting in order to

function at all. Other uses allowed in this zone are intended to be subordinate to the commercial fishing and other marine commercial and industrial uses of the Noyo Harbor.

The Noyo Harbor area currently supports a number of the commercial fishing, recreational boating, and coastal dependent industrial uses that the Harbor District was established to protect. As discussed above, the coastal dependent industrial uses are afforded priority over the proposed aquaculture use pursuant to Section 30255 of the Coastal Act. In addition, as also discussed previously, Section 30234 of the Coastal Act protects the existing facilities serving the commercial fishing and recreational boating industries from being displaced by other uses, including the proposed aquaculture use. The proposed LCP amendment to add aquaculture as a conditional use in the Harbor District could create conflicts in use of property if these Noyo Harbor coastal-dependent or coastal-related uses were usurped.

Aquaculture development in the HD or I-H districts could also result in the need for intake and outfall lines in the Commission's area of retained permit jurisdiction. Potential displacement of priority uses would also be considered by the Commission in its review of any CDP application for aquaculture development in the Commission's area of retained permit jurisdiction generally located seaward of the mean high tide line. Such development in the Commission's area of retained permit jurisdiction is also subject to the limitations of the Chapter 3 policies of the Coastal Act.

In addition, even if the physical plant of a proposed aquaculture operation would not displace such uses, if water intake and discharge pipe lines were permitted to extend out into the Noyo River estuary, such development could interfere with vessel launching, retrieval, or navigation of vessels integral to the commercial fishing, recreational boating, or coastal dependent industrial uses of the harbor area if not appropriately controlled.

Therefore, the Commission finds that the LUP Amendment as submitted is not consistent with Sections 30234 and 30255 of the Coastal Act, which prioritize certain uses that the amendment would not necessarily protect and therefore the amendment must be denied. However, the Commission finds that if modified to implement the provision of Sections 30234 and 30255 and protect the commercial fishing, recreational boating, or coastal dependent industrial uses of the Noyo Harbor area, the LUP amendment could be found consistent with the Coastal Act. Therefore, the Commission attaches Suggested Modification No. 5 and a portion of Suggested Modification No. 4.

Suggested Modification No. 5 would add a policy regarding the siting of aquaculture facilities within the Harbor District to require that aquaculture facilities not interfere with existing recreational boating facilities, commercial fishing, and other existing coastal-dependent industry to ensure consistency with Sections 30234 and 30255 of the Coastal Act.

**SUGGESTED MODIFICATION NO. 5:**

Modify Chapter X – Agriculture to add the following policy on the siting of new aquaculture facilities within the Harbor District relative to other priority uses:

X. Agriculture

...

***Policy X-18. Aquaculture facilities sited within the Harbor District shall not interfere with existing recreational boating facilities and existing coastal-dependent industry, especially commercial fishing.***

Suggested Modification No. 4 would establish certain requirements for new aquaculture facilities. One of these requirements, which would be included within new Policy X-4, is a requirement that if intake or discharge lines must be placed above ground within the Harbor District, the line shall be placed in a manner that would not interfere with existing recreational boating facilities and coastal dependent industry, especially commercial fishing. A second requirement, which would be included within new Policy X-6, would require that any intake or discharge lines placed above ground within the Harbor District must be removed upon abandonment of the aquaculture facility it was designed to serve so that the lines do not pose a constraint against use of the site for commercial fishing, recreational boating, and other coastal dependent uses in the future. As modified, the Commission finds that the LUP amendment is consistent with Sections 30234 and 30255 of the Coastal Act.

**PORTION OF SUGGESTED MODIFICATION NO. 4:**

Modify Chapter X – Agriculture as follows to add substantive policies on aquaculture to the land use plan:

X. Agriculture

...

**C. Aquaculture Policies**

***X-1 All aquaculture development or facilities shall require a coastal development permit and shall satisfy all policies and standards of the certified LCP, including but not limited to LUP Policies III-15(Public Access), VI-3, VI-4 and VI-5/XI-2 (Water and Marine Resources), VII-1 (Dredging, Filling, and Diking), IX-1 through IX-7 (Environmentally Sensitive Habitat Areas), XIII-1 and XIII-2 (archaeological resources), and any relevant Special Review Area Procedures contained in Chapter XVII, Section E.***

...

**X-5** *No intake or discharge lines shall be placed above ground within the Harbor District or the adjoining tidelands and submerged lands of the Noyo River unless all other alternatives have been demonstrated to be infeasible or more environmentally damaging. Alternatives to be evaluated shall include, but not be limited to, placing lines under ground through use of directional drilling or trenching, using closed-loop aquaculture systems that do not require offshore intake and discharge lines, and connecting discharge lines to the existing sanitary sewer system. If all other alternatives have been demonstrated to be infeasible or more environmentally damaging and intake or discharge lines must be placed above ground within the Harbor District and the adjoining tidelands and submerged lands of the Noyo River, the lines shall be placed in the least environmentally damaging feasible location and in a manner that will not interfere with Noyo River navigation, existing recreational boating facilities and coastal dependent industry, especially commercial fishing facilities.*

**X-6** *Any intake or discharge lines allowed to be placed above ground within the Harbor District and the adjoining tidelands and submerged lands of the Noyo River shall be removed upon abandonment of the aquaculture development or facility it was installed to serve.*

...

The LUP amendment as submitted is inconsistent with the priority use and coastal dependent use policies of the Coastal Act and must be denied. As modified, the proposed LUP amendment is consistent with Sections 30222, 30222.5, 30234, and 30255 of the Coastal Act, as use of the coastal zone for priority and coastal dependent uses will be protected.

3. Protection of Environmentally Sensitive Habitat

Section 30107.5 of the Coastal Act 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.*

Coastal Act Section 30240 – Environmentally sensitive habitat areas (ESHAs); adjacent developments – states:

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



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*(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.*

The proposed amendment is intended to accommodate development of aquaculture facilities as a conditional use in the Heavy Industrial District and Harbor District.

**ESHA In And Around Heavy Industrial Lands**

The land zoned as Heavy Industrial in the coastal zone is generally the blufftop property west of Highway One that has historically been used as a site for the Georgia-Pacific timber mill. The mill has now been shut down, but the property is zoned for industrial uses that would continue to involve large-scale industrial operations with heavy intensity of use and for activities that would be out of character in other zones and districts. The land has sustained heavy impact through the years, and there is very little obvious occurrence of ESHA resources on the blufftop terrace, except for ESHA in and around the two mill ponds and a few riparian areas. Thorough site surveys may reveal some other limited freshwater wetland areas or rare plant ESHA along the ocean-facing blufftop slopes.

The Fort Bragg certified LCP specifically designates several habitat types as ESHA. In addition to designating wetland and riparian areas as ESHA, the certified LUP also designates coastal bluffs in the I-H designated lands and the intertidal and marine areas offshore of the I-H lands as ESHA. The background section of the LUP indicates that coastal bluffs are considered ESHA because of the presence of rare plants and also because the ocean facing cliffs are well vegetated and are a valuable habitat for other plants and animals besides the rare plant species. The background section of the LUP describes the "intertidal and marine" ESHA as the rocky intertidal areas along the coast south of Glass Beach. In its description of this habitat, LUP Chapter IX, Environmentally Sensitive Habitat Areas, Section C—Intertidal and Marine Areas—states in part:

*The rocky intertidal areas along the coast south of Glass Beach contain extremely biologically rich tide pools, rocks, nesting grounds, bluffs, and kelp beds. ...The bluffs and adjacent industrial activity form an effective buffer protecting these habitats from human disruption. They are presently in a relatively pristine condition and biologically quite productive. ...[T]he adjacent industrial land use should be closely monitored by a public agency or private association for impact on these habitats. This may mean closer monitoring of and increased setbacks relating to industrial activity on the bluff ridges, and closer monitoring and adjustment of water runoff patterns. ...*

Coastal Act Section 30107.5 defines an environmentally sensitive 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." The Commission finds, consistent with the ESHA designation of



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this area contained in the certified LCP, that the entire rocky intertidal area south of Glass Beach including the adjoining sandy and cobble beaches and shallow subtidal habitat which includes predominantly sand, cobbles, and boulders constitute ESHA. As noted above, the certified LUP points out that the rocky intertidal areas contain extremely biologically rich tide pools, rocks, nesting grounds, bluffs, and kelp beds and attributes their relatively pristine condition in part to the fact that the bluffs and the former adjacent industrial activity have formed an effective buffer protecting the habitat from human disruption. A study conducted for the proposed Pacific Marine Farms aquaculture project entitled, "Field Report for A Marine Biological Survey of the Proposed Pacific Marine Farms Mariculture Facility at Fort Bragg, California," dated September 2001 and prepared by Applied Marine Sciences, Inc., confirms that the rocky intertidal area and its immediate environs are of high ecological value. Among the general observations made during the marine biological survey were the following:

"Many of these habitats have high ecological and recreational value as indicated by high algal cover and the presence of abalone, *Haliotis rufescens*... Biological communities in the survey area also have a high ecological and recreational value. The extensive and diverse algal cover suggests infrequent physical disturbance, except in the upper intertidal. The prevalence of bull kelp and other brown algae help support the abalones that were observed along [proposed] pipeline corridors."

The Commission finds that the entire rocky intertidal area south of Glass Beach including the adjoining sandy and cobble beaches and shallow subtidal habitat constitutes an ESHA because the protected nature of the area has resulted in a habitat of documented high ecological value. Furthermore, because the high value of the rocky intertidal habitat and its adjoining sandy and cobble beaches and shallow subtidal habitat has been retained in part because of the protected nature of the area, the habitat could be easily disturbed or degraded by human activities and developments. Thus, the rocky intertidal area south of Glass Beach including the adjoining sandy and cobble beaches and shallow subtidal habitat meets the Coastal Act definition of ESHA and is designated as such in the certified LCP.

### ESHA In And Around Harbor District Lands

Only a few parcels in the city that are governed by the certified LCP and located along the north bank of the Noyo River in the vicinity of the Noyo Harbor are zoned HD. Although this zoning district represents a small amount of acreage, it may contain some freshwater wetland areas, riparian areas, or rare plant habitat, which are all specifically protected ESHA under the certified LUP.

As cited above, Coastal Act Section 30240 regulates development in and adjacent to ESHA. Section 30240(a) allows only uses that are ESHA-dependent to be located within ESHA areas, and requires that any such permissible development shall not significantly disrupt habitat values. Section 30240(b) requires development located adjacent to ESHA to be sited and designed to prevent impacts that would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Certified LUP Policy IX-1 cited below closely mirrors Coastal Act Section 30240.

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*General Policy. Environmentally sensitive habitat areas in the City's coastal zone include: Intertidal and marine areas, coastal bluffs, wetlands, and riparian habitats. Such areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

### Aquaculture Development Within ESHA Not Consistent with Section 30240(a)

Pursuant to 30240(a), the aquaculture activities that would be allowed under the proposed LUP amendment could only be allowed within an ESHA if they are considered to be uses that are dependent on the resources of the ESHA. As discussed in Finding II-B-1 above, the aquaculture uses allowed under the definitions proposed by the City in the Implementation Plan Amendment and incorporated into the LUP under Suggested Modification No. 3 are limited to only include facilities which are located onshore and which involve the cultivation of species in tanks. Thus, the aquaculture operations that would occur as a result of the proposed amendment are fundamentally different than many forms of aquaculture where species are cultivated directly in the marine environment such as most oyster culture operations where oysters are raised in the marine habitat. Such oyster culture operations can be considered resource dependent in that they are raised within the marine habitat and depend on the sustenance provided by the habitat. Unlike these operations, the aquaculture activities allowed under the proposed amendment would involve cultivation of species in the artificial environment of an onshore tank or similar facility removed from the marine environment.

Even those operations to be performed under the proposed aquaculture amendment that would cultivate marine species and utilize water drawn from the sea or the Noyo River would not be dependent on the ESHA resources. To be resource dependent, a use must require a location in the ESHA to be able to function. Aquaculture operations that utilize seawater or river water in the cultivation of species do not necessarily have to be located in the various ESHA identified in the Fort Bragg area including wetlands, riparian areas, coastal bluffs, and the rocky intertidal and marine areas. For example, water for aquaculture operations can be drawn from an ocean collection point outside of the rocky intertidal ESHA area or from the middle of the Noyo River outside of any riparian vegetation ESHA along the river. In addition, pipelines transmitting collected water for aquaculture operations need not be routed through the identified ESHA areas such as the rocky intertidal areas to function. Pipelines could be routed instead, either around the ESHA or drilled underneath the ESHA. Therefore, the aquaculture development or facilities that would be allowed under the LUP amendment are not ESHA resource dependent.

Section 30240(a) also requires that any development within an ESHA shall not result in significant disruption of habitat values. Facilities dependent on pipelines crossing aboveground through ESHA would cause significant disruption to that fragile resource because: (1) habitat would be adversely impacted from construction activities involved with the initial placement of pipelines; (2) habitat would be adversely impacted from activities associated with operation and

maintenance of the pipelines; and (3) habitat would be adversely impacted from pipeline failure that results in unintended discharges in ESHA.

Therefore, the Commission finds that the aquaculture development or facilities that would be allowed under the proposed LUP amendment are not resource dependent uses that could be developed within ESHA consistent with Section 30240(a) of the Coastal Act.

Aquaculture development in the HD or I-H districts could also result in the need for intake and outfall lines in the Commission's area of retained permit jurisdiction. Potential significant adverse impacts to coastal resources would also be considered by the Commission in its review of any CDP application for aquaculture development in the Commission's area of retained permit jurisdiction. Such development in the Commission's area of retained jurisdiction is also subject to the limitations of the Chapter 3 policies of the Coastal Act.

#### Aquaculture Development Consistent with Section 30240

Since the aquaculture proposed by the LCP amendment would not be a use that could be considered to be dependent on the resources of rocky intertidal habitat, coastal bluffs, wetlands, riparian areas, rare plants, or other ESHA that is or could be present on the Heavy Industrial and Harbor District lands where the proposed amendment would allow aquaculture development, to be consistent with Coastal Act Section 30240(a) of the Coastal Act, aquaculture development would have to be sited and designed to completely avoid ESHA. To be consistent with the other provisions of section 30240, development would also have to be sited and designed to prevent impacts which would significantly disrupt habitat values or degrade ESHA resources, and be compatible with the continuance of those habitat areas. Because the LCP already contains ESHA protection policies, including LUP Policy IV-1, cited above, any coastal development permit application for aquaculture development reviewed under the existing LCP could be conditioned to avoid impacts to ESHA resources on these lands. As a part of the permit application review process, biological surveys could be required to identify the location of any ESHA, and mitigation measures could be imposed to avoid and to protect the resources. However, more specific policies for the two different areas where the proposed LUP would allow aquaculture development or facilities are needed to ensure that the particular ESHA resources present at the Heavy Industrial and Harbor District designated lands are fully recognized and protected.

#### Aquaculture Development in the Heavy Industrial Lands

As noted above, there are few ESHA resources present within the Heavy Industrial designated area on top of the coastal terrace, inland from the coastal bluff. Although several isolated wetlands are present and rare plants may occur in some locations near the bluff edge, there is ample opportunity to site and design aquaculture facilities around any ESHA identified. However, any permissible aquaculture facilities to be located in the I-H-zoned areas that would necessitate the placement of water intake and discharge pipelines to the ocean would have to be carefully designed to avoid encroachment into and disruption of ESHA. As discussed previously, the seaward side of most of the area designated as Heavy Industrial is flanked by two different kinds of ESHA designated in the LUP, the coastal bluffs and the rocky intertidal

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habitats including adjoining sandy and cobble beaches and shallow subtidal habitat. These two ESHA types are parallel to and adjoin each other, severely constraining the development of aquaculture pipelines between any aquaculture facility that might be built on the coastal terrace in the Heavy Industrial lands and water collection or discharge points in the open ocean.

However, there are other options available for developing aquaculture facilities in the Heavy Industrial designated lands that would not require installing intake and discharge pipelines through the coastal bluff and rocky intertidal habitat inconsistent with Section 30240 of the Coastal Act. These alternative options include, but are not limited to: (1) directional drilling to place pipelines underneath the coastal bluff habitat and rocky intertidal habitat between the facility located onshore and open ocean waters; (2) use of a closed loop system for re-circulation of a fixed amount of ocean water initially supplied from an approved location to fill the tanks; (3) routing of pipelines from the aquaculture facility to other ocean areas that do not contain coastal bluff habitat and rocky intertidal habitat; and (4) culturing freshwater species that are not dependent on the use of ocean water. It is also possible for aquaculture operators to apply for a CDP from the Commission for aquaculture cultivated directly in the marine environment.

Aquaculture development in the HD or I-H districts could also result in the need for intake and outfall lines in the Commission's area of retained permit jurisdiction. Potential adverse impacts to coastal resources would also affect the ability of an aquaculture operator to obtain a CDP from the Commission for development in the Commission's area of retained jurisdiction. Such development in the Commission's area of retained jurisdiction is also subject to the limitations of the Chapter 3 policies of the Coastal Act.

Without a clear policy or standard precluding development of intake and discharge lines through the coastal bluff and rocky intertidal habitat to an ocean collection or discharge point, establishing aquaculture as an allowable use within the Heavy Industrial designated lands along the coastal terrace could create erroneous expectations that developing such intake and discharge lines would be permissible, especially since the coastal bluff and rocky intertidal habitat flanks most of the oceanfront. Therefore, the LUP amendment as submitted would not ensure that future aquaculture development in the Heavy Industrial designated lands would be approved in a manner fully consistent with Section 30240 of the Coastal Act and must be denied. However, if modified to include provisions that would clearly preclude construction of above-ground pipelines within ESHA, the proposed amendment adding aquaculture as an allowable use in the Heavy Industrial District, could be found consistent with Section 30240. Therefore, the Commission imposes Suggested Modification No. 4 which precludes the installation of above-ground pipelines through the coastal bluff and rocky intertidal ESHA.

### **PORTION OF SUGGESTED MODIFICATION NO. 4:**

Modify Chapter X – Agriculture as follows to add substantive policies on aquaculture to the land use plan:

#### **XV. Agriculture**

...

**C. Aquaculture Policies**

...

- X-4 No intake or discharge lines shall be placed above ground in the Heavy Industrial District in any Environmentally Sensitive Habitat Areas as defined in Section 30107.5 of the Coastal Act, including but not limited to, along any coastal bluff or within a rocky intertidal habitat area.**

...

As modified, the LUP would still allow aquaculture development or facilities within the I-H lands on the coastal terrace, but such facilities would have to be developed and operated in a manner that would not require the installation of above ground intake or discharge pipelines that extend through the coastal bluff ESHA or the rocky intertidal ESHA. Therefore, any aquaculture facilities in the I-H area requiring intake and discharge lines would have to utilize other alternatives including, but not limited to (1) using directional drilling to drill borings under the coastal bluff and rocky intertidal ESHA to a submerged area further out into the ocean so that pipelines could be placed underneath the ESHA and not in the ESHA, (2) route intake and discharge pipelines significant distances to the north and south to go around the coastal bluff and rocky intertidal ESHAs, (3) rely on a closed loop system that would avoid the need to construct permanent intake and discharge lines, and (4) cultivate freshwater species that do not require seawater intake lines and avoid constructing discharge lines in the coastal bluff and rocky intertidal ESHA.

**Aquaculture Development In The Harbor District Lands**

The Harbor District does not contain any single ESHA or collection of ESHA types that separate Harbor District designated parcels entirely from the river where intake and discharge lines may be proposed to serve future aquaculture facilities. As mentioned above, however, these lands may contain discontinuous ESHA resources including rare plant habitat, riparian habitat, and/or freshwater wetland habitat. To be consistent with Coastal Act Section 30240 of the Coastal Act, aquaculture facilities would have to be sited and designed to avoid ESHA, to prevent impacts which would significantly degrade ESHA resources, and to be compatible with the continuance of those habitat areas. Because the LCP contains ESHA protection policies, as noted above, any coastal development permit application for aquaculture development reviewed under the existing LUP could be conditioned to avoid impacts to ESHA resources on HD-zoned lands. As a part of the permit application review process, biological surveys could be required to identify the location of any ESHA, and mitigation measures could be imposed to avoid and to protect the resources. An aquaculture facility designed with water intake and discharge pipelines to be located in the HD District could potentially be found consistent with ESHA protection provisions if it was sited and designed to avoid significant disruption of any ESHA identified on or adjacent to the site. However, as discussed in Findings II-B-5 and II-B-6 above, development of intake or

discharge pipelines underground within the Harbor District is also required to avoid impacts to other permitted uses or coastal resources such as public access and visual resources unless all other alternatives have been demonstrated to be infeasible or more environmentally damaging.

To ensure that aquaculture facility development within the Harbor District designated lands is sited and designed to avoid impacts that that would significantly degrade adjacent ESHA resources within the area, the Commission attaches Suggested Modification No. 4 to add a specific aquaculture policy requiring that this concern be taken into account during the review of a coastal development permit application.

**PORTION OF SUGGESTED MODIFICATION NO. 4:**

Modify Chapter X – Agriculture as follows to add substantive policies on aquaculture to the land use plan:

XVI. Agriculture

...

**C. Aquaculture Policies**

***Policy X-8: All aquaculture development or facilities shall be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, and shall be compatible with the continuance of those habitat areas.***

...

The LUP amendment as submitted is inconsistent with the environmentally sensitive habitat protection policies of the Coastal Act and must be denied. As modified, the proposed LUP amendment is consistent with Sections 30240 of the Coastal Act, as the non-resource dependent aquaculture uses that would be allowed by the proposed amendment would be precluded from locating within ESHA and must be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas and be compatible with the continuance of those habitat areas.

3. Locating and Planning New Development.

Section 30250(a) of the Coastal Act, in part, states:

*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...*

Among other requirements, Section 30250 requires that new development be located in areas with adequate services to be able to accommodate the development. The aquaculture use to be allowed by the proposed LUP amendment would involve cultivating aquatic organisms in tanks. Such operations require significant amounts of water. Two types of water may be needed by any given facility, freshwater or saltwater, depending on the species cultivated. Aquaculture operations cultivating purely freshwater species may seek to draw from limited surface or groundwater resources, perhaps even from the municipal water supply.

In the Fort Bragg area, freshwater resources including surface and ground water are limited. In addition, municipal water supplies are limited to the degree that developers of new development projects that seek to connect to the municipal water supply system must demonstrate that their project will not result in a significant net reduction in municipal water supplies. Developers are usually required to offset any drawdown of municipal water supplies by retrofitting toilets or other plumbing in existing development with water-saving facilities.

Given the large quantity of water that aquaculture operations can need, sufficient water resources to serve particular aquaculture developments within the City may not always be available. Thus, the amendment as submitted is inconsistent with Section 30250 of the Coastal Act, as the amendment would locate future aquaculture facilities in areas where adequate water to serve the proposed aquaculture use is not necessarily available. Therefore, the amendment as submitted must be denied. However, the Commission finds that if modified to require that aquaculture facilities only be approved when the availability of adequate water has been demonstrated, the LUP amendment could be found consistent with the Coastal Act. Therefore, the Commission attaches Suggested Modification No. 4. This modification would establish certain requirements for new aquaculture facilities. One of these requirements, which would be included within new Policy X-12, is a requirement that the availability of adequate water to serve any proposed new aquaculture development be demonstrated prior to approval of the development. As modified, the Commission finds that the LUP amendment is consistent Sections 30250 of the Coastal Act to the extent that new aquaculture facilities will only be approved in the City when adequate water is available to serve the proposed use.

**PORTION OF SUGGESTED MODIFICATION NO. 4:**

Modify Chapter X – Agriculture as follows to add substantive policies on aquaculture to the land use plan:

X. Agriculture

...

C. *Aquaculture Policies*



*X-1 All aquaculture development or facilities shall require a coastal development permit and shall satisfy all policies and standards of the certified LCP, including but not limited to LUP Policies III-15(Public Access), VI-3, VI-4 and VI-5/XI-2 (Water and Marine Resources), VII-1 (Dredging, Filling, and Diking), IX-1 through IX-7 (Environmentally Sensitive Habitat Areas), XIII-1 and XIII-2 (archaeological resources), and any relevant Special Review Area Procedures contained in Chapter XVII, Section E.*

...

*X-12 Availability of adequate water to serve all aquaculture development or facilities shall be demonstrated prior to approval of such aquaculture development or facilities.*

...

The LUP amendment as submitted is inconsistent with the adequate service provisions of Section 30250 of the Coastal Act and must be denied. As modified, the proposed LUP amendment is consistent with Section 30250 as availability of adequate water to serve the proposed aquaculture use must be demonstrated prior to approval of any particular aquaculture project.

5. Visual Resources.

Section 30251 of the Coastal Act states, in applicable part:

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

The proposed LCP amendment would affect those lands classified under the LUP for heavy industrial (I-H) and harbor (HD) uses. The lands classified as I-H are primarily all of those lands to the west of Highway One from Pudding Creek at the north end of the city, nearly all the way to the Noyo River at the south end except for a two-to-three block wide by seven-block-long section of residential and commercially-zoned lands located roughly between Oak Street and Manzanita Street near the central part of the city. In addition, there are two small sections of I-H land on either side of Highway One about a mile north of Pudding Creek. The lands classified HD are all on the north side of the Noyo River in Noyo Harbor. The largest area zoned HD involves about 13 acres located in the geographic region known as Noyo Flats. This is an area of deferred certification because of unresolved wetland issues and is therefore not a part of the



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certified LCP. Accordingly, the proposed LCPA would not govern aquaculture development in this area of deferred certification and a permit for aquaculture development in this area would need to be obtained from the Coastal Commission rather than the City. The remaining certified HD classified land consists of two small areas together totaling about 4 acres; one is a narrow strip located immediately adjacent to the Noyo Bridge and the other is a small triangle of land on the north side of North Harbor Drive at the tip near the river.

A large portion of the property zoned I-H and HD in the City's certified LCP has visual resource significance. Development of property west of Highway One in the Heavy Industrial District could potentially have significant adverse impacts on visual resources from Highway One if the development obstructed views to or along the ocean.

Development in some of the I-H designated areas would also affect views from other public vantage points, including public access areas at Glass Beach at the end of the Elm Street right-of-way, the public viewing area being developed by the City on the bluff tops along the south side of the mouth of the Noyo River, and from the ocean itself. There are other locations along the bluffs within the I-H designated areas where informal trails suggest that there may be potential prescriptive rights of public access.

Development within the HD classified lands in Noyo Harbor would be very prominent from public vantage points. Both sites are adjacent to the main public road through the Harbor, North Harbor Drive. In addition, both sites would be visible from boats in the harbor and from public roads on the south side of the harbor. The most significant public views of these sites might be the view from above from the public walkway on the inland side of the Highway One Noyo River Bridge.

Besides blocking views to and along the ocean, aquaculture development in either I-H or HD districts could adversely impact visual resources if the development were not screened to make it compatible with the character of surrounding areas not already developed with industrial-type uses. Aquaculture facilities also have the potential to create significant adverse impacts on visual resources from development of any permissible intake and discharge pipelines that would be laid out on top of the ground and extend into coastal waters. Accordingly, aquaculture development in either the IH or HD districts may result in the need for intake and outfall lines inside the area of the Commission's retained permit jurisdiction. Natural land forms such as the face of the coastal bluff and/or the extensive rocky intertidal area offshore of the I-H lands would be significantly altered by intake and discharge pipeline placement. To the extent such development would extend into the area of the Commission's retained permit jurisdiction generally located seaward of the mean high tide line, potential significant adverse impacts to coastal resources offshore would also be considered by the Coastal Commission in its review of any CDP application for aquaculture development in the Commission's area of retained permit jurisdiction.

The potential visual impacts of future aquaculture development that would be allowed by the proposed LUP amendment could be addressed in part by the existing visual policies of the LUP.

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Chapter XIV of Fort Bragg's certified LUP contains policies relating to the protection of visual resources as follows:

LUP Policy XIV-1— General Policy on Visual Resources states:

*New development within the City's coastal zone shall be sited and designed to protect views to and along the ocean, be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas.*

LUP Policy XIV-2/XVI-3—Industrial Development Near Visitor Sites states:

*The City shall require that any new industrial development sited next to visitor serving land uses and facilities, including public access-ways, be designed so as to minimize its visual impact on the visitor serving land uses and facilities.*

These policies provide general guidance on the protection of visual resources but do not require the use of specific visual impact mitigation measures that would be necessary to minimize the particular significant adverse visual impacts of aquaculture development. Screening of the facility site with fencing and landscaping may be the only effective way of making the facility site compatible with the character of the area as there would be limited opportunity to site the development behind knolls, within forested areas, or in other areas affording natural screening given the sites involved. The I-H lands are generally composed of a flat coastal terrace with minimal natural features providing opportunities for screening. The Noyo Harbor lands designated for Harbor District use also lack such natural features in areas where they could screen future aquaculture facilities from view from public vantage points.

The only effective way to mitigate the significant adverse visual impacts of any permissible intake and discharge lines particularly as they extend to and beyond the shoreline would be to place them underground and under the substrate. Although the size of pipelines that might be proposed to serve future aquaculture uses would certainly vary, pipelines would be significant structures readily visible from public vantage points. As discussed in greater depth in Finding II-B-3, above, the coastal bluff faces and the tidal and intertidal areas adjacent to the I-H designated lands are generally undisturbed areas that have not been affected by the industrial development that has occurred on the coastal terrace itself. The bluff face and rocky intertidal lands are identified in the certified LCP as environmentally sensitive habitat areas. An aquaculture intake or discharge line would be among the first physical developments to occur in these areas and as such would not blend into the visual landscape of the bluff face and tidal and intertidal areas. Pipelines placed above ground in these areas would represent a significant alteration of the appearance of the coastal bluff and rocky intertidal landforms. Within Noyo Harbor, above ground pipelines would be prominent mainly because of their proximity to the viewer. The Harbor District sites are close to public roads and proposed pipelines would extend around the roads and into the waters of the harbor itself, which is heavily used by boaters, including recreational boaters. Although painting or otherwise coloring pipelines in dark colors may help reduce their visual prominence, the size of the pipelines and in the case of the bluffs

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and intertidal areas off of the I-H designated lands, the lack of other development would greatly limit the effectiveness of coloring the pipelines to mitigate visual impacts. Thus, to the maximum extent feasible, it is necessary to install any otherwise permissible aquaculture intake and discharge lines underground in order to mitigate their visual impact.

Development of future aquaculture facilities in the I-H and Harbor District designated lands without consideration of the installation of screening around the facilities and the need for placement of intake and discharge lines underground would fail to ensure that the aquaculture facilities development would be compatible with the visual character of the area and minimize the alteration of landforms, as required by Section 30251 of the Coastal Act. Without specific visual mitigation policies requiring the consideration of these particular visual mitigation measures, development could be permitted by the proposed LCP that would not be consistent with Section 30251. Therefore, the amendment as submitted is inconsistent with Section 30251 of the Coastal Act and must be denied.

However, the Commission finds that if modified to require consideration of facilities screening and the placement of intake and discharge lines underground, the LUP amendment could be found consistent with Section 30251 of the Coastal Act. Therefore, the Commission attaches Suggested Modification No. 4. This modification would establish certain requirements for new aquaculture facilities. One of these requirements, which would be included within new Policy X-7, is a requirement that facilities shall be sited and designed to be visually compatible with the character of surrounding areas and shoreline facilities shall be screened. Another requirement that would be included within new Policy X-4 is a requirement that would prohibit the placement of intake or discharge lines above ground in the bluff and intertidal areas off of the coastal terrace lands designated as I-H where the LUP amendment would allow aquaculture. In contrast, in the Harbor District, new Policy X-5 would only allow such lines to be placed above ground within and off of the Harbor District lands if placement of lines underground in this area is demonstrated to be infeasible or more environmentally damaging. As discussed in Finding XX-B-3, above, Policy X-4 would impose a more stringent prohibition against the placement of lines above ground on the face of the coastal bluffs and in the rocky intertidal areas on the ocean coast off of the I-H designated lands than in the Noyo Harbor area because such placement above ground off of the coastal terrace lands designated as I-H would also not be consistent with Section 30240 and the environmentally sensitive habitat policies of the Coastal Act. For reasons explained in Finding II-B-3, above, placement of intake or discharge lines above ground within the Noyo Harbor area can be found to be consistent with Section 30240, if placement below ground is demonstrated to be infeasible or more environmentally damaging.

### **PORTION OF SUGGESTED MODIFICATION NO. 4:**

Modify Chapter X – Agriculture as follows to add substantive policies on aquaculture to the land use plan:

#### **X. Agriculture**

...  
**C. Aquaculture Policies**

**X-1 All aquaculture development or facilities shall require a coastal development permit and shall satisfy all policies and standards of the certified LCP, including but not limited to LUP Policies III-15(Public Access), VI-3, VI-4 and VI-5/XI-2 (Water and Marine Resources), VII-1 (Dredging, Filling, and Diking), IX-1 through IX-7 (Environmentally Sensitive Habitat Areas), XIII-1 and XIII-2 (archaeological resources), and any relevant Special Review Area Procedures contained in Chapter XVII, Section E.**  
...

**X-4 No intake or discharge lines shall be placed above ground in the Heavy Industrial District in any Environmentally Sensitive Habitat Areas as defined in Section 30107.5 of the Coastal Act, including but not limited to, along any coastal bluff or within a rocky intertidal habitat area.**

**X-5 No intake or discharge lines shall be placed above ground within the Harbor District or the adjoining tidelands and submerged lands of the Noyo River unless all other alternatives have been demonstrated to be infeasible or more environmentally damaging. Alternatives to be evaluated shall include, but not be limited to, placing lines under ground through use of directional drilling or trenching, using closed-loop aquaculture systems that do not require offshore intake and discharge lines, and connecting discharge lines to the existing sanitary sewer system. If all other alternatives have been demonstrated to be infeasible or more environmentally damaging and intake or discharge lines must be placed above ground within the Harbor District and the adjoining tidelands and submerged lands of the Noyo River, the lines shall be placed in the least environmentally damaging feasible location and in a manner that will not interfere with Noyo River navigation, existing recreational boating facilities and coastal dependent industry, especially commercial fishing facilities.**  
...

**X-7 All aquaculture development or facilities shall be sited and designed to be visually compatible with the character of surrounding areas, and shoreline facilities shall be screened.**  
...

The LUP amendment as submitted is inconsistent with the visual resource protection provisions of Section 30251 of the Coastal Act and must be denied. As modified, the proposed LUP amendment is consistent with Section 30251 as the most effective measures for mitigating the visual impacts of any future aquaculture development that would be allowed by the LUP amendment will be required to be considered during the review of coastal development permit applications for future aquaculture development. As mitigated to require screening of

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aquaculture facilities or the placement of otherwise permissible intake and discharge lines underground, future aquaculture development would be compatible with the visual character of its surrounding and minimize the alteration of natural landforms consistent with Section 30251.

### 6. Public Access and Recreation:

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

The geographic areas zoned for Heavy Industrial and Harbor District uses where aquaculture would be added as a conditional use are located along shorelines adjacent to the ocean and Noyo River. As proposed, aquaculture facilities could involve aboveground water intake and discharge pipelines that would traverse coastal bluffs, and cross shoreline areas as they extend to open water. The shoreline areas within the I-H and Harbor District designated lands currently do not contain formally established public access ways that run laterally along the bluff top or along upland areas of the shoreline. As discussed previously, the I-H designated lands have generally been devoted to lumber mill operations in the past and most of the shoreline areas have been off-limits to the public. The Noyo Harbor provides shoreline access at Ocean Front Park west of the Highway One Bridge, but most other shoreline areas along North Harbor Drive adjacent to the certified Harbor District designated lands are covered by existing development. Nonetheless, some public access use is made of the shoreline adjacent to the I-H designated area by tide pool observers and visitors to Glass Beach, where a vertical access way extends along the Elm Street right-of-way. The bluff edge and bluff faces south of the Elm Street right-of-way are also crisscrossed by various informal pathways, suggesting that the public has used the area in the past for access purposes. The tidelands off both the I-H designated oceanfront lands and within the Noyo Harbor are also subject to the public trust. Within Noyo Harbor especially, recreational boaters make significant use of the tidelands and submerged lands.

As discussed in Finding II-B-5, above, intake and discharge lines to be installed with future aquaculture facilities that would be allowed by the LUP amendment would likely vary in size, but large diameter pipelines could be employed. Large diameter pipelines would be significant structures that would form a formidable obstacle for anyone walking along the shoreline for public access purposes or trying to navigate a small recreational vessel along the shoreline. Aquaculture development in the HD or I-H districts could also result in the need for intake and outfall lines in the Commission's area of retained permit jurisdiction. Potential adverse impacts to public access to and along the water would also be considered by the Commission in its

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review of any CDP application for aquaculture development in the Commission's area of retained permit jurisdiction generally located seaward of the mean high tide line. Such development is also subject to the limitations of the Chapter 3 access policies of the Coastal Act.

The Noyo Harbor area contains a mix of uses, including commercial fishing operations, other coastal-dependent industry, and recreational uses that facilitate visitors' enjoyment of the coastal harbor. Included among the latter are the previously mentioned, Ocean Front Park, boat launching ramps, and recreationally oriented commercial establishments such as charter fishing boat operations. The mix of uses are tightly spaced within the Harbor and the boundaries between different uses and properties often are not fenced or otherwise separated. Aquaculture operations sometimes require substantial open work areas where equipment and materials may be set in open areas. Under such circumstances where large open areas are utilized and physical boundaries between parcels and lease areas are not always present, aquaculture operations could easily encroach into adjacent areas utilized for public access and recreation.

As submitted, the LUP amendment proposes no specific standards or requirements either to ensure that the installation of aquaculture intake and discharge lines would not adversely affect public access to the shoreline or to ensure that aquaculture operations would not encroach onto adjacent public access and recreational areas. Without such requirements, there is no assurance that significant adverse impacts on public access will be adequately addressed in the review of future applications for coastal development permits for aquaculture operations. Therefore, the amendment as submitted is inconsistent with the public access policies of the Coastal Act and must be denied.

However, the Commission finds that if modified to incorporate specific standards that would require the mitigation of any significant adverse impacts on adjacent public access and recreation areas caused by the installation of any permissible above ground pipelines and the encroachment of aquaculture, the LUP amendment could be found consistent with the Coastal Act. Therefore, the Commission attaches Suggested Modification No. 4. This modification would establish certain requirements for new aquaculture development or facilities. As discussed elsewhere in Findings II-B-3 and II-B-5, one of these requirements, Policy X-4 would prohibit the placement of intake or discharge lines above ground in the bluff and intertidal areas off of the coastal terrace lands designated as I-H. Recommended Policy X-5 would only allow such lines to be placed above ground within and off of the Harbor District lands if placement of lines underground in this area is demonstrated to be infeasible or more environmentally damaging. Placing the lines underground would eliminate the pipelines from becoming obstacles that would block public access use of the shoreline. Recommended Policy X-10 would require that in the event that alternatives to the installation of underground intake and discharge lines for aquaculture operations within Noyo Harbor is not feasible or less environmentally damaging but above ground pipeline installation or other aquaculture facility improvements would interfere with public access along the shoreline, adequate provision for lateral and vertical access must be ensured. This provision would enable the City or the Commission on appeal to require ramps, detours, or other measures to enable the public to continue to access the shoreline through the affected area. Finally, Suggested Modification No. 4 includes a requirement (Policy X-9) that



aquaculture facilities be sited and designed to avoid encroachment into adjacent recreational areas.

**PORTION OF SUGGESTED MODIFICATION NO. 4:**

Modify Chapter X – Agriculture as follows to add substantive policies on aquaculture to the land use plan:

X. Agriculture

...

C. *Aquaculture Policies*

***X-1 All aquaculture development or facilities shall require a coastal development permit and shall satisfy all policies and standards of the certified LCP, including but not limited to LUP Policies III-15(Public Access), VI-3,VI-4 and VI-5/XI-2 (Water and Marine Resources), VII-1 (Dredging, Filling, and Diking), IX-1 through IX-7 (Environmentally Sensitive Habitat Areas), XIII-1 and XIII-2 (archaeological resources), and any relevant Special Review Area Procedures contained in Chapter XVII, Section E.***

...

***X-4 No intake or discharge lines shall be placed above ground in the Heavy Industrial District in any Environmentally Sensitive Habitat Areas as defined in Section 30107.5 of the Coastal Act, including but not limited to, along any coastal bluff or within a rocky intertidal habitat area.***

***X-5 No intake or discharge lines shall be placed above ground within the Harbor District or the adjoining tidelands and submerged lands of the Noyo River unless all other alternatives have been demonstrated to be infeasible or more environmentally damaging. Alternatives to be evaluated shall include, but not be limited to, placing lines under ground through use of directional drilling or trenching, using closed-loop aquaculture systems that do not require offshore intake and discharge lines, and connecting discharge lines to the existing sanitary sewer system. If all other alternatives have been demonstrated to be infeasible or more environmentally damaging and intake or discharge lines must be placed above ground within the Harbor District and the adjoining tidelands and submerged lands of the Noyo River, the lines shall be placed in the least environmentally damaging feasible location and in a manner that will not interfere with Noyo River navigation, existing recreational boating facilities and coastal dependent industry, especially commercial fishing facilities.***

...

*X-9 All aquaculture development or facilities shall be sited and designed to avoid encroachment of aquaculture operations into adjacent recreational areas.*

*X-10 No aquaculture development or facilities shall interfere with the public's right of access to the sea. All aquaculture development or facilities shall ensure adequate provision of lateral and vertical access.*

...

The LUP amendment as submitted is inconsistent with the public access policies of Section 30210, 30211, and 30212 of the Coastal Act and must be denied. As modified, the proposed LUP amendment is consistent with the public access policies of the Coastal Act as the most effective measures for mitigating the impacts of future aquaculture development on public access use of the shoreline will be required to be considered during the review of coastal development permit applications for future aquaculture development. As mitigated, future aquaculture development would avoid significant adverse impacts on public access consistent with the public access policies of the Coastal Act.

7. Geologic Hazards.

Coastal Act Section 30253 states in part that:

*New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

As cited above, Coastal Act Section 30253 requires that new development minimize risks to persons and property, assure stability and structural integrity and avoid the need for protective devices or other major alterations of landforms.

The City's proposal to add aquaculture as a conditional use in the Heavy Industrial District and Harbor District would allow development of aquaculture facilities in a variety of locations with potential for geologic hazard. Some of the I-H designated lands include blufftop parcels subject to bluff stability and bluff retreat hazards. In addition, some of the Harbor District designated lands are located within the flood plain of the Noyo River and may be subject to flood, tsunami, and liquefaction hazard. Furthermore, the North Coast is a seismically active region subject to earthquake hazards.



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Moreover, the siting and design of any otherwise permissible intake and discharge pipelines extending into tidal and intertidal areas raise geologic stability issues. Aquaculture development in the HD or I- districts could also result in the need for intake and outfall lines in the Commission's area of retained permit jurisdiction generally located seaward of the mean high tide line. Potential adverse impacts to coastal resources would also be considered by the Commission in its review of any CDP application for aquaculture development in the Commission's area of retained permit jurisdiction generally located seaward of the mean high tide line. Such development in the Commission's area of retained jurisdiction is also subject to the limitations of the Chapter 3 policies of the Coastal Act. Any otherwise permissible intake and discharge pipelines must be designed to maintain their structural integrity and withstand wave attack or strong river currents.

The City of Fort Bragg certified LUP includes certain policies concerning geologic and flood hazards. LUP Chapter XI (F) – Hazards Policies – contains the following policies:

*Policy XI-1: Special Review of Bluff Development. The City shall require all development occurring in the "demonstration area" defined in this chapter to demonstrate that the area is stable for development and will neither create a geologic hazard nor diminish the stability of the area. The applicant shall file a report evaluating the geologic conditions of the site and the effects of development, to be prepared by a registered geologist, a professional civil engineer with expertise in soils or foundation engineering, or by a certified engineering geologist.*

*Policy VI-5/XI-2: Alteration of Landforms. The alteration of cliffs, bluff tops, faces or bases, and other natural land forms shall be minimized in the Coastal Zone and especially in runoff ("RO") special review areas. Such changes may be allowed only if a buffer sufficient to allow for the interception of any material eroded as a result of the proposed development has been provided.*

*Policy XI-3: Flood Plain Development. New development in flood plains in the City's coastal zone shall be limited to those uses allowed in the Harbor District ("HD") land use classification in addition to the requirements of other land use plan policies. They shall be designed so as to minimize danger of loss of life and property during a flood, either on the site or downstream from the site.*

The above certified LUP policies require new development to be sited and designed in a manner that will address bluff retreat and certain flood hazards, but do not address some of the other hazards to new development noted above such as liquefaction, tsunamis, and other seismic hazards. In addition, these certified LUP policies do not require that geologic stability issues raised in the design of intake and discharge pipelines extending into tidal areas be considered in the siting and design of aquaculture facilities. As submitted, the proposed LUP amendment includes no policy language establishing any additional requirements for the review of geologic hazard issues raised by the siting and design of new aquaculture facilities. Without such requirements, there is no assurance that new aquaculture facility development will be sited and designed to (1) minimize risks to life and property in areas of high geologic hazard and (2) not

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create a geologic hazard or require construction of a protective device in a manner consistent with Section 30253 of the Coastal Act. Therefore, the amendment as submitted is inconsistent with Section 30253 of the Coastal Act and must be denied.

However, the Commission finds that if modified to require the review of the full range of geologic hazard issues raised by the siting and design of new aquaculture facilities, the LUP amendment could be found consistent with Section 30253 of the Coastal Act. Therefore, the Commission attaches Suggested Modification No. 4. This modification would establish certain requirements for new aquaculture facilities. One of these requirements, which would be included within new Policy X-11, is a requirement that facilities be sited and designed to minimize risks to life and property from all geologic and flood hazards, including bluff erosion, slope stability, seismic events, liquefaction, tsunamis, floods, and wave attack, and to assure stability and structural integrity and not contribute to geologic hazards.

**PORTION OF SUGGESTED MODIFICATION NO. 4:**

Modify Chapter X – Agriculture as follows to add substantive policies on aquaculture to the land use plan:

**X. Agriculture**

...

**C. Aquaculture Policies**

**X-1** *All aquaculture development or facilities shall require a coastal development permit and shall satisfy all policies and standards of the certified LCP, including but not limited to LUP Policies III-15(Public Access), VI-3,VI-4 and VI-5/XI-2 (Water and Marine Resources), VII-1 (Dredging, Filling, and Diking), IX-1 through IX-7 (Environmentally Sensitive Habitat Areas), XIII-1 and XIII-2 (archaeological resources), and any relevant Special Review Area Procedures contained in Chapter XVII, Section E.*

...

**X-11** *All aquaculture development or facilities shall be sited and designed to: (1) minimize risks to life and property from geologic and flood hazards, including but not limited to bluff erosion, slope stability, seismic events, liquefaction, tsunamis, floods, and wave attack; and (2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

...

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The LUP amendment as submitted is inconsistent with the geologic and flood hazard policies of Section 30253 of the Coastal Act and must be denied. As modified, the proposed LUP amendment is consistent with Section 30253 as the LUP would require new aquaculture facilities to be sited and designed to address the full range of geologic and flood hazard issues raised by the development of the facilities.

### **8. Conclusion**

The Coastal Act recognizes aquaculture as a form of agriculture. Section 30222 affords agriculture, and by extension aquaculture, priority over residential, general industrial, or general commercial development. Therefore, adding aquaculture as a conditional use within a local coastal program is generally consistent with the Coastal Act priority use policies. However, aquaculture development can result in significant impacts on coastal resources, and any proposed LCP amendment that would allow for aquaculture development must include provisions to ensure that future aquaculture development would be sited and designed in a manner that is consistent with Coastal Act Chapter 3 policies that address the protection of such coastal resources. Several aspects of the proposed LUP amendment do not conform with particular Coastal Act policies relevant to the protection of coastal resources from aquaculture development within the City of Fort Bragg. These aspects include (1) the protection of environmentally sensitive habitat and conformance with Section 30240 of the Coastal Act, (2) the protection of visual resources and conformance with Section 30251, (3) the protection of public access and conformance with the public access policies of the Coastal Act, (4) the protection of water quality and marine resources and conformance with Sections 30230 and 30231, (5) ensuring that future aquaculture development will not contribute to geologic and flood hazards and conformance with Section 30253 of the Coastal Act, and conformance with priority use policies of the Coastal Act. Therefore the Land Use Plan amendment as submitted is not consistent with the Chapter 3 policies of the Coastal Act and must be denied. However, with the suggested modifications, the LUP amendment would include additional policies that would ensure that aquaculture development would be allowed by the amendment consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds the City's Land Use Plan, as modified, conforms with the requirements of Chapter 3 of the Coastal Act pursuant to Sections 30512 and 30512.2 of the Coastal Act.

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## **PART FOUR: AMENDMENT TO IMPLEMENTATION PROGRAM**

### **I. ANALYSIS CRITERIA**

Section 30513 of the Coastal Act establishes the criteria for Commission action on proposed amendments to certified Implementation Programs (IP). Section 30513 states, in applicable part:

*...The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the*

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*commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection specifying the provisions of land use plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out together with its reasons for the action taken.*

**II. FINDINGS FOR DENIAL OF IP AMENDMENT NO. FTB-MAJ-1-02 AS SUBMITTED AND CERTIFICATION IF MODIFIED**

The Commission finds and declares as following for Implementation Plan Amendment No. FTB-MAJ-1-02:

**1. Description of Proposed Implementation Program Amendments:**

The proposed IP Amendment is intended by the City to add aquaculture as a conditionally permitted use in the Heavy Industrial and Harbor zoning districts, revise the definition of aquaculture, and make other modifications to the Fort Bragg Municipal Code as follows:

The full text of the submitted amendment is included as part of Attachment 1.

As submitted, the proposed amendment includes a proposal to amend the City's Local Coastal Program Manual to add aquaculture as a conditional use in both the Harbor District and Heavy Industrial zoning districts as proposed below:

Amendment to the LCP Manual, Chapter XVII, Subsection F, Zoning Classifications, Section 12. HD-Harbor District: under subparagraph c. Secondary Uses, adding aquaculture as a conditional use. Section 12. IH-Heavy Industrial: under subparagraph c. Secondary Uses, adding aquaculture as a conditional use.

The LCP Manual is not a part of the certified LCP. The LCP Manual is simply a document that the city produced a number of years ago after certification of Amendment No. 2-85 incorporating material from both the Land Use Plan and Fort Bragg Municipal Code.

The proposed amendment would make changes to the certified IP as well. The existing definition of aquaculture found in Section 18.07.060 of the Code would be repealed in its entirety and amended to read as follows:

***18.07.060 Aquaculture.***

*"Aquaculture" means a form of agriculture that is devoted to the culture and husbandry of aquatic organisms, including but not limited to finfish, shellfish, mollusks, crustaceans, kelp and algae. This definition is further limited to only include facilities which are onshore and which involve the cultivation of aquatic organisms in tanks.*

In addition, the amendment would revise Code Section 18.34.020 IH-Heavy Industrial to add aquaculture as a conditional use in the coastal zone. This section would also be amended to

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allow any use which the Planning Commission finds to conform with the purpose and intent of this chapter and to be compatible and appropriate to the district in which it is proposed with a use permit. This section of the code is largely devoted to a chart of land uses. Principal permitted uses are designated by a "P" (permitted) and conditional uses are designated by "UP" (use permit). The first column of the chart is for that part of the Heavy Industrial District outside of the coastal zone and the second column is for that part of the Heavy industrial District within the coastal zone. The actual amendment takes the form of (1) adding a new land use category to the chart called "aquaculture" and placing a "UP" in the coastal zone column for this land use category; and (2) adding a "UP" in the coastal zone column for an existing land use category listed as:

"Any use similar to those specified above which the planning commission finds to conform with the purpose and intent of this chapter and to be compatible and appropriate to the district in which it is proposed."

The amended portion of the chart would appear as follows:

Land Uses	I-H	I-H-CZ
...		
<b>Aquaculture</b>		<b>UP</b>
...		
Any use similar to those specified above which the planning commission finds to conform with the purpose and intent to this chapter and to be compatible and appropriate to the district in which it is proposed.	UP	<b>UP ..."</b>

Finally, the amendment would revise Code Section 18.36.030 HD-Harbor District to add aquaculture as a conditional use in the coastal zone.

2. Need for Modification of Amendment Description:

The following Suggested Modification makes a correction in the content and format of the IP amendment submittal, rather than a suggested change for the purpose of finding consistency with the Coastal Act or the land use plan as amended. As noted above, the City's submittal proposes to amend both the "LCP Manual," and the zoning code to add aquaculture as a conditional use to the Harbor District and Heavy Industrial District. However, the "LCP Manual," is not a part of the certified LCP. The proposal to add aquaculture as a conditional use to the Harbor District and Heavy Industrial District should be an amendment to the certified IP only, and not to the uncertified LCP Manual. The proposed amendment to the uncertified LCP Manual should be deleted from the amendment as submitted because the intended changes to add aquaculture as a conditional use in areas zoned as Heavy Industrial and Harbor District should be reflected in the certified IP. Therefore, as submitted, the amendment does not specify the correct changes to the

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IP. To clarify how the IP would be amended, the Commission adds Suggested Modification No. 7.

Suggested Modification No. 7 would delete the proposed changes to the LCP Manual from the IP amendment submittal.

## **SUGGESTED MODIFICATION NO. 7:**

Delete proposed changes to LCP Manual.

~~Amendment to the LCP Manual, Chapter XVII, Subsection F, Zoning Classifications, Section 12. HD Harbor District: under subparagraph e. Secondary Uses, adding aquaculture as a conditional use. Section 12. IH Heavy Industrial: under subparagraph e. Secondary Uses, adding aquaculture as a conditional use.~~

### **3. Consistency with LUP Land Use Designations.**

The proposed amendment would add aquaculture as a conditional use in the Heavy Industrial District and Harbor District as well as add as a conditional use in the Heavy Industrial District of the coastal zone any use similar to other approved uses as specified in the Fort Bragg Municipal Code (FBMC) as long as the Planning Commission finds the new use would conform with the purpose and intent of the Heavy Industrial District and be compatible and appropriate to the district.

The proposed Implementation Program (IP) amendment to add aquaculture as a conditional use in the Heavy Industrial District and Harbor District zoning districts conforms with the Land Use Classifications in the LUP as proposed to be amended and as modified. The land areas classified by the certified LUP as Heavy Industrial District and Harbor District match those land areas zoned as Heavy Industrial District and Harbor District in the certified zoning ordinance. As amended by LUP Amendment No. FTB-MAJ-1-02 and as modified to incorporate the changes included in Suggested Modification No. 2, the LUP would allow for aquaculture as secondary, or conditional uses, in the certified areas of the coastal zone classified as Heavy Industrial District and Harbor District. Therefore, these proposed changes to the IP to add aquaculture as conditional uses in the two districts conform with and adequately carry out the corresponding land use classifications of the LUP as amended.

The proposed amendment to the IP to allow as a conditional use in the Heavy Industrial District portion of the coastal zone any use similar to other approved uses as specified in the FBMC as long as the Planning Commission finds the use would conform with the purpose and intent of the Heavy Industrial District and be compatible and appropriate to the district is not consistent with the certified LUP as amended. The land use types included as secondary or conditional uses within the Heavy Industrial District land use classification of the LUP as proposed to be amended are as follows:

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Secondary Uses. Those are: specified uses with outdoor operations; industrial support commercial, sand gravel and rock yards; concrete and asphalt products; *aquaculture*, and similar uses found appropriate by the Planning Commission and as listed in the City's zoning provisions.

The use listed in this section of the LUP that most closely matches the proposed conditional use to be added to the Heavy Industry zoning district is found in the last phrase, "similar uses found appropriate by the Planning Commission and as listed in the City's zoning provisions." To be allowable under this provision, a use must be "listed in the City's zoning provisions." The applicable list in the zoning code is the list of specific use types designated as UP in the coastal zone column of the previously described land use chart found in Code Section 18.34.020 IH-Heavy Industrial. The listed uses include (1) animal hospitals, (2) kennels, (3) industrial support facilities, (4) lumber mills, (5) the manufacture of concrete, ceramic or asphaltic paving products, including batch plants, and with the amendment proposed by LUP Amendment No. FTB-MAJ-1-02, the list has been expanded to include aquaculture. Because the certified implementation program implements and carries out the certified LUP, listed uses contained in the certified implementation program are more specific in nature and greater in number than the more general land use types classified as secondary uses in the Heavy Industrial land use classification of the LUP. The inclusion in the certified LUP of the land use type "similar uses found appropriate by the Planning Commission and as listed in the City's zoning provisions" was a means of clarifying in the LUP that the zoning ordinance could be written to include use types that did not exactly match the secondary uses listed in the LUP, so long as the conditional uses to be included in the zoning were (a) similar, (b) found appropriate by the Planning Commission, and (c) specifically listed in the zoning ordinance. Adding a conditional use type to the zoning that is even more general than the uses specifically listed in the LUP provision is not consistent with the approach for establishing conditional uses set forth in the language of the LUP provision.

Besides being inconsistent with the language of the LUP provision, the proposed conditional use is problematic in that it affects the Commission's ability to carry out its responsibility under the Coastal Act of ensuring that any land uses established in an LCP for a particular area are consistent with the Chapter 3 policies of the Coastal Act. Without the proposed amendment, any use qualifying under the similar use provision of the LUP would have to be listed in the zoning ordinance which would require an IP amendment that would have to be certified by the Commission before the amendment could become effective within the coastal zone. The proposed conditional land use type would leave decisions about what specific uses may be allowed in the Heavy Industrial District areas located in the coastal zone only to the discretion of the Planning Commission and would remove the ability for the Commission to fulfill its responsibilities under the Coastal Act to review an LCP amendment to allow proposed new uses within the zoning district.

For the reasons discussed above, the IP amendment as submitted does not conform with and adequately carry out the secondary use provisions of the LUP as amended with regard to secondary uses within the coastal zone Heavy Industrial District land use classification. Therefore, the IP amendment as submitted must be denied pursuant to Section 30513 of the



Coastal Act. However, the Commission finds that if modified to delete the provision that would list as a conditional use in the Heavy Industrial District areas located in the coastal zone, any use similar to other approved uses in the district which the planning commission finds to conform with the purpose and intent to this chapter and to be compatible and appropriate to the district in which it is proposed, the IP amendment could be found to conform with and adequately carry out the LUP as amended with regard to secondary uses within the coastal zone Heavy Industrial District land use classification. Therefore, the Commission attaches Suggested Modification No. 8 which would delete that particular use from the IP amendment. The modification would also clarify that aquaculture is excluded from the existing provision of Section 18.34.020 that states agriculture is a principally permitted use in the Heavy Industrial District. This change is needed to establish internal consistency with the portion of the proposed amendment that would add aquaculture as a conditional use in the zone.

**SUGGESTED MODIFICATION NO. 8:**

Modify Chapter 18.34 – I-H - Heavy Industrial Zone, as follows to (1) distinguish aquaculture from other agriculture uses in the listing of principally permitted uses in the coastal zone, and (2) to delete from the proposed amendment “any use similar to those specified above which the Planning Commission finds to conform with the purpose and intent of this Chapter and to be compatible and appropriate to the district in which it is proposed,” as a conditional use, as reflected in the chart contained within Section 18.34.20.

Chapter 18.34 – I-H - Heavy Industrial Zone

Sections:

18.34.010	General purpose and intent.
18.34.020	Uses.
18.34.030	Development standards.

18.34.010 GENERAL PURPOSE & INTENT

The purpose of the Heavy Industrial or I-H Zone is to protect the health, safety and general welfare of the public by providing an industrial district or districts for the location of heavy industrial uses which are generally large in scale, require large outdoor storage areas, or open operations as discussed in the General Plan. It may also provide for the location of uses which the City Council finds to be incompatible with other zones and related uses.

It is the intent of this section to provide for the location of uses which may be large in scale as to size and generally heavy in their intensity of use, or whose character is found to be out of keeping with uses in or the character of other zones and districts. It also provides less stringent development standards compatible to such uses, but provides



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regulations as are needed to control nuisances and protect surrounding non-industrial uses and highly used public rights-of-way or areas.

The regulations in this chapter and the provisions of Chapters 18.71 and 18.72 shall apply in all Heavy Industrial, or I-H, zones.

**18.34.020      USES**

Permitted uses allowed in the Heavy Industrial Zone are listed in the table hereunder. Principal permitted uses are designated by a "P" (permitted) and conditional uses are designated by "UP" (use permit). Separate headings are provided for the Heavy Industrial Use District in general and that part of the District which is located in the coastal zone and therefore subject to the provisions of the Local Coastal Program.

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Land Uses	I-H	I-H - CZ
All principal permitted uses in the I-L zone	P	P
Manufacturing, General – indoor operations, except as noted requiring use permits	P	P
Fabrication, General – indoor operation	P	P
Construction, farming and logging equipment sales and service, including rental	P	P
Repair, Equipment	P	P
Lumber yards for retail sales, not including mills	P	P
Agricultural ( <i>excluding aquaculture</i> ) and forest products processing, inside operation only	P	P
Storage operations	P	P
Distribution industries, including wholesaling	P	P
Research and development laboratories	P	P
Any above building enclosed permitted use when outdoor storage is desired or required	UP	
Caretaker or watchman living quarters	P	P
Animal hospitals	P	UP
Kennels	P	UP
Industrial support facilities	P	UP
Limited retail sales in conjunction with permitted distribution/wholesale	UP	
Autobody repair and painting	UP	
Animal products processing plants, feed and auction yards	UP	
Feed and fuel yards	UP	
Contractor's and corporation yards	UP	
Amusement parks	UP	
Lumber Mills	UP	UP
Recreational enterprises	UP	
Manufacture of concrete, ceramic or asphaltic paving products, including batch plants	UP	UP
Drilling, quarrying	UP	
Manufacturing, refining and storage by manufacturers or wholesale petroleum, petro. products, acids, cement, gas, glue, gypsum and flammable fluids or gases.	UP	
Dry cleaning and laundry	UP	
Motels, if direct access to a state highway	UP	
Sand gravel and rock yards	UP	
Adult entertainment	UP	
Smelting or reduction of metallic ores	UP	
<u>Aquaculture</u>		<u>UP</u>
Any use similar to those specified above which the Planning Commission finds to conform with the purpose and intent of this Chapter and to be compatible and appropriate to the district in which it is proposed	UP	<u>UP</u>

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The IP amendment also includes a proposed change in the definition of aquaculture. The proposed change in definition conforms with the definition in the LUP as amended.

The Commission thus finds that the proposed Amendment to the Implementation Plan concerning consistency with LUP Land Use Designations, if modified as suggested, is consistent with and adequate to carry out the policies of the Land Use Plan, as amended.

#### **4. Implementing Substantive Aquaculture Policies of LUP.**

The proposed LUP amendment as modified would add a number of substantive policies establishing requirements that all future aquaculture development or facilities must meet to be granted a coastal development permit. These substantive policies were included in Suggested Modification Nos. 4 and 5, and include policies addressing avoidance of aquaculture development impacts on ESHA, visual resources, public access, recreation, and marine resources and water quality. With regard to marine resources and water quality, proposed Policy No. X-16 would require the implementation of Best Management Practices (BMPs) to ensure that the number and quantity of pollutants discharged from an aquaculture facility will be minimized to the maximum extent feasible. In addition, the policies added by Suggested Modification Nos. 4 and 5 require that aquaculture development only be approved if the availability of adequate water to serve the development or facilities has been demonstrated and that aquaculture development and facilities be sited and designed to minimize risks to life and property from geologic and flood hazards. Furthermore, the policies require that aquaculture facilities to be sited within the Harbor District not interfere with existing recreational boating facilities and existing coastal-dependent industry, including fishing. Moreover the policies prohibit aquaculture development or facilities which are not located onshore and involve the cultivation of aquatic organisms in tanks and further require that all aquaculture development or facilities shall satisfy all other policies and standards of the certified LCP.

To evaluate the conformance of a proposed aquaculture development with the aquaculture policies of the LUP as amended and modified, the City and the Commission on appeal will need to have certain detailed information at the time of filing of a coastal development permit application. For example, to evaluate whether an aquaculture development would be sited and designed to minimize risks to life and property from geologic hazards, the reviewing authority will need a credible geotechnical report prepared by an appropriate professional that addresses how the development can be safely designed to minimize the particular risks affecting the development site, whether the risk is from bluff erosion, liquefaction, slope stability concerns or other hazards. For another example, if there are indications an ESHA may be present, a biological survey would be needed to evaluate whether the development would adversely affect the ESHA. To evaluate whether an aquaculture development would conform with the requirement that Best Management Practices (BMPs) be implemented to ensure that the number and quantity of pollutants discharged from an aquaculture facility will be minimized to the maximum extent feasible, the reviewing authority would need detailed information about the layout of the operation, the materials to be used in the production process, and the production process itself to assess whether appropriate BMPs would be appropriately implemented.

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Therefore, there is a need for suggested modifications in the IP. As amended and modified, the LUP contains policies and standards to be applied to Coastal Development Permits such that development shall be sited and designed to prevent significant adverse impacts to coastal resources. In order to implement those policies and standards of the LUP in relation to aquaculture, certain filing requirements are needed to ascertain necessary information and assure compliance as part of the application process. Therefore, the Commission imposes the following suggested modifications.

As Policy X-16 of the LUP as amended would require the implementation of Best Management Practices (BMPs) to ensure that the number and quantity of pollutants discharged from an aquaculture facility will be minimized to the maximum extent feasible, a Best Management Practices Plan needs to be submitted for each proposed aquaculture development at the time of filing a coastal development permit application and the plan must be reviewed by the permitting authority to ensure the plan will conform with Policy X-16. To ensure consistency with the requirement of LUP Policy X-16 that the number and quantity of discharged pollutants be minimized, the BMP plan would need to include a variety of BMPs including BMPs addressing such practices as minimizing the discharge of unconsumed feed given to the organisms, minimizing discharges to surface waters of blood, viscera, and fish carcasses, cleaning tanks at frequencies that minimize the discharge of accumulated solids, and minimizing the escape of non-native species by installing effluent screens or other devices.

To ensure that the objective of Policy X-16 to minimize discharges from aquaculture development is actually met as the facility is developed, a mechanism for monitoring the effectiveness of the BMP plan in minimizing such discharges must be established. A BMP monitoring and maintenance plan (MMP) required as a condition of approval of coastal development permits for aquaculture facilities would provide such a mechanism. The MMP would provide for the submittal of periodic monitoring reports that would help ensure that the development continues to be carried out in a manner consistent with the approved BMP plan. Because monitoring reports submitted pursuant to the MMP may reveal that discharges of particular pollutants are occurring contrary to the provisions of the approved BMP plan, a mechanism must also be established for implementing corrective measures; otherwise the objective of Policy X-16 to minimize discharges from aquaculture developments would be thwarted. A contingency plan (CP) required as a condition of approval of coastal development permits for aquaculture facilities would provide such a mechanism.

The IP amendment as submitted does not include filing requirements for coastal development permits for aquaculture developments to ensure adequate information will be available to the permitting authority to evaluate the conformance of the proposed development with the substantive aquaculture policies of the LUP as proposed to be amended and as modified. The IP amendment also does not include provisions requiring that a Best Management Practices Plan, BMP Monitoring and Maintenance Plan, and Contingency Plan be required as conditions of approval of permits for aquaculture development. As discussed above, these plans or similar information is essential for ensuring that the number and quantity of pollutants discharged from an aquaculture facility will be minimized to the maximum extent feasible as required by LUP Policy X-16. Therefore, the IP amendment as submitted does not conform with and adequately

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carry out the LUP as amended. Therefore, the IP amendment as submitted must be denied pursuant to Section 30513 of the Coastal Act. However, the Commission finds that if modified to include provisions for permit application filing requirements and submittals of BMP plans, MMP plans, and CPs, the IP amendment could be found to conform with and adequately carry out the LUP as amended. Therefore, the Commission attaches Suggested Modification No. 9 which would establish appropriate permit application filing requirements and submittals of BMP plans, MMP plans, and CPs.

**SUGGESTED MODIFICATION NO. 9:**

Modify Chapter 18.61, CZ-Coastal Zone Combining Code, as follows, to add the following requirements for aquaculture projects concerning conformance with the amended LCP, permit application filing requirements, and requirements for preparation and implementation of Best Management Practices Plans and related Monitoring and Maintenance Plans and Contingency Plans

Chapter 18.61

CZ – COASAL ZONE COMBINING ZONE

18.61.11 Generally

This combining zone classification is intended to be applied to land areas which are in the coastal zone as defined in Chapter 18.07 and as designated by the land use plan of the Local Coastal Program, and on a finding that they meet criteria for such classification and require the particular protection provided by the regulations of this Chapter to preserve their unique resource qualities and public interest therein.

18.61.22 Application of existing zone designations – additional regulations.

In any zone with which the CZ classification is combined, the regulations of the basic zone shall apply subject to the following additional zone regulations.

18.61.23 Public Shoreline Access

...

**18.61.031 *Aquaculture Development or Facilities***

- A. ***Conformance to LCP. In addition to satisfying all other policies and standards of the certified LCP, all aquaculture development or facilities shall be governed by the Aquaculture Policies contained in Chapter 10, Section C and any relevant Special Review Area Procedures contained in Chapter XVII, Section E.***

- B. Application Submittal Requirements.** *Applications for aquaculture development or aquaculture facilities shall conform with the requirements of Section 18.61.062(A) and shall contain the following specific information to enable the reviewing authority to evaluate the conformance of the proposed development or facility with the aquaculture policies and standards of the certified LCP:*
- 1. An area map(s) identifying the location of the development or facility and any proposed intake structure(s) and outfall(s). The map(s) should be based upon an official map of the U.S. Geologic Survey (USGS) with a scale appropriate to the geographic surroundings.*
  - 2. Plans of the development or facility drawn to scale and including (a) a site plan of the development or facility depicting all structures, ponds, raceways, holding tanks, water containing or conveyance structures, work areas, paving, fencing, property lines, (b) a map identifying surrounding uses and delineating existing improvements and property lines, (c) grading and drainage plans, (d) floor plans, (e) building elevations, and (f) landscaping plans.*
  - 3. A general description of the development or facility, indicating the total number of ponds, raceways, holding tanks, and other similar water containing or conveyance structures.*
  - 4. A flow diagram of the development or facility that contains all sub-flows, inputs, and outputs to the facility, with discharge rates expected at different times.*
  - 5. The projected number of operating days for the facility on a monthly basis throughout a calendar year.*
  - 6. A list of species of aquatic animals and plants held and fed, or introduced to the facility. For each species, the application shall specify the total weight produced by the facility per year in pounds of harvestable weight, and the maximum weight present at any one time. The values given should be representative of normal operation.*
  - 7. The total pounds of food fed during the calendar month of maximum feeding, based upon normal operation.*
  - 8. A list of the projected types, maximum daily amounts, and maximum concentration of all drugs, disinfectants, and other chemicals that will be used at the facility that could ultimately be discharged to coastal waters. Material Safety Data Sheets shall be submitted for each such product that could be discharged. The basis of calculations and/or a*

*comparison of the reported concentrations with analytical method detection limits should be included.*

9. *A copy of a complete Best Management Practices (BMPs) Plan conforming to the requirements of Section 18.61.031(C) below. BMPs are schedules of activities, prohibitions of practices, cleaning and maintenance procedures, employee training, treatment methods, etc. that are employed to control discharge of pollutants.*
10. *A copy of a Monitoring and Maintenance Plan (MMP). The MMP shall detail inspection and maintenance activities for structural BMPs and lay out a procedure for periodic evaluations of nonstructural BMPs.*
11. *A description of the number and nature of any outfall(s) from the facility to the receiving water, using a sketch, diagram or photograph to depict the facility, intake(s), outfall(s), and receiving water. The maximum daily, maximum 30-day average, and long-term (greater than six months) average flow (gpd) from each outfall shall be provided.*
12. *An alternatives analysis of whether there are feasible less environmentally damaging alternatives for any proposal to place intake or discharge lines above ground within the Harbor District and the adjoining tidelands and submerged lands of the Noyo River. Alternatives to be evaluated shall include, but not be limited to, placing lines under ground through use of directional drilling or trenching, using closed-loop aquaculture systems that do not require offshore intake and discharge line, connecting discharge lines to the existing sanitary sewer system, and minimizing impacts through alternative locations.*
13. *A visual analysis of whether the aquaculture development or facility would be visually compatible with the character of the surrounding area.*
14. *A survey of biological resources of the development site that includes a narrative description and map of the biological resources, an analysis of the potential impacts of the proposed development on the identified habitat or species, project alternatives designed to avoid and minimize impacts to sensitive resources, and mitigation measures that would minimize or mitigate residual impacts that cannot be avoided through project alternatives.*
15. *All aquaculture development or facilities, including any intake or discharge lines, located in or near an area subject to the geologic or flood hazards, including but not limited to bluff erosion, slope stability, seismic events, liquefaction, tsunamis, floods and wave attacks, shall be*

*required to submit a geologic/soils/geotechnical study report prepared by a Registered Geologist, a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) that identifies any geologic hazards affecting the development site and any necessary mitigation measures. The geologic/soils/geotechnical report shall include a statement by the consultant that the development will be safe from geologic hazards and that the development will in no way contribute to instability on or off the subject site.*

16. *Evidence demonstrating the availability of adequate water and sewer services to serve the aquaculture development or facility.*

**C. *Best Management Practices Plan***

1. *Applicants for aquaculture development or facilities shall develop and implement a Best Management Practices (BMP) Plan that ensures all development will be carried out in a manner that sustains the biological productivity of coastal waters, protects human health and maintains healthy populations of all species of marine organisms. A complete BMP Plan shall be submitted with the permit application. The BMP Plan shall document specific BMPs and their standard operating procedures. An approved BMP Plan shall be fully implemented prior to commencement of any discharges associated with the development.*
2. *At a minimum, structural and/or non-structural BMPs shall be proposed, to the maximum extent feasible, to:*
  - a. *Minimize the reintroduction of solids removed through the treatment of the water supply.*
  - b. *Minimize excess feed entering the aquatic animal production system.*
  - c. *Minimize the discharge of unconsumed food.*
  - d. *Minimize discharge of feeds containing high levels of fine particulates and/or high levels of phosphorus.*
  - e. *Minimize discharges to surface waters of blood, viscera, fish carcasses, or transport water containing blood associated with the transport or harvesting of fish.*
  - f. *Clean raceways, ponds, tanks or settling ponds at frequencies that minimize the disturbance and subsequent discharge of accumulated solids during routine activities, such as harvesting and grading of fish, and ensure adequate retention volume for the settling ponds.*



- g. *Maintain in-system technologies to prevent the overflow of any floating matter and subsequent by-pass of treatment technologies.*
  - h. *Ensure the safe storage of drugs and chemicals to avoid inadvertent spillage or release into the aquatic animal production facility.*
  - i. *Settle, screen, or filter effluent to minimize or eliminate the discharge of waste solids to the greatest extent practicable.*
  - j. *Collect aquatic animal mortalities on a regular basis. Store and dispose of aquatic animal mortalities to prevent discharge to surface waters.*
  - k. *Minimize the potential escape of non-native species by, for example, installing physical barrier such as effluent screens. No animals of a non-native species shall be intentionally released under any circumstances.*
- 3. *The facility staff shall be familiar with the BMP Plan and adequately trained in the specific procedures that the BMP Plan requires.*
- 4. *A copy of the BMP Plan shall be maintained at all times at the aquaculture development or facilities.*

**D. Best Management Practices Monitoring and Maintenance**

- 1. *Applicants for aquaculture facilities shall develop and implement a Monitoring and Maintenance Plan (MMP) that ensures that all development continues to be carried out in a manner that sustains the biological productivity of coastal waters, protects human health, and maintains healthy populations of marine organisms.*
- 2. *A complete MMP shall be submitted to the permitting authority with the permit application. An approved MMP shall be fully implemented within three months of the commencement of development operations.*
- 3. *The MMP shall describe inspection and maintenance activities to be performed for structural BMPs and the associated activity frequencies. Structural BMPs include practices, methods, and measures of a mechanical or biological nature. Major observations to be made during inspections include: (1) locations of discharges from the development; (2) BMPs that are in need of maintenance; (3) BMPs that are not performing, failing to operate, or inadequate; and (4) locations where additional BMPs are needed.*
- 4. *The MMP shall include a procedure for periodic evaluations of structural and nonstructural BMPs needed to achieve compliance with*

*the requirements of the certified LCP. The MMP shall also include written reporting requirements that provide for the submittal of monitoring reports at a frequency acceptable to the permitting authority, but not less frequent than once per year.*

**E. Noncompliance**

- 1. *Applicants for aquaculture facilities shall develop a Contingency Plan (CP) to be immediately enacted should the MMP results show noncompliance with the requirements of the certified LCP. The CP shall include instructions to notify the permit issuing authority, determine the source of the noncompliance, eliminate the source, and monitor the discharge to verify that the noncompliance has been eliminated. Such instructions shall be consistent with subsection 3 below. Key operating and site management personnel shall be familiar with the contents of the CP.***
- 2. *A complete CP shall be submitted to the permitting authority for approval prior to issuance of the CDP.***
- 3. *Where corrective CP measures would not constitute development under Section 30106 of the Coastal Act, the permittee shall implement such corrective CP measures consistent with the requirements of the CP immediately following discovery of noncompliance with the approved permit or the certified LCP requirements. Where corrective CP measures would constitute development under Section 30106 of the Coastal Act, implementation of such corrective measures shall require an amendment to the original coastal development permit.***

**F. Permit Amendment**

**Coastal development permits for aquaculture development or facilities shall be conditioned to require a permit amendment whenever there is a proposed change in the facility or the operation of the facility, including changes in the nature of the discharges from the facility.**

**5. Conclusion**

The IP amendment as submitted would conform with and be adequate to carry out the provisions of the City's LUP as modified to add aquaculture as a secondary use in the Heavy Industrial and Harbor Districts. However, in other respects, the IP amendment as submitted would not conform with or be adequate to carry out the LUP as modified. The IP amendment includes changes to the City's LCP Manual, which is not actually part of the certified LCP. In addition, a proposed new provision for the Heavy Industrial District areas of the coastal zone that would allow any use determined by the Planning

**FORT BRAGG LCP AMENDMENT (AQUACULTURE)**

**NO. FTB-MAJ-1-02**

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Commission to be similar to other uses in the district to be allowed as conditional uses does not conform to and implement the land use types listed in the LUP as secondary uses in the Heavy Industrial District land use classification. Furthermore, the IP amendment also does not include provisions requiring that certain information be submitted at the time of filing of coastal development permit applications for aquaculture developments to enable the permitting authority to evaluate the development's consistency with substantive aquaculture policies included in the LUP as amended. Moreover, the IP amendment does not include provisions requiring that a BMP Plan, MMP Plan, and CP be required as conditions of approval of permits for aquaculture development. These plans and similar information are essential for ensuring that the number and quantity of pollutants discharged from an aquaculture facility will be minimized to the maximum extent feasible as required by LUP Policy X-16. However, if modified with Suggested Modifications 7, 8, and 9 to delete the changes to the LCP Manual, delete the proposed conditional use for the Heavy Industrial District that does not implement and conform to a corresponding secondary use in the LUP, and add permit application filing requirements and requirements for applicants for aquaculture development to submit BMP Plans, MMP Plans, and CPs, the IP as modified would conform with and be adequate to carry out the requirements of the LUP as amended.

Therefore, consistent with Section 30513 of the Coastal Act, the Commission finds that the City's Implementation Program, as modified, conforms with and is adequate to carry out the requirements of the certified Land Use Plan as amended

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**PART FIVE: CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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 Section 21080.5 of the Public Resources Code. Section 21080.5(d)(2)(A) of the Public Resources Code 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.*

As discussed in the findings above, the amendment request with the incorporation of the suggested modifications is consistent with the California Coastal Act. Further, future aquaculture development would require coastal development permits further assessing the specific impacts of individual development projects. There are no other feasible alternatives or mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment. The Commission finds that approval of the LCP Amendment with the incorporation of the suggested modifications will not result in

significant environmental effects within the meaning of the California Environmental Quality Act.

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**ATTACHMENT 1: LCP AMENDMENT AS SUBMITTED**

**EXHIBITS:**

1. Regional Location Map
2. Zoning Districts
3. City Resolution

# ATTACHMENT 1

## Fort Bragg LCP Amendment No. FTB-MAJ-1-02 (Aquaculture)

### Proposed Changes to LCP Policies and Standards (As submitted by the City of Fort Bragg)

Existing text is shown in plain type. Proposed new text is shown in underline. Proposed deletions are indicated by ~~strikethroughs~~

#### I. Proposed Changes to City of Fort Bragg Local Coastal Program Manual

LCP 1-01: Amendment to the LCP Manual, Chapter XVII, Subsection D, Land Use Classifications, Section 10. HD-Harbor District: under subparagraph c: Secondary Uses; adding aquaculture as a conditional use. Section 12. IH-Heavy Industrial: under subparagraph c. Secondary Uses, adding aquaculture as a conditional use.

Amendment to the LCP Manual, Chapter XVII, Subsection F, Zoning Classifications, Section 12. HD-Harbor District: under subparagraph c. Secondary Uses, adding aquaculture as a conditional use. Section 12. IH-Heavy Industrial: under subparagraph c. Secondary Uses, adding aquaculture as a conditional use.

#### II. Proposed Changes to Certified Fort Bragg Municipal Code Zoning Code

##### Chapter 18.07 – Coastal Zone Definitions

18.07.060 ~~The culture and husbandry of aquatic organisms, including but not limited to fish, shellfish, mollusks, crustaceans, kelp and algae. Aquaculture shall not mean the culture and husbandry of commercially utilized inland crops, including but not limited to rice, watercress, and bean sprouts.~~

18.07.060 “Aquaculture” means a form of agriculture that is devoted to the culture and husbandry of aquatic organisms, including but not limited to finfish, shellfish, mollusks, crustaceans, kelp and algae. This definition is further limited to only include facilities which are onshore and which involve the cultivation of aquatic organisms in tanks.

##### Chapter 18.34 – I-H - Heavy Industrial Zone

Sections:

**FORT BRAGG LCP AMENDMENT (AQUACULTURE)**

**NO. FTB-MAJ-1-02**

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- 18.34.010      General purpose and intent.
- 18.34.020      Uses.
- 18.34.030      Development standards.

**18.34.010      GENERAL PURPOSE & INTENT**

The purpose of the Heavy Industrial or I-H Zone is to protect the health, safety and general welfare of the public by providing an industrial district or districts for the location of heavy industrial uses which are generally large in scale, require large outdoor storage areas, or open operations as discussed in the General Plan. It may also provide for the location of uses which the City Council finds to be incompatible with other zones and related uses.

It is the intent of this section to provide for the location of uses which may be large in scale as to size and generally heavy in their intensity of use, or whose character is found to be out of keeping with uses in or the character of other zones and districts. It also provides less stringent development standards compatible to such uses, but provides regulations as are needed to control nuisances and protect surrounding non-industrial uses and highly used public rights-of-way or areas.

The regulations in this chapter and the provisions of Chapters 18.71 and 18.72 shall apply in all Heavy Industrial, or I-H, zones.

**18.34.020      USES**

Permitted uses allowed in the Heavy Industrial Zone are listed in the table hereunder. Principal permitted uses are designated by a "P" (permitted) and conditional uses are designated by "UP" (use permit). Separate headings are provided for the Heavy Industrial Use District in general and that part of the District which is located in the coastal zone and therefore subject to the provisions of the Local Coastal Program.

**FORT BRAGG LCP AMENDMENT (AQUACULTURE)**

**NO. FTB-MAJ-1-02**

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Land Uses	I-H	I-H – CZ
All principal permitted uses in the I-L zone	P	P
Manufacturing, General – indoor operations, except as noted requiring use permits	P	P
Fabrication, General – indoor operation	P	P
Construction, farming and logging equipment sales and service, including rental	P	P
Repair, Equipment	P	P
Lumber yards for retail sales, not including mills	P	P
Agricultural and forest products processing, inside operation only	P	P
Storage operations	P	P
Distribution industries, including wholesaling	P	P
Research and development laboratories	P	P
Any above building enclosed permitted use when outdoor storage is desired or required	UP	
Caretaker or watchman living quarters	P	P
Animal hospitals	P	UP
Kennels	P	UP
Industrial support facilities	P	UP
Limited retail sales in conjunction with permitted distribution/wholesale	UP	
Autobody repair and painting	UP	
Animal products processing plants, feed and auction yards	UP	
Feed and fuel yards	UP	
Contractor's and corporation yards	UP	
Amusement parks	UP	
Lumber Mills	UP	UP
Recreational enterprises	UP	
Manufacture of concrete, ceramic or asphaltic paving products, including batch plants	UP	UP
Drilling, quarrying	UP	
Manufacturing, refining and storage by manufacturers or wholesale petroleum, petro. products, acids, cement, gas, glue, gypsum and flammable fluids or gases.	UP	
Dry cleaning and laundry	UP	
Motels, if direct access to a state highway	UP	
Sand gravel and rock yards	UP	
Adult entertainment	UP	
Smelting or reduction of metallic ores	UP	
Aquaculture		UP
Any use similar to those specified above which the Planning Commission finds to conform with the purpose and intent of this Chapter and to be compatible and appropriate to the district in which it is proposed	UP	UP

**HD—Harbor District**

- 18.36.010 General purpose and intent
- 18.36.020 Principal permitted uses
- 18.36.030 Conditional uses requiring use permits
- 18.36.040 Development standards

**18.36.010 General purpose and intent.**

The purpose of this zone is to provide a district in which a mix of commercial and industrial activities can occur in the Noyo River Basin. The intent of this zone is to provide for the continuation of a mix of activities which support the Basin's functioning as a commercial fishing village and to protect and reserve parcels on, or adjacent to, the sea for coastal-dependent and coastal-related uses which require such siting in order to function at all. Support commercial allowed in this zone is intended to be subordinate to the marine commercial and industrial uses, not to preempt them. The regulations in this chapter and provisions of Chapter 13.61 shall apply in all HD zones.

**18.36.020 Principal permitted uses.**

- A. Commercial fishing facilities
- B. Fish processing plants
- C. Ship building and boat repair
- D. Public docks and non-public docks
- E. Marine services

**18.35.030 Conditional uses requiring use permits**

- A. Cold storage facilities and ice plants/houses
- B. Fishing piers
- C. Boat Launching facilities
- D. Marine hardware and supplies



**FORT BRAGG LCP AMENDMENT (AQUACULTURE)**

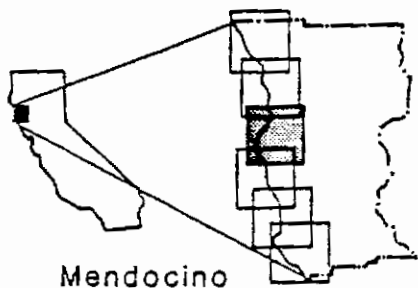
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- E. Offices which support coastal-dependent uses
- F. Small grocery stores
- G. Restaurants and bars
- H. Quasi-public uses
- I. Subsidiary uses to any permitted use, such as wholesale and retail fish markets, boat and ship sales, residential uses related to coastal dependent uses, and other coastal related commercial activities.
- J. For parcels or portions thereof which are physically separated from the basin area and/or over 25 feet above mean high tide, the following uses shall be allowed thru the use permit procedure:
  - 1. Lodging
- K. Aquaculture

...

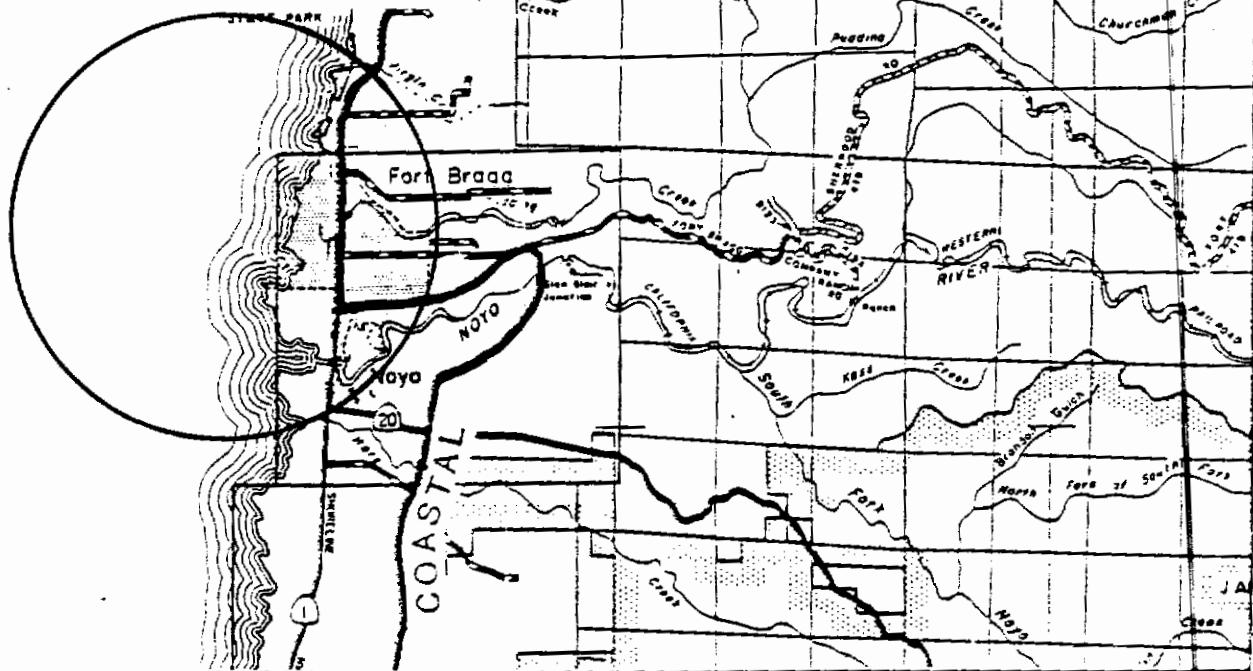
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**EXHIBIT NO. 1**

**APPLICATION NO.**  
FTB-MAJ-1-02  
**CITY OF FORT BRAGG**  
**LCP AMENDMENT**  
**REGIONAL LOCATION**  
**MAP**

**Amendment Location**





3. The certified Local Coastal Program and the General Plan of the City of Fort Bragg are amended to incorporate those changes identified in Exhibits "A" and "B", copies of which are attached.

The above and foregoing Resolution was introduced by Councilmember Peters, seconded by Councilmember Gjerde, and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 25<sup>th</sup> day of February, 2002, the following vote:

AYES: Councilmembers Gjerde, Peters, and Mayor Pro Tempore White.  
NOES: None.  
ABSENT: None.  
ABSTAIN: Councilmember Benedetti and Mayor Melo.

ATTEST:

Michele White  
MICHELE WHITE, Mayor Pro Tempore

Cynthia M. VanWormer  
Cynthia M. VanWormer,  
City Clerk

The foregoing instrument is a correct copy of the original on file at City Hall, Fort Bragg, Calif.

ATTEST Cynthia VanWormer  
CITY CLERK

**EXHIBIT A**  
**LOCAL COASTAL PROGRAM AMENDMENTS (LCPA 1-01; ZON 1-01)**

**GPA 1-01:** Fort Bragg General Plan, Land Use Element, Section A is amended as follows:

**Harbor District.** This land use classification is characterized by the unique mix of commercial and industrial activities occurring in the Noyo Harbor Basin. This plan recommends the continuation of that mix of activities in support of its functioning as a commercial fishing village. Thus, uses should include fish processing, boat sales, construction and service, boat chartering, restaurants, gift shops, marine hardware, and retail fish sales. Aquaculture facilities may be established with a use permit.

**Heavy Industrial District.** The Heavy Industrial classification is currently limited to the Georgia-Pacific lumber mill and certain adjacent properties as well as properties in the vicinity of the Baxman gravel operation. A continuation of the heavy industrial activity currently underway on those sites is foreseen. Aquaculture facilities may be established with a use permit in the coastal zone.

**LCP 1-01:** The Local Coastal Program Manual, Chapter XVII, Subsection D, Land Use Classifications is amended as follows:

Section 10. HD-Harbor District: under subparagraph c. Secondary Uses, add aquaculture.

Section 12. IH- Heavy Industrial: under subparagraph c. Secondary Uses, add aquaculture in the coastal zone.

The Local Coastal Program Manual, Chapter XVII, Subsection F, Zoning Classifications is amended as follows:

Section 12. HD-Harbor District: under subparagraph c. Secondary Uses, add aquaculture.

Section 13. IH- Heavy Industrial. Under subparagraph c. Secondary Uses, add aquaculture in the coastal zone.

**ZON 1-01 and Ordinance 833-2001:** The Fort Bragg Municipal Code §18.07.060 is revised to change the definition of aquaculture, to read:

"Aquaculture" means a form of agriculture that is devoted to the culture and husbandry of aquatic organisms, including but not limited to finfish, shellfish, mollusks, crustaceans, kelp and algae. This definition is further limited to only include facilities which are onshore and which involve the cultivation of aquatic organisms in tanks.

Fort Bragg Municipal Code §18.34.020 "Heavy Industrial" is revised to add aquaculture as a conditional use in the coastal zone and to allow Any use which the Planning

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Commission finds to conform with the purpose and intent of this chapter and to be compatible and appropriate to the district in which it is proposed with a use permit.

Fort Bragg Municipal Code §18.36.020 "Harbor District" is revised to add aquaculture as a conditional use.

The amendments to Fort Bragg Municipal Code Section 18.07.060, 18.34.020 and 18.36.020 are shown in Exhibit "B" (Ordinance 833-2001)

## BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

An Ordinance Amending Fort Bragg  
Municipal Code Chapter 18.07 COASTAL  
ZONE DEFINITIONS, Chapter 18.34 I-H  
HEAVY INDUSTRIAL ZONE, and Chapter  
18.36 HD HARBOR DISTRICT

ORDINANCE NO. 833-2001

THE CITY COUNCIL OF THE CITY OF FORT BRAGG DOES HEREBY ORDAIN AS  
FOLLOWS:

**Section 1.** Sections 2 and 3 of Ordinance 812-99 are hereby repealed in their entirety.

**Section 2.** Fort Bragg Municipal Code Chapter 18.07 COASTAL ZONE DEFINITIONS, Section 18.07.060, *Aquaculture*, is hereby repealed in its entirety and amended to read as follows:

**"18.07.060 Aquaculture.**

"Aquaculture" means a form of agriculture that is devoted to the culture and husbandry of aquatic organisms, including but not limited to finfish, shellfish, mollusks, crustaceans, kelp and algae. This definition is further limited to only include facilities which are onshore and which involve the cultivation of aquatic organisms in tanks.

Except as amended, Chapter 18.07 is hereby reaffirmed.

**Section 3.** Fort Bragg Municipal Code Chapter 18.34 I-H HEAVY INDUSTRIAL ZONE, Section 18.34.020 *Uses* is hereby amended, in part, as follows:

Land Uses	I-H	I-H-CZ
...		
<u>Aquaculture</u>		<u>UP</u>
...		
Any use similar to those specified above which the planning commission finds to conform with the purpose and intent of this chapter and to be compatible and appropriate to the district in which it is proposed	UP	<u>UP ...</u>

Except as amended, Chapter 18.34 is hereby reaffirmed.

**Section 4.** Section 7 (in part) of Ordinance 817-99 is repealed and Fort Bragg Municipal Code Chapter 18.36 HD HARBOR DISTRICT, is amended as follows:

Section 18.36.020 *Principal Permitted Uses*, is amended to delete the following:

(F.) Aquaculture.

Section 18.36.030 *Conditional uses requiring use permits*, is amended to add the following:

(K.) Aquaculture.

Except as amended, Chapter 18.36 is hereby reaffirmed.

**Section 5. Publication.** Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause it to be published at least once in a newspaper of general circulation published and circulated in the City.

The foregoing Ordinance was introduced by Councilmember Peters, at a regular meeting of the City Council of the City of Fort Bragg held on February 11, 2002, and adopted at a regular

meeting of the City Council held on February 25, 2002, by the following vote:

AYES: Councilmembers Gjerde, Peters, and Mayor Pro Tempore White.  
NOES: None.  
ABSENT: None.  
ABSTAIN: Councilmember Benedetti and Mayor Melo.

Michele White  
MICHELE WHITE, Mayor Pro Tempore

ATTEST:

Cynthia M. VanWormer  
Cynthia M. VanWormer  
City Clerk

PUBLISH: February 28, 2002.  
EFFECTIVE: This Ordinance will not become effective until certified by the California Coastal Commission.