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# F 7b

TO: Commissioners and Interested Parties

DATE: December 21, 2007

FROM: Peter Douglas, Executive Director  
Bob Merrill, North Coast District Manager  
Tiffany S. Tauber, Coastal Planner

SUBJECT: **City of Fort Bragg LCP Amendment No. FTB-MAJ-1-06 (LCP Update)  
(Meeting of January 11, 2008)**

**[Click here to go to the staff report addendum.](#)**

### **SYNOPSIS:**

The proposed LCP Amendment was submitted on May 18, 2006 and filed on October 31, 2006. A one-year time extension was granted by the Commission on January 12, 2007. As such, the last date for Commission action on this item is January 29, 2008.

Fort Bragg City staff requested that the Commission open the hearing at the December 14, 2007 meeting and then continue the matter to the January meeting to allow more time for City review of the staff report and suggested modifications and for discussion with Commission staff. At the December 14, 2007 meeting, the Commission opened the hearing and then continued the matter to the January 11, 2008 meeting.

### **STAFF NOTES:**

#### **1. Exhibits to the Staff Report**

Exhibit No. 1 and Exhibit No. 2 of the staff report are key components of the staff recommendation, as all of the recommended suggested modifications are shown merged into the text of the City's proposed General Plan (Exhibit No. 1), and the City's proposed Land Use and Development Code (Exhibit No. 2). The full text versions of the City's proposed LCP Amendment, with suggested modifications, show how the suggested modifications fit into the context of the City's proposed LCP documents. Due to the size of Exhibit No. 1 and Exhibit No.

2, all exhibits are contained electronically on a disc to reduce paper consumption and reproduction costs. The disc has been mailed to some recipients with a hard copy of the staff report. The exhibits are also available for review on-line at the Commission's website by following the links under "Exhibits" on page 15 of the on-line version of the staff report. Commission staff will also provide several hard copies of the exhibits at the January 11, 2008 meeting.

**2. Changes to the Staff Recommendation and Suggested Modifications since the December 14, 2007 Commission Meeting**

This revised staff report contains changes and additions made to the findings and to the suggested modifications contained in Exhibit Nos. 1 and 2 since the original staff report was mailed on November 30, 2007 and includes (1) all of the changes included in the Addendum prepared for the December 14, 2007 Commission meeting, (2) additional changes resulting from further discussions between Commission staff and City staff since the December 14, 2007 Commission meeting, and (3) findings for the IP portion of the LCP amendment that were not included in the original staff report. These changes are further specified below:

The following changes that were detailed in the addendum prepared for the December 14, 2007 Commission meeting have been merged into the findings and/or exhibits contained in this staff report:

- Minor additions, clarifications, and/or corrections to the recommended suggested modifications to the LUP and IP to address concerns raised by the City;
- Addition of three new suggested modifications regarding resolution of the appropriate land use designation and zoning for an area along the Noyo River known as the Noyo River Flats that was set aside as an Area of Deferred Certification when the original LCP was certified (see Suggested Modification No. 13(f) and 25(d));
- Changes and additions to the LUP findings regarding the Public Facilities Element and the Housing Element to further support certain recommended suggested modifications;
- Addition of new LUP findings regarding the Circulation Element that were not included in the staff report mailed on November 30, 2007; and
- Inclusion of Chapter 18.58 regarding Wetland Protection and Restoration and the suggested modifications to this Chapter that were inadvertently excluded from Exhibit No. 2 of the staff report mailed on November 30, 2007.

Since the Commission's December 14, 2007 meeting, staff has had several additional meetings with City representatives to discuss the suggested modifications contained in the staff recommendation. As a result of those further discussions, staff is making additional clarifications, and/or corrections to the recommended suggested modifications to the LUP and IP to address concerns raised by the City. Changes of particular note involve:

- Deleting additional Programs from the LUP that the City has indicated have already been completed including: Programs CD-1.1.4, CD-1.1.5, CD-1.2.1, CD-1.3.1, CD-1.3.2, CD-

- 1.3.3, CD-1.4.1, CD-1.7.1, CD-1.8.1, CD-2.3.3, CD-5.2.1, CD-6.2.3, OS-11.4.1, OS-11.5.1, OS-13.1.7, H-3.1, H-3.10 and H-3.10.1;
- Revising suggested modification language of Policy LU-5.1 and corresponding provisions in the IP regarding Specific Plans to clarify that only the portions of a Specific Plan that meet the definition of “Land Use Plan” and “Implementing actions” as defined by the Coastal Act are required to be submitted to, and effectively certified by, the Coastal Commission as an LCP amendment before those portions of a Specific Plan become effective;
  - Consolidating the bullet list in Policy OS-ESHA-A describing types of ESHA to eliminate misleading language that includes only partial definitions of what constitutes ESHA;
  - Adding additional language to Policy OS-ESHA-B to clarify the purpose of LUP Map LC-2;
  - Replacing Section 18.71.040(C)(7) of the IP regarding criteria for the exclusion of temporary events from permit requirements with the criteria that conform to the Commission’s temporary events guidelines;
  - Adding a new Chapter 18.95 to the IP as requested by the City that includes provisions for amendments to portions of the General Plan and Development Code that are not part of the certified LCP;
  - Adding Tables 1-3 to Article 6 of the IP regarding the selection of Best Management Practices that were inadvertently excluded from Exhibit No. 2 of the staff report mailed on November 30, 2007;
  - Adding Coastal Act definitions of the following terms to the Glossary: Land use plan, Implementing actions, and Cumulatively or cumulative effect;
  - Adding definitions to the Glossary pertaining to inclusionary housing as requested by the City including the following terms: Green Building Project, Inclusionary Unit or Inclusionary Dwelling Unit, Low-income household, Median-income household, Moderate-income household, and Small secondary unit;
  - Replacing the definition of “passive recreation” in the Glossary and Chapter 18.56 (Public Access) with the City’s requested definition; and
  - Revisions to the Zoning Map to accurately reflect (1) the City’s waste water treatment facility designation as Public Facilities and Services (PF), (2) the size of Noyo Harbor Park, and (3) the RH zoning designation for four parcels located along North Harbor Drive that are incorrectly shown as RL on the zoning map.

Lastly, this staff report adds findings for the IP portion of the LCP amendment that were not included in the original staff report mailed on November 30, 2007. The IP findings are contained in Section IX.(B) of this report and include, in particular, findings supporting recommended suggested modifications regarding an approximately 13-acre area known as the Noyo River Flats that was set aside as an Area of Deferred Certification when the original LCP was certified.

Staff further notes that the policy charts included as Exhibit Nos. 3-12 have not been updated to reflect changes to suggested modifications made since the original staff report was mailed on November 30, 2007. However, the charts are included again as Exhibit Nos. 3-12 to this staff

report, as they continue to serve as a guide for reviewing how the majority of the proposed policies, as proposed and modified, compare to the City's existing certified LCP language.

### **3. Areas of Known Controversy**

The majority of the concerns expressed by the City to date about particular suggested modifications have been resolved by making revisions, additions, and/or corrections to the suggested modifications described above. However, there are two remaining areas of known controversy at this time regarding (i) requiring the reservation of adequate services to serve existing and projected priority uses that would increase density, and (ii) mitigating the loss of low cost visitor serving facilities. Commission staff will continue to work with City staff to resolve these issues to the extent possible prior to the continued January hearing on the LCP amendment. These issues are described in further detail in (i) and (ii) below:

#### **i. Adequate Services for Priority Uses**

The suggested modifications recommended by staff include the addition of Policy PF-B to the City's proposed LUP that requires certain development, including land divisions, and other conditional uses to demonstrate that the development would not adversely impact the provision of services for priority uses including coastal dependent industrial and visitor serving, recreational uses. Preserving, protecting, and enhancing priority uses in the coastal zone, such as coastal-dependent land uses, visitor serving facilities, commercial fishing, and recreational boating are required by Sections 30250, 30254, 30220, 30221, 30222, and 30224, and 30234 of the Coastal Act.

As described in the narrative text of the City's proposed Public Facilities Element, the City anticipates making certain future improvements to its water supply and sewer treatment infrastructure to ensure that there will be adequate services to serve existing and future development. As proposed, the LCP amendment does not involve land use changes in the coastal zone that would significantly increase demand on the City's services. Nevertheless, because the City's current water and wastewater treatment facilities face certain capacity limitations, Commission staff believes it is necessary to include a mechanism to ensure that services needed to serve priority uses, such as visitor-serving facilities, commercial fishing, and recreational boating, would not be precluded by other types of non-priority development consistent with the requirements of Coastal Act Section 30254.

Policy PF-B recommended by staff prohibits certain development that is not principally permitted under the LCP as amended unless it is demonstrated, in applicable part, that adequate service capacity would be retained to accommodate existing and projected future coastal dependent industrial (including commercial fishing facilities), visitor serving, and recreational priority uses in commercial, industrial, parks and recreation, and public facilities districts. These non-principally permitted uses include, but are not limited to, land divisions and various residential use types. As initially recommended by staff, Policy PF-B stated as follows:

**Policy PF-B: Certain development, including but not limited to (i) land divisions, including lot line adjustments, mergers and issuance of conditional certificates of compliance, (ii) multi-family dwellings allowed by use permit in residential and commercial districts, (iii) mobile home parks allowed by use permit in residential districts, (iv.) residential care facilities allowed by use permit in residential, commercial, and public facilities districts, (v) organizational houses (sorority, monastery, etc.) allowed by use permit in residential districts, and (vi) rooming or boarding uses allowed by use permits in residential districts are prohibited unless it is demonstrated that (a) adequate services exists to serve the proposed parcels and building sites consistent with the requirements of Policies PF-1.1 and PF-A above, and (b) adequate service capacity would be retained to accommodate existing and projected future coastal dependent industrial (including commercial fishing facilities), visitor serving, and recreational priority uses in commercial, industrial, parks and recreation, and public facilities districts. Prior to approval of a coastal development permit, the Planning Commission or City Council shall make the finding that these criteria have been met. Such findings shall be based on evidence that adequate service capacity remains to accommodate the existing and projected priority uses identified above. Lack of adequate services to serve the proposed development and existing and projected future priority uses shall be grounds for denial of the development.**

The City has expressed objection to Policy PF-B, in part, on the basis that it is not clear how the policy would be implemented. The City has stated that while it may be possible to apply the policy to *existing* priority uses, it would be difficult to identify *projected* future priority uses and assess and reserve an adequate level of services for such future uses as required by the policy.

This issue is still under review by Commission and City staff and has not been fully resolved at this time. However, to address this issue in part, Commission staff is recommending further changes to Policy PF-B to replace the phrase “*existing and projected*” with the phrase “*past, present, and probable future*” consistent with use of this phrase as it applies to cumulative impact analysis provisions under CEQA and the Coastal Act definition of “cumulative effect.”

Additionally, to further resolve this issue, the suggested modifications to Policy PF-2.2 and PF-2.5 have been revised to require that at such time as the City expands its water supply or wastewater treatment infrastructure capacity, the City must reserve adequate service capacity to accommodate existing and projected future priority uses. The revisions to the suggested modifications recommended by staff are as follows:

Policy PF-2.5 Wastewater: Review wastewater capacity and expansion plans as needed when regulations change and as the treatment and disposal facility nears capacity. Any expansion of capacity of wastewater facilities shall be prohibited unless such upgrades are designed to serve a level of development which does not exceed the level of development allowed by the certified LCP,

and where found to be consistent with all other policies of the LCP and General Plan. Any proposed wastewater capacity, expansions, or change in service area shall be sized and designed to reserve adequate service capacity to accommodate existing and projected future coastal dependent industrial (including commercial fishing facilities), visitor serving, and recreational priority uses in commercial, industrial, parks and recreation, and public facilities districts.

Policy PF-2.2 Potable Water Capacity: Develop long-term solutions regarding the supply, storage, and distribution of potable water and develop additional supplies only where such water facilities and supplies are designed to serve a capacity of development which does not exceed the amount of development allowed by the certified LCP, and where found to be consistent with all other policies of the LCP and General Plan. Any proposed water supply system capacity, expansions, or changes in service area shall be sized and designed to reserve adequate service capacity to accommodate existing and projected future coastal dependent industrial (including commercial fishing facilities), visitor serving, and recreational priority uses in commercial, industrial, parks and recreation, and public facilities districts.

Implementation of these policies as modified, would involve conducting an inventory of existing priority uses and vacant lands planned and zoned for priority uses in the City at the time such service infrastructure improvements are proposed. The inventory data would be used to calculate the amount of services necessary to adequately serve the existing and projected future uses and the infrastructure improvements would be required to be sized and designed accordingly, thus ensuring that there is a mechanism in place in the City's amended LCP to preserve, protect, and enhance priority uses consistent with the requirements of Sections 30250, 30254, 30220, 30221, 30222, and 30224, and 30234 of the Coastal Act.

ii. Protection of Lower Cost Visitor Serving Facilities

The second area of known controversy is in regard to the protection of lower cost visitor serving and recreational facilities. The City includes Policy LC-2.2 in its amended LUP, which incorporates the provisions of Coastal Act Section 30213 requiring that lower-cost visitor and recreational facilities be protected, encouraged, and provided where feasible. Staff is recommending a suggested modification to the City's proposed Policy LC-2.2 that would further require that any removal or conversion of existing lower cost opportunities be prohibited unless the use would be replaced with another lower cost opportunity offering comparable visitor serving or recreational opportunities. The suggested modification is found on page 5-25 of the Conservation, Open Space, & Parks Element of the LUP included as Exhibit No. 1 and states as follows:

Policy LC-2.2 Lower Cost Facilities: Protect, encourage, and, where feasible, provide lower-cost visitor and recreational facilities for persons and families of

low and moderate income. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

The City has expressed opposition to this suggested modification based on the fact that the vast majority of the existing visitor serving uses located in Fort Bragg are lower cost facilities, including inexpensive hotels and campgrounds. The City anticipates that the future development of the Georgia Pacific mill site will introduce some new visitor serving facilities that may eventually out compete some of the abundant low cost overnight facilities. The City is concerned that this policy, as suggested to be modified, would preclude the opportunity to convert excess low-cost facilities with less future demand to higher cost facilities, or to residential uses, such as senior housing, that would better serve the City's needs.

Staff acknowledges that in contrast to most other parts of the coast, the City of Fort Bragg already has an abundant supply of lower cost visitor serving facilities. However, Commission staff believes that to ensure consistency with Section 30213 of the Coastal Act, it is necessary to maintain the supply of lower cost visitor serving facilities in the future and that provisions for mitigating the loss of lower cost visitor serving and recreational opportunities are essential to ensure that such opportunities are protected as development pressures increase. Commission staff is continuing to review this issue with City staff and the issue has not been fully resolved at this time.

#### **4. Background**

The City of Fort Bragg has put forth a considerable effort over the past several years to prepare and submit the proposed amendment to the City's LCP, which constitutes the first comprehensive update since the LCP was originally certified in 1983. Although the Commission has certified several LCP amendments since the time of original certification, the City has used this LCP Amendment as a significant opportunity to bring the LCP up to date with current planning and development standards, particularly with regard to the protection of the City's coastal resources. Overall, the LCP Amendment as proposed by the City constitutes a far more comprehensive, detailed, and improved LCP than the City's currently certified Land Use Plan and zoning ordinance.

Commission staff notes that despite the significant improvements to the City's LCP as part of the proposed amendment, the changes included in the Suggested Modifications are numerous. However, it is important to note that many of the changes are largely due to a reorganization of the City's proposed LUP and IP that evolved from discussions between Commission staff and City staff during the review of the amendment submittal. As explained in greater detail below, the General Plan (LUP) and Land Use & Development Code (IP) submitted by the City for certification were originally prepared to apply to both inland and coastal portions of the City. Commission staff and City staff agreed that developing a separate *Coastal* General Plan and *Coastal* LUDC to apply specifically to the geographic portion of the City located within the coastal zone would provide greater clarity of the documents, improve the usability and

administration of the LCP, and ensure consistency with the Coastal Act. The City would continue to apply the existing General Plan and the LUDC to the geographic areas of the City that are outside the coastal zone. Given this decision to maintain separate General Plans and Land Use and Development Codes for portions of the City inside and outside of the coastal zone, many of the suggested modifications reflect necessary changes that stem from this reorganization. Additionally, many of the changes included in the Suggested Modifications reflect “friendly modifications” requested by the City. Lastly, many changes included in the Suggested Modifications are a result of the LUP having been prepared several years prior to the preparation of the IP, thus necessitating the addition or deletion of various policies, programs, text, and other references to ensure consistency between the LUP and IP.

### **SUMMARY OF AMENDMENT REQUEST**

The proposed LCP amendment consists of a comprehensive update of the City’s currently certified Land Use Plan (LUP) and Implementation Program (IP), originally certified in 1983. The City adopted a new General Plan in December 2002 (with amendments through November 2004) to replace the currently certified LUP. The City also adopted a new zoning ordinance in June 2004, entitled the Land Use and Development Code, to replace the currently certified zoning ordinance (Title 18 of the City’s Municipal Code). Both the General Plan (LUP) and the Land Use and Development Code (IP) have been submitted to the Commission for certification. Both documents constitute a complete update of all of the City’s programs and policies and are in an entirely different organizational format than the currently certified LUP and IP.

The proposed updated LUP document has a significantly changed format from the currently certified LUP and is organized by General Plan “element.” The first chapter includes an introductory discussion of the General Plan process and the organization and contents of the General Plan. The introduction chapter (1) is followed by several “elements,” which include: (2) Land Use Element, (3) Public Facilities Element, (4) Coastal Element, (5) Conservation, Open Space, and Parks Element, (6) Circulation Element, (7) Community Design Element, (8) Safety Element, (9) Noise Element, and (10) Housing Element. The LUP also includes a Glossary and several Appendices containing information excerpted from the *“Procedural Guidance for the Review of Wetland Projects in California’s Coastal Zone.”* In addition, the proposed LUP includes several Maps including, Map LU-1: Land Use Designations; Map LC-1: Coastal Access and City Trail System; Map LC-2: Special Review and Runoff Sensitive Areas; Map LC-3: Scenic Views in the Coastal Zone; and Map SF-1: Geologic Hazards.

The City’s proposed updated IP document, the Land Use and Development Code (LUDC), also has a significantly changed format from the currently certified Zoning Ordinance and is substantially more comprehensive including, for example, new or expanded provisions regarding (1) site planning and design standards such as parking and signs, (2) standards for specific land uses such as aquaculture and second units, (3) locating and permitting telecommunications facilities, (4) grading permit requirements and standards, and (5) application filing, processing, and permitting procedures. The IP as proposed to be amended also includes a more comprehensive subdivision ordinance and a new affordable housing ordinance with provisions

regarding density bonuses and inclusionary housing. Specific policies regarding coastal resources, including ESHA, wetlands, water quality, geologic hazards, blufftop development, visual resources, and public access are contained primarily in Article 5 of the LUDC.

The proposed LCP amendment includes changes to the land use and zoning designation nomenclature (see Exhibit No. 19). The City is also proposing to change the land use and zoning designations of 17 specific sites or general areas within the City. The majority of the proposed land use and zoning designation changes involve updating the designations to reflect the current use of a particular site. For example, five of the proposed changes relate to either the currently certified designations to Parks and Recreation (PR) at sites that have been recently acquired by the City, or are currently used for, public access and recreation such as the MacKerricher State Park parking lot, the Glass Beach access area, Noyo Harbor Park, and Pomo Bluff Park.

The City is also proposing to change the land use and zoning designation of the approximately 400-acre former Georgia Pacific mill site located on the coastal terrace west of Highway One and the city center. This 400-acre site is currently designated in the LUP and zoned in the IP as Heavy Industrial (I-H). The proposed LCP amendment would change the land use and zoning designation from Heavy Industrial to a newly created designation, Timber Resources Industrial (IT). As proposed, this designation would allow for the timber resource related land uses that have historically occurred on the site to continue, and the LCP as amended would require that a Specific Plan be prepared before any further changes in land use designation or zoning could occur at the site. The Georgia Pacific Mill ceased operations in 2002 and the site is currently undergoing an extensive clean-up process and the City is engaged in planning for future uses of the site. The Specific Plan process, as set forth in the proposed LCP update amendment, would allow the flexibility for the City to work with future land owners to plan for specific uses and ensure the protection of coastal resources, maximize the provision of public access, and consider land uses that would benefit the local economy. Specific Plans are required by the LCP Amendment to be submitted to, and effectively certified by, the Coastal Commission as an LCP amendment before they become effective.

Two of the proposed land use and zoning designation changes affect the allowable density of residential development within the City. The City proposes to redesignate and rezone five parcels totaling 4.6 acres adjacent to the College of the Redwoods Campus from Residential Suburban (RS) to Medium Density Residential (RM), which would allow for one additional unit per acre resulting in a potential increase of approximately five residential units. These lots are located in an existing residentially developed area and are currently served by existing infrastructure. The other change affecting the density and intensity of development involves the down-zoning of 71 lots totaling 11 acres from Duplex/Triplex/Multi-family Residential (DTMR) to Low Density Residential (RL). The City is proposing this change to better reflect the existing development in the neighborhood, which is comprised of primarily single family residences with relatively few multi-family residences. Therefore, as proposed to be amended, the City's land use and zoning designation changes would not result in significant changes to the density and intensity of use allowed under the LCP.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission **DENY** both the Land Use Plan (LUP) and Implementation Plan (IP) portions of the amendment as submitted, and then **APPROVE** both portions of the amendment if modified to incorporate the Suggested Modifications listed below. The motions to accomplish this are found on pages 16-18.

The City's LCP was certified in 1983. Although there have been numerous amendments, the LCP has never been comprehensively updated until now. Most of the staff recommended suggested modifications are intended to supplement and enhance the proposed policies and standards to reflect current policy and standard language that has been applied in more recently certified LCPs and LCP amendments throughout the coastal zone. These updated policies and standards reflect current practices of the Commission in implementing Chapter 3 policies of the Coastal Act in the Commission's review of coastal development permit applications. For example, many of the staff recommended suggested modifications would modify the proposed LCP policies and standards in this amendment dealing with the protection of water quality, environmentally sensitive habitat areas, and geologic hazards to reflect the considerable refinement in the Commission's program over the last 25 years in these areas.

### **LCP Reorganization**

The General Plan (LUP) and Land Use & Development Code (IP) submitted by the City for certification were originally prepared to apply to both inland and coastal portions of the City. As submitted, the City had designated certain policies throughout several of the General Plan Elements with a wave symbol (“~”) intended to distinguish those policies meant to apply to the coastal zone. In addition, as submitted, the General Plan included a Coastal Element that contained policies specific to the coastal zone. The City submitted the entire Land Use and Development Code (LUDC) to the Commission for certification to implement the General Plan. Following several discussions between Commission staff and City staff during the course of review of the LCP Amendment, it was decided that developing a separate Coastal General Plan and Coastal LUDC to apply specifically to the geographic portion of the City located within the coastal zone would provide greater clarity of the documents, improve the usability and administration of the LCP, and ensure consistency with the Coastal Act. The City would continue to apply the existing General Plan and the LUDC to the geographic areas of the City that are outside the coastal zone. Given this decision to maintain separate General Plans and Land Use and Development Codes for portions of the City inside and outside of the coastal zone, Commission staff and City staff agreed to do away with the “~” symbol and the Coastal Element and reorganized the Coastal General Plan to disperse the policies originally contained in the Coastal Element to the respective applicable Element of the Coastal General Plan (e.g., policies related to coastal hazards were moved to the Safety Element, policies regarding Environmentally Sensitive Habitat Areas were moved to the Open Space, Conservation, and Parks Element, etc.). This reorganization makes it clear that development in the coastal zone must be consistent with all applicable policies of the entire Coastal General Plan (LUP) and not just those contained in a

Coastal Element and also avoids confusion over or oversight of applicable policies denoted with a “~” symbol.

Furthermore, there are some policies in the General Plan and the LUDC that are not necessary to be included as part of the LCP for consistency with the Coastal Act such as the Noise Element of the General Plan, the Sphere of Influence and Annexation policies contained in the Land Use Element, Chapter 18.40 of the LUDC regarding Adult Oriented Business Regulations, and Chapter 18.72 of the LUDC regarding CEQA requirements. Such policies do not govern the review and approval of coastal development permits, but remain in the documents because they constitute standards that apply to other required City approvals and processes and their inclusion provide context and in some cases inform the user of requirements other than coastal development permits that may apply to land use decisions within the City. Commission staff and City staff worked together to identify these policy areas that are not intended to be part of the certified LCP. The City intends to demarcate these policies with the City seal “” and they are identified as such through suggested modification language.

These features of the reorganization are specifically reflected in the changes included as Suggested Modification Nos. 1 and 15, which involve organization-related directive modifications and text changes to the Introduction and applicability sections of the LUP and IP.

#### **Summary of Reasons for Numerous Suggested Modifications Other Than Policy Changes Necessary for Compliance with the Coastal Act**

The changes included in the Suggested Modifications recommended by staff are numerous for several reasons. In addition to policy changes necessary for compliance with the Coastal Act, many of the changes included in the Suggested Modifications are recommended for reasons generally described below:

1. Changes included in the Suggested Modifications recommended by staff include some “friendly modifications” that are changes that have been requested by the City following submittal of the LCP Amendment to provide further clarification and/or make corrections to proposed language. In cases where the changes proposed by the City are more than just minor edits, they are identified at the end of the text as [**CITY REQUESTED MOD**] as an informational note for purposes of review. The most significant “friendly modification” involves the complete replacement of the text of Chapter 18.31 (Density Bonus and Affordable Housing Incentives) and Chapter 18.32 (Inclusionary Housing Incentives) of the IP with new text recently adopted by the City to reflect changes and updates to state housing law that have occurred since the City submitted the update of the IP for certification. Therefore, the originally submitted Chapter 18.31 and Chapter 18.32 are shown entirely in strikethrough and the text of the respective replacement chapters are shown in bold double underline.

2. The City's proposed Land Use and Development Code (IP) update was prepared several years after preparation of the General Plan update (LUP). The proposed LUP update includes many "Programs" that direct the City to include various code amendments to implement certain LUP policy changes in the IP update that had not yet been undertaken at the time of City adoption of the General Plan. Many changes included in the Suggested Modifications involve deleting "Programs" in the LUP that have either (1) already been incorporated into the proposed IP update by the City, or (2) are incorporated through recommended changes to the IP update as part of the suggested modifications. Many Suggested Modifications involve changing a proposed "Program" to a "Policy" where the language includes requirements or standards intended to govern coastal development.
3. Many changes included in the Suggested Modifications involve moving proposed text and/or policy language from one section to another, or from the LUP to the IP or vice versa, purely for organizational purposes. These changes are identified wherever possible as an informational note for review purposes (e.g., **[MOVED TO IP]**, **[MOVED TO SECTION 18.71.040]**, etc.)
4. The City's General Plan update and Land Use and Development Code (LUDC), as submitted, were originally prepared to apply to both inland and coastal portions of the City. As noted above, following staff discussions with the City about organization of the LCP update, it was determined that the submitted General Plan and LUDC would be modified to apply only to the geographic portion of the City located within the coastal zone and a separate unmodified General Plan and LUDC would apply to the inland portion of the City). Therefore, many changes included in the Suggested Modifications reflect deletions of text and policies that either (1) apply to areas of the City located outside the coastal zone, or (2) are superseded by coastal zone-specific policies. As an example of the former, Policy C-8.1 regarding extending City streets to future annexation and development east of the City limits (out of the coastal zone) has been deleted. As an example of the latter, the majority of policies related to the general protection of biological resources contained in the proposed Open Space, Conservation, and Parks Element of the LUP have been deleted because they are superseded by more specific policies required to protect environmentally sensitive habitat areas within the coastal zone consistent with the Coastal Act.
5. As discussed in the LCP Reorganization section above, the text and policies contained in the Coastal Element of the General Plan (LUP) as originally submitted have been dispersed to other respective Elements of the LUP and the Coastal Element has been eliminated. Therefore, Suggested Modifications include changes showing the proposed Coastal Element in its entirety in strikethrough and the text and policies that have been moved from the Coastal Element to other Elements are modified in bold double underline and strikethrough in their new location.

### **Conclusion of Staff Recommendation**

Staff believes that with the suggested modifications recommended by staff, the LUP amendment is consistent with the Chapter 3 policies of the Coastal Act and the IP amendment conforms with, and is adequate to carry out, the LUP as modified.

### **FORMAT OF SUGGESTED MODIFICATIONS: Chart Format and Book Format**

Suggested Modifications are presented in this report in two different formats: (1) chart format, and (2) book format. First, staff has prepared ten (10) policy charts by topic area that show the City's existing certified LCP policies in one column and the City's proposed language with the staff recommended suggested modifications in the other column. These charts do not include all of the City's proposed LCP amendment text, but address the primary Coastal Act Chapter 3 topic areas, collecting in one place all of the proposed policies and standards found throughout the Coastal General Plan and Coastal LUDC that concern the topic area. The charts are intended to be used as a guide to reviewing how the proposed policies and standards as modified would conform with and implement Coastal Act Chapter 3 policies. The charts are attached to this staff report as Exhibit Nos. 3 -12 and include policies grouped by the following topics: Land Use, Industrial Development, Archaeology, Commercial Fishing/Boating, Public Works & Services, Environmentally Sensitive Habitat Areas, Public Access & Recreation, and Visual Resources. It should be noted that because the City's proposed LCP Amendment involves a substantial update to the certified LCP and a complete reorganization and entirely different format than the certified LCP, the charts showing the certified language in one column and the proposed language in the other column are not meant to be read as a straight across comparison. Additionally, at this time, the charts do not include changes to suggested modifications that have been made since the original staff report was mailed on November 30, 2007.

Second, staff has prepared Exhibit Nos. 1 and 2 showing in "book format" all of the Suggested Modifications merged into the text of the City's proposed General Plan (Exhibit No. 1), and the City's Land Use and Development Code (Exhibit No. 2). This format includes all of the suggested modifications included in the charts described above as well as the suggested modifications for all other portions of the proposed LCP Amendment not otherwise shown in the chart format. This full text version of the City's proposed LCP Amendment with suggested modifications shows how the suggested modifications fit into the context of the City's proposed documents.

### **KEY TO SUGGESTED MODIFICATIONS**

The Suggested Modifications are numbered to correspond with the compilation of changes made to each particular Element of the General Plan (LUP) and to each particular Article of the Land Use and Development Code (IP). In addition, suggested modifications involving directives to the City are numbered and grouped by topic (e.g., "Organization", "LUP Maps," etc.).

The City's proposed language is shown in regular text while the suggested modifications are shown in **bold double underline** (text to be added) and ~~strikethrough~~ (text to be deleted).

Where suggested modifications involve adding entirely new policies to the LUP, staff has given the new policy an interim number for reference purposes - to distinguish it from the City's proposed policies - starting with the City's abbreviation for the General Plan Element within which it is meant to be inserted followed by a letter. For example, a suggested modification involving a new policy to be added to the Safety Element (SF) is shown as: **Policy SF-A:...** followed by **Policy SF-B:...**, a new policy to be added to the Open Space, Conservation and Parks Element (OS) is shown as **Policy OS-A...** etc. Where multiple topics have been moved to a single element, new policies are further identified by topic to further distinguish them for reference purposes during the review process. For example, in the Land Use Element, new Industrial Development policies are shown as **Policy LU-IND-A**, **Policy LU-IND-B**, etc., new archaeological resources policies are shown as **Policy LU-ARCH-A**, and new Aquaculture policies are shown as **Policy LU-AQ-A**, etc. Policies that have been moved from the City's originally proposed Coastal Element (LC) to other Elements throughout the General Plan retain the originally proposed nomenclature preface "LC." The addition of new policies and the deletion of proposed policies will affect the numbering of policies throughout the LUP and IP. The numbering has been changed as necessary as part of the suggested modifications. However, Suggested Modification No. 13 (Organization) directs the City to correct all sequential numbering, nomenclature, and cross-referencing when it prepares the final LCP documents for submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

## **ADDITIONAL INFORMATION**

The text of the City's entire currently certified LCP is not included in its entirety as an exhibit to the staff report to save paper. However, the City's existing certified LCP is available for review on-line at the Commission's website at <http://documents.coastal.ca.gov/reports/2007/12/F6a-12-2007-a5.pdf> or by contacting the North Coast District office. Copies of the City's entire currently certified LCP will also be available at the Commission hearings on this LCP Amendment. The staff report available on-line at the Commission's website contains color versions of the proposed Land Use Plan map and Zoning map included as Exhibit Nos. 15 and 16, respectively.

For further information please contact Tiffany S. Tauber at the North Coast District Office (707) 445-7833. Correspondence should be sent to the North Coast District Office at P.O. Box 4908, Eureka, CA, 95521. All LCP Amendment documents are also available for review at the North Coast District office located at 710 E Street, Suite 200, Eureka.

**EXHIBITS:**

Proposed LCP with Suggested Modifications:

1. Proposed Amended General Plan (LUP) with Suggested Modifications
2. Proposed Amended Land Use & Development Code (IP) with Suggested Modifications

Charts with Existing and Proposed LCP Policies by Topic:

3. Land Use (LUP/IP)
4. Industrial Development (LUP/IP)
5. Archaeology (LUP/IP)
6. Commercial Fishing/Boating (LUP)
7. Public Works & Services (LUP)
8. Environmentally Sensitive Habitat Areas (LUP/IP)
9. Public Access & Recreation (LUP/IP)
10. Circulation (LUP)
11. Visual Resources (LUP/IP)
12. Hazards (LUP/IP)

Maps & Tables:

13. Regional Location Map
14. City of Fort Bragg Coastal Zone Boundary Map
15. Proposed Amended Land Use Plan Map
16. Proposed Amended Zoning Map
17. Existing Certified Land Use Plan and Zoning Map
18. Map of Proposed LUP/Zoning Changes
19. Table showing Existing and Proposed LUP/Zoning Nomenclature
20. Noyo River Flats (ADC) Location Map

City Resolution

21. City Resolution of LCP Amendment Transmittal

## **I. COMMISSION RESOLUTIONS ON CITY OF FORT BRAGG LAND USE PLAN AMENDMENT FTB-MAJ-1-06**

Following a public hearing, staff recommends the Commission adopt the following resolution and findings.

### **A. Denial of LUP Amendment No. FTB-MAJ-1-06 As Submitted**

#### **Motion #1**

I move that the Commission **CERTIFY** City of Fort Bragg Land Use Plan Amendment FTB-MAJ-1-06 as submitted.

#### **Staff Recommendation for Denial**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolutions and findings. The motion to certify as submitted passes only upon affirmative vote of a majority of the appointed Commissioners.

#### **Resolution for Denial of Certification of the Land Use Plan Amendment, As Submitted**

The Commission hereby **DENIES** certification of City of Fort Bragg Land Use Plan Amendment 1-06 as submitted and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and is not in conformity with the policies of Chapter 3 of the California Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act as there are feasible mitigation measures and alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

### **B. Certification of LUP Amendment No. FTB-MAJ-1-06 with Suggested Modifications**

#### **Motion #2**

I move that the Commission **CERTIFY** City of Fort Bragg Land Use Plan Amendment FTB-MAJ-1-06 if modified as suggested in this staff report.

#### **Staff Recommendation for Certification**

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the land use plan with suggested modification and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

**Resolution for Certification of the Land Use Plan Amendment with Suggested Modifications**

The Commission hereby certifies the Land Use Plan Amendment FTB-MAJ-1-06 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 plan 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.

**II. COMMISSION RESOLUTIONS ON CITY OF FORT BRAGG  
IMPLEMENTATION PLAN AMENDMENT FTB-MAJ-1-06**

Following a public hearing, staff recommends the Commission adopt the following resolution and findings.

**C. Denial of Implementation Plan Amendment No. FTB-MAJ-1-06, As Submitted**

**Motion #3**

I move that the Commission reject Implementation Program Amendment No. FTB-MAJ-1-06 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 plan 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 for Denial of the Implementation Plan Amendment, As Submitted**

The Commission hereby denies certification of the Implementation Program Amendment No. FTB-MAJ-1-06 as submitted for the City of Fort Bragg and adopts the findings set forth below on grounds that the implementation plan 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 plan amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation

measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the implementation program amendment as submitted.

**D. Approval of Implementation Plan Amendment No. FTB-MAJ-1-06 with Suggested Modifications**

**Motion #4**

I move that the Commission certify Implementation Plan Amendment No. FTB-MAJ-1-06 for the City of Fort Bragg if it is modified as suggested in this staff report.

**Staff Recommendation for Certification**

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 for Certification of the Implementation Plan Amendment with Suggested Modifications**

The Commission hereby certifies the Implementation Plan Amendment for the City of Fort Bragg if modified as suggested and adopts the findings set forth below on grounds that the implementation plan 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 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 implementation plan 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.

### **III. LAND USE PLAN SUGGESTED MODIFICATIONS**

Staff recommends the following suggested modifications to the proposed LUP amendment be adopted. Suggested Modification Nos. 1-11 each modify a separate element and the glossary of the General Plan. The suggested modifications are included in Exhibit No. 1 showing the suggested modifications as they apply directly to the entire text of the City's proposed Coastal General Plan. Because of the length of each suggested modification, Suggested Modification Nos. 1-11 are not reproduced here except for Suggested Modification No. 9, which is very brief. The language in Exhibit No. 1 shown in **bold double underline** represents language that the Commission suggests be added and the language shown in ~~strikethrough~~ represents language that

the Commission suggests be deleted from the language as originally submitted. Suggested Modification Nos. 13 and 14 do not involve direct text changes, but are directives to the City. These suggested modifications are shown in ***bold italics***.

**1. Suggested Modification No. 1: (General Plan Introduction)**

All changes to the General Plan Introduction shown in the Introduction Chapter of Exhibit No. 1.

**2. Suggested Modification No. 2: (Land Use Element)**

All changes to the Land Use Element shown in the Land Use Element of Exhibit No. 1. Portions of Suggested Modification No. 2 concerning Land Use, Industrial Development, Archaeological and Paleontological Resources, and Commercial Fishing and Boating, are also shown in the policy charts included as Exhibit Nos. 3, 4, 5, and 6, respectively.

**3. Suggested Modification No. 3: (Public Facilities Element)**

All changes to the Public Facilities Element shown in the Public Facilities Element of Exhibit No. 1. Portions of Suggested Modification No. 3 concerning Public Services are also shown in the policy chart included as Exhibit No. 7.

**4. Suggested Modification No. 4: (Coastal Element)**

All changes (i.e., strikethrough all) to the Coastal Element shown in the Coastal Element of Exhibit No. 1.

**5. Suggested Modification No. 5: (Conservation, Open Space, and Parks Element)**

All changes to the Conservation, Open Space, and Parks Element shown in the Conservation, Open Space, and Parks Element of Exhibit No. 1. Portions of Suggested Modification No. 5 concerning Environmentally Sensitive Habitat Areas and Public Access and Recreation are also shown in the policy charts included as Exhibit Nos. 8 and 9, respectively.

**6. Suggested Modification No. 6: (Circulation Element)**

All changes to the Circulation Element shown in the Circulation Element of Exhibit No. 1. Portions of Suggested Modification No. 6 concerning circulation are also shown in the policy chart included as Exhibit No. 10.

**7. Suggested Modification No. 7: (Community Design Element)**

All changes to the Community Design Element shown in the Community Design Element of Exhibit No. 1. Portions of Suggested Modification No. 7 are also shown in the policy chart included as Exhibit No. 11.

**8. Suggested Modification No. 8: (Safety Element)**

All changes to the Safety Element shown in the Safety Element of Exhibit No. 1. Portions of Suggested Modification No. 8 concerning Hazards and Shoreline/Bluff Development are also shown in the policy chart included as Exhibit No. 12.

**9. Suggested Modification No. 9: (Noise Element)**

The following language shall be added to the beginning of the Noise Element:

**The policies of the Noise Element are not part of the City of Fort Bragg certified Local Coastal Program and do not govern the review and approval of coastal development permits.**

**10. Suggested Modification No. 10 (Housing Element)**

All changes to the Housing Element shown in the Housing Element of Exhibit No. 1.

**11. Suggested Modification No. 11 (Glossary)**

All changes to the Glossary shown in the Glossary of Exhibit No. 1.

**12. Suggested Modification No. 12 (Appendices)**

All changes to the Appendices (i.e., strikethrough all) shown in the Appendices of Exhibit No. 1.

**13. Suggested Modification No. 13 (LUP Maps)**

All changes to the LUP Maps as follows:

- a. *Map LU-1: Revise to show the Coastal Zone boundary.*
- b. *Map LC-2: (1) Combine Runoff Sensitive Areas and Special Review Areas, and (2) remove Special Review Area designation from properties bordering North Harbor Drive. [CITY REQUESTED MOD]*
- c. *Map LC-3: Revise to delete map text as follows: Visual impact analysis will be performed on a case by case basis during the design review process.*
- d. *MAP C-2: Replace with revised and updated version prepared by the City. [CITY REQUESTED MOD]*
- e. *Map OS-1: Delete Environmentally Sensitive Habitat Areas so that Map OS-1 shows only designated Open Space areas.*
- f. *Map LU-1: Revise General Plan Map LU-1, Land Use Designations to change the approximately 13-acre Noyo Flats parcel that was previously an Area of Deferred Certification from Harbor District (HD) to Open Space (OS).*

**14. Suggested Modification No. 14 (Organization)**

All changes to the organization of the LCP as follows:

- a. *Delete “~” symbol from all Elements of the General Plan.*

- b. *Number all policies and programs in appropriate sequential order and correct all policy cross-references prior to submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.*
- c. *List all policies that constitute the LCP in subsection F(2) of the Introduction Chapter of the LUP following the numbering corrections required by (b) above.*
- d. *Add the City seal notation “” next to all policies in the LUP and IP text identified in subsection F(2) of the LUP Introduction and Section 18.10.020(C) of the IP as being excluded from the certified LCP.*
- e. *Revise descriptive narrative text as necessary to conform narrative text to any associated policy(s) that have been added or revised through suggested modifications.*
- f. *Delete all miscellaneous italicized narrative text throughout the Coastal General Plan that is not part of policy language. [CITY REQUESTED MOD]*
- g. *Change all references to “General Plan” to “Coastal General Plan” throughout the LUP and LUDC. Change all references to “Land Use & Development Code” to “Coastal Land Use & Development Code” throughout the LUP and LUDC. [CITY REQUESTED MOD]*

#### IV. IMPLEMENTATION PLAN SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed IP amendment be adopted. Suggested Modification Nos. 15-24 each modify a separate Article of the Coastal Land Use and Development Code (LUDC). The suggested modifications are included in Exhibit No. 2 showing the suggested modifications as they apply directly to the entire text of the City's proposed LUDC. Because of the length of each suggested modification, Suggested Modification Nos. 15-24 are not reproduced here. The language in Exhibit No. 2 shown in **bold double underline** represents language that the Commission suggests be added and the language shown in ~~strikethrough~~ represents language that the Commission suggests be deleted from the language as originally submitted. Suggested Modification No. 25 does not involve direct text changes, but are directives to the City. These suggested modifications are shown in ***bold italics***.

##### **15. Suggested Modification No. 15: (Article 1 – Land Use and Development Code Applicability)**

All changes to Article 1 shown in Article 1 of Exhibit No. 2.

##### **16. Suggested Modification No. 16: (Article 2 – Zoning Districts and Allowable Land Uses)**

All changes to Article 2 shown in Article 2 of Exhibit No. 2.

**17. Suggested Modification No. 17: (Article 3 – Site Planning and Design Standards)**

All changes to Article 3 shown in Article 3 of Exhibit No. 2.

**18. Suggested Modification No. 18: (Article 4 – Standards for Specific Land Uses)**

All changes to Article 4 shown in Article 4 of Exhibit No. 2.

**19. Suggested Modification No. 19: (Article 5 – Resource Management)**

All changes to Article 5 shown in Article 5 of Exhibit No. 2. Portions of Suggested Modification No. 18 concerning Industrial Development, Archaeological Resources, Environmentally Sensitive Habitat Areas, Public Access and Recreation, Visual Resources, and Hazards and Bluff/Shoreline Development are also shown in the policy charts included as Exhibit Nos. 4,5,7,8,9,10, 11, and 12, respectively.

**20. Suggested Modification No. 20: (Article 6 – Site Development Regulations)**

All changes to Article 6 shown in Article 6 of Exhibit No. 2.

**21. Suggested Modification No. 21: (Article 7 – Planning Permit Procedures)**

All changes to Article 7 shown in Article 7 of Exhibit No. 2.

**22. Suggested Modification No. 22: (Article 8 – Subdivision Regulations and Procedures)**

All changes to Article 8 shown in Article 8 of Exhibit No. 2.

**23. Suggested Modification No. 23: (Article 9 – Land Use and Development Code Administration)**

All changes to Article 9 shown in Article 9 of Exhibit No. 2.

**24. Suggested Modification No. 24 (Article 10 - Glossary)**

All changes to Article 10 shown in Article 10 of Exhibit No. 2.

**25. Suggested Modification No. 25 (Zoning Map)**

- a. *Revise the Zoning Map to accurately reflect the City's Waste Water Treatment facility designation as Public Facilities and Services (PF) (shown as #19 on Exhibit No. 18). [CITY REQUESTED MOD]*
- b. *Revise the Zoning Map to accurately depict the size of Noyo Harbor Park (shown as #9 on Exhibit No. 18). [CITY REQUESTED MOD]*
- c. *Revise the Zoning Map to accurately reflect the RH zoning designation for four parcels located along North Harbor Drive which are inaccurately shown as RL on the zoning map (shown as #18 on Exhibit No. 18). [CITY REQUESTED MOD]*

- d. *Revise the Zoning Map to change the approximately 13-acre Noyo Flats parcel that was previously an Area of Deferred Certification from Harbor District (HD) to Open Space (OS).*

## **V. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)**

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512 states: “*(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.*”

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission must act by majority vote of the Commissioners present when making a decision on the implementing portion of a local coastal program.

## **VI. BACKGROUND**

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, Fort Bragg 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. Commercial land uses in the City are located along the Highway One and Franklin Street corridors. The central business district, located between Oak and Pine Streets, is the historic, civic and cultural core of the community. Residential neighborhoods are located east of the commercial core and in the west Fort Bragg neighborhood.

Fort Bragg contains a very large historic timber mill site (Georgia Pacific) located on the coastal terrace west of Highway One and the city center. This 400+-acre site is currently designated in the land use plan and zoned in the implementation plan as Heavy Industrial District (I-H). The proposed LCP amendment would change the land use and zoning designation of this property from Heavy Industrial to Timber Resources Industrial to allow for the timber resource related land uses that have historically occurred on the site to continue, and would require a Specific Plan be prepared before any further changes in land use designation or zoning could occur. The Georgia Pacific Mill ceased operations in 2002 and the site is currently undergoing an extensive

clean-up process as well as a specific planning process. The specific plan process allows the flexibility for the City to work with future land owners to plan for specific uses and ensure the protection of coastal resources, maximize the provision of public access, and consider land uses that would benefit the local economy.

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.

The Commission certified the original Land Use Plan in part in February, 1982. The original 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 currently zoned locally as Harbor District. 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 City proposes to include the area within its LCP with a land use and zoning designation of Harbor District (HD), which would allow land uses that support Noyo Harbor's functioning as a commercial fishing center with a mix of commercial and industrial activities.

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.

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	
No. 1-02 (Major)	Approved	Not Certified	Yes	none

The most recent LCP Amendment submitted by the City of Fort Bragg was LCP Amendment No. FTB-MAJ-1-02 that involved a proposal to amend the City's LUP and IP to allow aquaculture as a conditionally permitted use in Heavy Industrial and Harbor District areas of the City's coastal zone. In June 2003, the Commission approved the LCP Amendment with suggested modifications. However, the changes approved under this LCP Amendment never took effect because the Commission's adopted suggested modifications were not accepted by the City within the required six-month period following Commission action. The proposed LCP Amendment includes similar provisions to allow aquaculture as a conditionally permitted use in the Heavy Industrial, Harbor District, and newly created Timber Resources Industrial districts. Several of the suggested modifications adopted by the Commission in its action on FTB-MAJ-1-02 have been incorporated into the proposed LCP update amendment.

The currently 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 currently certified 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 currently certified 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.

As described in detail in the findings below, Fort Bragg’s proposed LCP update involves an entirely new Land Use Plan and Implementation Program format.

## VII. SUMMARY OF PUBLIC PARTICIPATION

The City initially decided to update its General Plan in 1994. An extensive public participation process took place to ensure that the revised Plan reflects the concerns and views of the community.

Key milestones of the public participation process undertaken by the City include the following:

- The Citizen Advisory Committee (CAC) was established in 1994 and conducted public workshops on the General Plan Vision Statement and various elements.
- The CAC and the Planning Commission conducted public workshops on the goals and policies in 1995.
- Joint Planning Commission/City Council public workshops were held in 1996 to review an Administrative Draft General Plan. After these workshops, work on the General Plan was interrupted for more than two years.
- In 1999, an insert describing the General Plan and Coastal Element update process was placed in the local newspaper, the *Fort Bragg Advocate-News*. The City Council and Planning Commission conducted a joint workshop to review the 1996 Administrative Draft and provide direction to staff and the consultants regarding additional work necessary to complete the General Plan.
- In 2000, a Background Report was prepared on land use, environmental resources, transportation, and on the Local Coastal Program. The Background Report presented information about the City, the issues and constraints related to the General Plan, and alternative policy options.
- Joint Planning Commission/City Council public workshops were held during 2000 and 2001 on General Plan issues and alternatives.

- A revised Administrative Draft General Plan with a more comprehensive Coastal Element was prepared in October 2001.
- Public workshops were held by the Planning Commission and the City Council during late 2001.
- Public hearings were held by the Planning Commission and the City Council in August through December 2002 to review the Draft General Plan and the Environmental Impact Report.

Following numerous special meetings and public hearings, the City of Fort Bragg adopted an updated General Plan and certified an Environmental Impact Report for the General Plan in December, 2002.

In June 2004, the City adopted a comprehensive Land Use and Development Code (LUDC) and a Negative Declaration for the LUDC. In November 2004, the City adopted a General Plan Amendment that included modifications to the 2002 General Plan to “clean up” the General Plan and address inconsistencies that arose during the LUDC update process.

In May 2003, the City submitted LCP Amendment Application No. FTB-MAJ-1-03 that involved comprehensive changes to the City’s Land Use Plan (LUP) pursuant to the City’s adopted 2002 General Plan update. In response to this application, Commission staff sent a letter to the City dated January 29, 2004 requesting additional information. Included in this request was Item No. 1, “City Resolution for Submittal to the Commission” requesting that the City submit a revised resolution that would clearly state that the adopted LUP update amendment was being transmitted to the Commission for its certification. As this revised resolution was never submitted by the City, LCP Amendment Application No. FTB-MAJ-1-03 was never formally transmitted by the City to the Commission for certification. The City has submitted the new LCP Amendment application (FTB-MAJ-1-06) transmitting the Land Use Plan update from 2002, the updated Land Use and Development Code, and “clean up” amendments to the 2002 LUP update to be processed as one comprehensive LCP update for certification by the Commission.

The proposed LCP Amendment was submitted on May 18, 2006 and filed on October 31, 2006. A one-year time extension was granted by the Commission on January 12, 2007. As such, the last date for Commission action on this item is January 29, 2008.

## **VIII. FINDINGS FOR DENIAL OF THE CITY OF FORT BRAGG'S LAND USE PLAN AMENDMENT, AND APPROVAL WITH MODIFICATIONS**

### **A. Amendment Description**

The proposed updated LUP document has a significantly changed format from the currently certified LUP and is organized by General Plan “element.” The first chapter includes an introductory discussion of the General Plan process and the organization and contents of the General Plan. The introduction chapter is followed by several “elements,” which include: (2) Land Use Element, (3) Public Facilities Element, (4) Coastal Element, (5) Conservation, Open Space, and Parks Element, (6) Circulation Element, (7) Community Design Element, (8) Safety Element, (9) Noise Element, and (10) Housing Element. The LUP also includes a Glossary and several Appendices containing information from the “Procedural Guidance for the Review of Wetland Projects in California’s Coastal Zone.” In addition, the proposed LUP includes several Maps including, in part, Map LU-1: Land Use Designations; Map LC-1: Coastal Access and City Trail System; Map LC-2: Special Review and Runoff Sensitive Areas; Map LC-3 Scenic Views in the Coastal Zone; and Map SF-1: Geologic Hazards.

### **B. Findings**

[Organizational Note: The following findings sections are organized to correspond with the organization of the City’s proposed General Plan (LUP). Policies contained within the Coastal Element as proposed by the City are discussed in the Element to which they have been suggested to be moved.]

#### **1. General Plan Introduction**

- a. Summary of Suggested Modification No. 1: (General Plan Introduction)
  - Clarify the relationship between the General Plan and the LCP.
  - Describe the portions of the General Plan that constitute the Land Use Plan.
  - Clarify the definitions of “Policy” and “Program” so that “Policy” governs the review and approval of coastal development permit applications.
  - Clarify procedural requirements and processes of the Coastal General Plan.

- b. Discussion

The Introductory chapter of the LUP explains the process, mission and vision, and organization and content of the General Plan.

The General Plan (LUP) and Land Use & Development Code (IP) submitted by the City for certification were originally prepared to apply to both inland and coastal portions of the City. As submitted, the City had designated certain policies throughout several of the General Plan Elements with a wave symbol (“~”) intended to distinguish those policies meant to apply to the coastal zone. In addition, as submitted, the General Plan included a Coastal Element that contained policies specific to the coastal zone. The City submitted the entire Land Use and Development Code (LUDC) to the Commission for certification to implement the General Plan. Following several discussions between Commission staff and City staff during the course of review of the LCP Amendment, it was decided that developing a separate Coastal General Plan and Coastal LUDC to apply specifically to the geographic portion of the City located within the coastal zone would provide greater clarity of the documents, improve the usability and administration of the LCP, and ensure consistency with the Coastal Act. The City would continue to apply the unmodified General Plan and the LUDC to the geographic areas of the City that are outside the coastal zone. Commission staff and City staff also agreed to do away with the “~” symbol and the Coastal Element and reorganized the Coastal General Plan to disperse the policies originally contained in the Coastal Element to the respective applicable Element of the Coastal General Plan (e.g., policies related to coastal hazards were moved to the Safety Element, policies regarding Environmentally Sensitive Habitat Areas were moved to the Open Space, Conservation, and Parks Element, etc.). This reorganization makes it clear that development in the coastal zone must be consistent with all applicable policies of the entire Coastal General Plan (LUP) and not just those contained in a Coastal Element and also avoids confusion over, or oversight of, applicable policies denoted with a “~” symbol.

Furthermore, there are some policies in the General Plan and the LUDC that are not necessary to be included as part of the LCP for consistency with the Coastal Act such as the Noise Element of the General Plan, the Sphere of Influence and Annexation policies contained in the Land Use Element, Chapter 18.40 of the LUDC regarding Adult Oriented Business Regulations, and Chapter 18.72 of the LUDC regarding CEQA requirements. Such policies do not govern the review and approval of coastal development permits, but remain in the documents because they constitute standards that apply to other required City approvals and processes and their inclusion provide context and in some cases inform the user of requirements other than coastal development permits that may apply to land use decisions within the City. Commission staff and City staff worked together to identify these policy areas that are not intended to be part of the certified LCP and the City intends to demarcate these policies with the City seal  and they are further identified through suggested modification language.

These features of the reorganization and corrections and additions necessary to clarify procedural requirements and processes of the LCP are included as Suggested Modification No. 1, which make necessary text changes to the introductory chapter of the LUP.

Suggested Modification No. 14(e) includes directives to the City regarding the reorganization of the LUP. When incorporating the suggested modifications into the Coastal General Plan, inconsistencies may arise between the text of the narrative and the revised policies. Descriptive narrative no longer consistent with the policies will need to be revised by the City to conform the

narrative to any associated policy that has been revised through suggested modifications as part of the submission of the final document for certification pursuant to sections 13544 and 13544.5 of the California Code of Regulations. Narrative is intended only as background and shall not be considered policy. Language clearly labeled "Policy" within each Element shall control. Furthermore, the addition of new policies or the deletion of policies as submitted affects the numbering of subsequent policies. Suggested Modification No. 14(b) includes a directive to the City to number all policies and programs in appropriate sequential order and correct all policy cross-references prior to submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

The Commission finds that as modified, the Introduction chapter of the LUP meets the requirements of, and is in conformity with, the Coastal Act.

## **2. Land Use Element**

The Land Use Element of the City's proposed LUP addresses, as modified, (1) land use designations, (2) industrial and energy development, (3) recreation and visitor-serving facilities, (4) commercial fishing and recreational boating, and (5) archaeological and paleontological resources. Policy areas of particular concern are those involving the provision of adequate services, locating industrial and oil and gas development, the protection of coastal priority uses, and the protection of cultural resources. Suggested Modification No. 2 includes all of the changes to the proposed Land Use Element shown in Exhibit No. 1. Portions of Suggested Modification No. 2 concerning Land Use, Industrial Development, Archaeological and Paleontological Resources, and Commercial Fishing and Boating, are also shown in the policy charts included as Exhibit Nos. 3, 4, 5, and 6, respectively.

### **a. Land Use Designations**

The land use designation section of the LUP has been amended from the currently certified format to include a general statement describing the types of land use allowable in each specific land use designation and to move the specific development standards from the LUP to the IP. This format change is more consistent with the typical structure of an LUP and zoning ordinance wherein the zoning ordinance includes greater specificity with regard to specific use types, allowable densities, setback requirements, height limitations, etc.

The Land Use Element of the LUP also addresses land use and development issues, including the identification of the kinds, location and intensity of uses allowed in the coastal zone. The LCP amendment proposes to change the land use designation and zoning district nomenclature so that the LUP designations and zoning districts would have the same symbol for ease of use and clarity. A comparison of the currently certified zoning district nomenclature and the proposed land use and zoning designation symbols are shown in Exhibit No. 19. Furthermore, the proposed LCP amendment includes a revised Land Use Designation Map (Map LU-1) and zoning map, which include several proposed changes to the land use and zoning designation of

several properties described by the City's submittal below and shown in the table below with the corresponding map included as Exhibit No. 18.

Description of Proposed Land Use Designation Changes

The proposed land use designation changes are summarized below:

Proposed Changes in Land Use Designation (see Exhibit No. 18)

Map Key	Description	Current Land Use Designation	Proposed Land Use Designation
1	MacKerricher St. Park parking lot	HVC	PR
2	Glass Beach Parcel	IH	PR
3	Former Georgia Pacific Mill Site	IH	IT
4	West Fort Bragg neighborhood	DTMR	RL
5	Elm/Spruce/Stewart block	IH	CG
6	Parcels Adjacent to Mendo Mill lumber yard	CBD	IH
7	Grove/Walnut Area – PG&E	APO	PF
8	Backside of Cypress Street	GAC	CO
9	Noyo Harbor Park	IH	PR
10	Corner Myrtle/North Harbor	USF	CG
11	Pomo Bluff Park	PD	PR
12	2 Pomo Bluff Park parcels (future annexation)	RS (pre-zoned)	PR (pre-zoned)
13	Ocean View Drive parcels	RS	RM
14	Holiday Inn	APO	CH
15	Highway 20 Fire Station/Water Tank	RR	PF
16	Boatyard Shopping Center	C-3	CG
17	Noyo Flats Area of Deferred Certification	N/A	HD

**1. MacKerricher State Park parking lot:** current Land Use/Zoning designation – HVC (Highway Visitor Commercial); proposed Land Use/Zoning designation – PR (Parks and Recreation).

**Explanation:** The proposed change in land use and zoning designation from Highway Visitor Commercial to Parks and Recreation reflects the existing and historic use of the parcel as a public parking lot for MacKerricher State Park to facilitate direct public access to the coastal bluffs north of Pudding Creek, MacKerricher State Park, and the old Georgia Pacific Haul Road Coastal Trail. With the recent rehabilitation of the Pudding Creek Trestle by State Parks, this parking area will continue to see an increase public access use. The proposed change in land use designation is more consistent with the existing use of the parcel.

**2. Glass Beach Parcel:** current Land Use / Zoning designation – IH (Heavy Industrial); proposed Land Use / Zoning designation – PR (Parks and Recreation).

**Explanation:** The proposed change in land use and zoning designation from Heavy Industrial to Parks and Recreation reflects the recent (2002) State Parks acquisition and use of the parcel as parks and open space extension of MacKerricher State Park located directly north of the site (across Pudding Creek). In the near future the site will be directly connected to the main portion of MacKerricher State Park upon completion of the recent Pudding Creek Trestle bridge reconstruction which is intended to be a bicycle/pedestrian access over Pudding Creek connecting the old Georgia Pacific Haul Road coastal trail to the central portion of Fort Bragg. The proposed change in land use designation is more consistent with the existing use of the parcel.

**3. Former Georgia Pacific Mill Site parcels:** current Land Use / Zoning – IH (Heavy Industrial); proposed Land Use / Zoning – IT (Timber Resources Industrial).

**Explanation:** The proposed change in land use and zoning designation from Heavy Industrial to Timber Resources Industrial would allow for the timber resource related land uses that have historically occurred on the site. As discussed further below, the LUP, as proposed to be amended, would require preparation of a Specific Plan prior to further land use designation changes that would allow any other use type.

**4. West Fort Bragg neighborhood:** current Land Use / Zoning – DTMR (Duplex Triplex Multi Residential); proposed Land Use / Zoning – RL (Residential Low Density).

**Explanation.** The City proposes to change the zoning and land use designation of the West Fort Bragg neighborhood from DTMR (Duplex Triplex Multi-Residential) to RL (Residential Low Density) to better reflect the existing development in the neighborhood as primarily single family residences with a mix of second units and relatively few multi-family uses. This change affects 71 lots totally 480,000 square feet, or 11 acres. This proposed change would allow for less dense development in this area.

**5. Elm/Spruce/Stewart parcels adjacent to Rossi's Building Materials:** current Land Use / Zoning – IH (Heavy Industrial); proposed Land Use / Zoning – CG (General Commercial).

**Explanation.** The proposed change in land use and zoning designation of these parcels from Heavy Industrial to General Commercial reflects the existing office, assembly, and retail uses of the sites and acknowledges the largely residential nature of existing development located to the south and east of the sites. The proposed change would potentially allow for a change in use of the sites from a non-priority use to priority use (i.e. lodging, motel/hotel, bed and breakfast operation) with approval of a Use Permit while the current designation would not. Further, uses allowed in the General Commercial zone are generally more compatible with adjacent residential uses.

**6. Parcels adjacent to Mendo Mill:** current Land Use / Zoning – CBD (Central Business District); proposed Land Use / Zoning – IH (Heavy Industrial).

**Explanation.** The proposed change in land use and zoning designation from Central Business District to Heavy Industrial would better reflect the existing and historic use of the parcels as a building materials storage/retail sales operation, gas station use, and miscellaneous office uses. The area in question is isolated from direct access to coastal resources (i.e. bluffs and beach area) due to the Georgia Pacific mill site to the west. The sites are located on Main Street (State Route 1) lending themselves to the current land use type of more intensive Industrial/Retail uses.

**7. Grove St./Walnut St. Area parcels:** current Land Use / Zoning – APO (Administrative-Professional Office); proposed Land Use / Zoning – PF (Public Facilities).

**Explanation.** The proposed change in land use and zoning designation from Administrative Office use type to Public Facilities reflects the historic and current operation and ownership of the parcels as a PG&E substation and corporation yard.

**8. Backside of Cypress St. parcels;** current Land Use / Zoning – GAC (Garden Apartment Condominium); proposed Land Use / Zoning – CO (Office Commercial).

**Explanation.** The proposed change in land use and zoning designation from Garden Apartment Condominium to Office Commercial reflects the existing medical office use of two of the two of the parcels as well as the multi-family residential use of the other two parcels.

**9. Noyo Beach Parking Area parcel:** current Land Use / Zoning – IH (Heavy Industrial); proposed Land Use / Zoning – PR (Parks and Recreation).

**Explanation.** The proposed change in land use and zoning designation from Heavy Industrial to Parks and Recreation reflects the current use/ownership of the parcel by the City of Fort Bragg as a parking area for coastal beach access at the mouth of the Noyo River where it enters Noyo Bay. The proposed designation is intended to solidify the City's intent on maintaining the property for coastal access and open space use.

**10. Corner of Myrtle St. and North Harbor Drive parcel:** current Land Use / Zoning – USF; proposed Land Use / Zoning – CG.

**Explanation.** The proposed map change is to correct a mapping error in the LCP. This change in land use and zoning designation was approved by the Coastal Commission in August of 1989 (LCP Amendment 1-89). The City failed to make appropriate map revisions in light of the approval.

**11. Pomo Bluff Park parcel:** current Land Use / Zoning – PD (Planned Development); proposed Land Use / Zoning – PR (Parks and Recreation).

**Explanation.** The proposed change in land use designation from Planned Development to Parks and Recreation reflects the acquisition of the parcel by the City of Fort Bragg as well as current use and development of the property as a coastal open-space park with a bicycle/pedestrian trail

recently improved by the City thorough grant funding from the State Coastal Conservancy. The proposed change in designation is intended to solidify the City's intent on maintenance of the property for coastal access and open space use.

**12.** Two parcels located on the coastal bluffs on the west end of Todd's Point, adjacent to Pomo Bluffs Park, slated for future annexation (pre-zoned): current Land Use / Zoning – RR (Mendocino County); proposed Land Use / pre-zoning – PR (Parks and Recreation).

**Explanation.** The proposed change in land use/zoning designation (pre-zoning) reflects the current use of the properties as coastal bluff and open space passive use park and access areas. The City acquired these parcels through grant funding from the State Coastal Conservancy and plans to annex them into City limits in the near future. The parcels would continue to be utilized as parks/open space.

**13.** Ocean View Drive parcels: current Land Use / Zoning – RS (Residential Suburban); proposed Land Use / Zoning – RM (Medium Density Residential).

**Explanation.** The proposed change in land use/zoning designation from Residential Suburban to Medium Density Residential would allow for higher density residential development on five parcels totally 4.6 acres adjacent to the College of the Redwoods Campus. The sites are currently served with City water and sewer and would be accessed via existing roads.

**14.** Holiday Inn parcel: current Land Use / Zoning – APO (Administrative Professional Office); proposed Land Use / Zoning – CH (Highway and Visitor Serving Commercial).

**Explanation.** The proposed change in land use/zoning designation from Administrative Professional Office to Highway and Visitor Serving Commercial better reflects the current use of the site as a motel/hotel. The proposed designation would be more reflective of the visitor serving use of the site.

**15.** Highway 20 Fire Station/Water Tank parcel: current Land Use / Zoning – RR (Mendocino County); proposed Land Use / Zoning – PF (Public Facilities).

**Explanation.** The proposed change in land use/zoning designation from Rural Residential to Public Facilities reflects the ownership and use of the site as a municipal water storage and Fort Bragg Fire Department facility. The site is physically separated from the City limits though it was part of a satellite annexation performed by the city in the 1990's. All City owned and maintained properties (except parks) are given the PF designation.

**16.** Boatyard Shopping Center parcels: current Land Use / zoning – C-3 (Community Commercial); proposed Land Use / zoning – CG (General Commercial).

**Explanation.** The proposed change in land use/zoning designation from Community Commercial to General Commercial is requested to eliminate the C-3 zone altogether as the

subject site is the only site given this particular designation. The main difference between the existing and proposed land use designations is that visitor serving priority uses such as motels/hotels and bed and breakfast operations could be considered with a use permit under the proposed zoning and they are not allowed under the existing zoning. The site is currently developed with a multi-tenant shopping center.

**17. Noyo Flats area of deferred certification, located on the eastern end of South Street. Proposed Land Use/Zoning – Harbor District (HD).**

**Explanation.** The Noyo Flats ADC was created on February 4, 1982 when the Coastal Commission acted on Fort Braggs original LUP. The area contains approximately 13 acres of land largely comprised of wetlands adjacent to the Noyo River. A resubmittal requesting certification of the area was denied on September 8, 1987 and the issue remains unresolved. The City again requests to include the area within its LCP with a designation of Harbor District (HD).

**Discussion:**

As described above, the majority of the proposed land use designation changes are intended to more accurately reflect the existing use of each site. The City is also proposing to change the land use and zoning designation of the approximately 400-acre former Georgia Pacific mill site located on the coastal terrace west of Highway One and the city center. This 400-acre site is currently designated in the LUP and zoned in the IP as Heavy Industrial (I-H). The proposed LCP amendment would change the land use and zoning designation from Heavy Industrial to a newly created designation, Timber Resources Industrial (IT). As proposed, this designation would allow for the timber resource related land uses that have historically occurred on the site to continue, and the LCP as amended would require that a Specific Plan be prepared before any further changes in land use designation or zoning could occur at the site. The Georgia Pacific Mill ceased operations in 2002 and the site is currently undergoing an extensive clean-up process and the City is engaged in planning for future uses of the site. The Specific Plan process, as set forth in the proposed LCP update amendment, would allow the flexibility for the City to work with future land owners to plan for specific uses and ensure the protection of coastal resources, maximize the provision of public access, and consider land uses that would benefit the local economy. Specific Plans are required by the LCP Amendment to be submitted to, and effectively certified by, the Coastal Commission as an LCP amendment before they become effective.

Additionally, as described in #4 and #13 above, two of the proposed land use and zoning designation changes affect the allowable density of residential development within the City. The City proposes to redesignate and rezone five parcels totaling 4.6 acres adjacent to the College of the Redwoods Campus from Residential Suburban (RS) to Medium Density Residential (RM), which would allow for one additional unit per acre resulting in a potential increase of approximately five residential units. These lots are located in an existing residentially developed area and are currently served by existing infrastructure. The other change affecting the density

and intensity of development involves the down-zoning of 71 lots totaling 11 acres from Duplex/Triplex/Multi-family Residential (DTMR) to Low Density Residential (RL). The City is proposing this change to better reflect the existing development in the neighborhood, which is comprised of primarily single family residences with relatively few multi-family residences. Therefore, as proposed to be amended, the City's land use and zoning designation changes would not result in significant changes to the density and intensity of use allowed under the LCP.

**b. Priority Uses**

The Coastal Act protects and encourages low cost visitor and recreational facilities and gives priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over private residential, general industrial, or general commercial development. As proposed, the LUP includes some, but not all provisions necessary to reflect a prioritization of visitor serving development in areas where such uses should be focused. Without specific controls on development within primary visitor serving cores, inappropriate uses could proliferate within tourist destination spots, resulting in inadequate provision of visitor services and facilities along the coast. While the needs of the local residents would be met, the needs of the visitor would not. As such, the LUP as proposed is inconsistent with the provisions of the Coastal Act designed to protect and encourage visitor and recreational uses over other non-priority types of development. Therefore, the changes included as part of Suggested Modification No. 2 add the priority use provisions of the Coastal Act to ensure the protection of low cost visitor and recreational facilities.

**c. Industrial and Energy Development**

Industrial and energy development is addressed in the Land Use Element of the LUP, including policies regarding standards for industrial uses allowable within Noyo Harbor, general standards for other industrial development, prohibiting onshore oil and gas facilities, and siting new industrial development.

The Chapter 3 policies most applicable to these planning issues include Sections 30250, 30255, 30260, 30261, 30262, and 30515.

Section 30250 of the Coastal Act states in applicable part:

*(a) 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. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and*

*the created parcels would be no smaller than the average size of surrounding parcels.*

*(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.*

Section 30255 of the Coastal Act 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.*

Section 30260 of the Coastal Act states:

*Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.*

Section 30261 of the Coastal Act states:

*Multicompany use of existing and new tanker facilities shall be encouraged to the maximum extent feasible and legally permissible, except where to do so would result in increased tanker operations and associated onshore development incompatible with the land use and environmental goals for the area. New tanker terminals outside of existing terminal areas shall be situated as to avoid risk to environmentally sensitive areas and shall use a monobuoy system, unless an alternative type of system can be shown to be environmentally preferable for a specific site. Tanker facilities shall be designed to (1) minimize the total volume of oil spilled, (2) minimize the risk of collision from movement of other vessels, (3) have ready access to the most effective feasible containment and recovery equipment for oil spills, and (4) have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally or legally required.*

Section 30262 of the Coastal Act states:

*a) Oil and gas development shall be permitted in accordance with Section 30260, if the following conditions are met:*

*(1) The development is performed safely and consistent with the geologic conditions of the well site.*

- (2) *New or expanded facilities related to that development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.*
- (3) *Environmentally safe and feasible subsea completions are used when drilling platforms or islands would substantially degrade coastal visual qualities unless use of those structures will result in substantially less environmental risks.*
- (4) *Platforms or islands will not be sited where a substantial hazard to vessel traffic might result from the facility or related operations, determined in consultation with the United States Coast Guard and the Army Corps of Engineers.*
- (5) *The development will not cause or contribute to subsidence hazards unless it is determined that adequate measures will be undertaken to prevent damage from such subsidence.*
- (6) *With respect to new facilities, all oilfield brines are reinjected into oil-producing zones unless the Division of Oil and Gas of the Department of Conservation determines to do so would adversely affect production of the reservoirs and unless injection into other subsurface zones will reduce environmental risks. Exceptions to reinjections will be granted consistent with the Ocean Waters Discharge Plan of the State Water Resources Control Board and where adequate provision is made for the elimination of petroleum odors and water quality problems.*
- (7)(A) *All oil produced offshore California shall be transported onshore by pipeline only. The pipelines used to transport this oil shall utilize the best achievable technology to ensure maximum protection of public health and safety and of the integrity and productivity of terrestrial and marine ecosystems.*
- (B) *Once oil produced offshore California is onshore, it shall be transported to processing and refining facilities by pipeline.*
- (C) *The following guidelines shall be used when applying subparagraphs (A) and (B):*
  - (i) *"Best achievable technology," means the technology that provides the greatest degree of protection taking into consideration both of the following:*
    - (I) *Processes that are being developed, or could feasibly be developed, anywhere in the world, given overall reasonable expenditures on research and development.*
    - (II) *Processes that are currently in use anywhere in the world. This clause is not intended to create any conflicting or duplicative regulation of pipelines, including those governing the transportation of oil produced from onshore reserves.*

- (ii) "Oil" refers to crude oil before it is refined into products, including gasoline, bunker fuel, lubricants, and asphalt. Crude oil that is upgraded in quality through residue reduction or other means shall be transported as provided in subparagraphs (A) and (B).
  - (iii) Subparagraphs (A) and (B) shall apply only to new or expanded oil extraction operations. "New extraction operations" means production of offshore oil from leases that did not exist or had never produced oil, as of January 1, 2003, or from platforms, drilling island, subsea completions, or onshore drilling sites, that did not exist as of January 1, 2003. "Expanded oil extraction" means an increase in the geographic extent of existing leases or units, including lease boundary adjustments, or an increase in the number of well heads, on or after January 1, 2003.
  - (iv) For new or expanded oil extraction operations subject to clause (iii), if the crude oil is so highly viscous that pipelining is determined to be an infeasible mode of transportation, or where there is no feasible access to a pipeline, shipment of crude oil may be permitted over land by other modes of transportation, including trains or trucks, which meet all applicable rules and regulations, excluding any waterborne mode of transport.
- (8) If a state of emergency is declared by the Governor for an emergency that disrupts the transportation of oil by pipeline, oil may be transported by a waterborne vessel, if authorized by permit, in the same manner as required by emergency permits that are issued pursuant to Section 30624.
- (9) In addition to all other measures that will maximize the protection of marine habitat and environmental quality, when an offshore well is abandoned, the best achievable technology shall be used.
- b) Where appropriate, monitoring programs to record land surface and near-shore ocean floor movements shall be initiated in locations of new large-scale fluid extraction on land or near shore before operations begin and shall continue until surface conditions have stabilized. Costs of monitoring and mitigation programs shall be borne by liquid and gas extraction operators.
- c) Nothing in this section shall affect the activities of any state agency that is responsible for regulating the extraction, production, or transport of oil and gas.

Coastal Act Section 30515 states:

*Any person authorized to undertake a public works project or proposing an energy facility development may request any local government to amend its certified local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification. If, after review, the local government determines that the amendment*

*requested would be in conformity with the policies of this division, it may amend its certified local coastal program as provided in Section 30514.*

*If the local government does not amend its local coastal program, such person may file with the commission a request for amendment which shall set forth the reasons why the proposed amendment is necessary and how such amendment is in conformity with the policies of this division. The local government shall be provided an opportunity to set forth the reasons for its action. The commission may, after public hearing, approve and certify the proposed amendment it finds, after a careful balancing of social, economic, and environmental effects, that to do otherwise would adversely affect the public welfare, that a public need of an area greater than that included within the certified local coastal program would be met, that there is no feasible, less environmentally damaging alternative way to meet such need, and that the proposed amendment is in conformity with the policies of this division.*

i. Industrial Development

Proposed Policy LU-5.2 incorporates Coastal Act Section 30250(a) regarding siting new development, including industrial development, in areas with adequate public services and where it will not have significant adverse effects on coastal resources. Coastal Act Section 30250(b) sets forth a further development siting standard and specifically requires that new hazardous industrial development be located away from existing developed areas where feasible. As the City's proposed LUP policies regarding siting industrial development omitted this siting standard, Suggested Modification No. 2 includes the addition of subsection (b) of Coastal Act Section 30250.

Proposed Policy LC-7.1 sets forth standards for industrial development located in Noyo Harbor consistent with existing standards contained in the currently certified LUP. Suggested Modification No. 2 includes changes to this policy to clarify that industrial uses allowed in Noyo Harbor, including aquaculture, must be consistent with all applicable policies of the LCP, including but not limited to policies regarding the protection of public access, visual resources, and environmentally sensitive habitat areas in addition to being consistent with all other standards set forth in Policy LC-7.1. Additionally, Suggested Modification No. 2 adds a new policy that prioritizes coastal dependent industrial uses over other industrial uses on or near the shoreline.

These changes included in Suggested Modification No. 2 are necessary to find the LUP consistent with Coastal Act Sections 30250 and 30255.

ii. Oil and Gas Development

The Industrial and Energy Development section of the proposed LUP discusses a ballot measure approved by voters in Fort Bragg on November 5, 1996 entitled Measure C, codified as Ordinance 790, which prohibits onshore and offshore oil and gas exploration, development, and/or production in the City. Proposed LUP Policy LC-7.3 reflects the City's position on such

development and prohibits the permitting of any onshore facilities related to the exploration and development of offshore oil and gas. However, the Coastal Act allows oil and gas development if certain criteria are met. A policy banning oil and gas development in the LUP is not appropriate in the Land Use Plan in the absence of a comprehensive analysis demonstrating empirically that such a ban is consistent with the requirements of the Coastal Act policies cited above, such as Section 30262. An outright prohibition on such development renders the LUP inconsistent with the Coastal Act.

The Coastal Act encourages clustering coastal-dependent industrial facilities in existing locations, in order to minimize the potential adverse impacts of locating new industrial facilities in parts of the coastal zone now devoted to agriculture, open space, or recreation. Section 30260 also provides, however, that new or expanding coastal-dependent industrial facilities may be located outside existing sites, if three tests are met. The first of these is that the Commission or local government must find that alternative sites are infeasible or more environmentally damaging than the proposed project. The second finding that the coastal permitting agency must make is that to do otherwise than approve the proposed project would adversely affect the public welfare. The third finding is that adverse environmental effects of the project are mitigated to the maximum extent feasible. The third finding requires mitigation of adverse impacts, but not complete avoidance of impacts. Thus, the Coastal Act allows, in limited circumstances, the approval of coastal-dependent industrial facilities that carry with them some adverse environmental effects, as long as they are mitigated to the maximum extent feasible and the other required findings can be made. Therefore, an outright ban on coastal-dependent industrial facilities is not consistent with Section 30260 of the Coastal Act.

The Commission has found that offshore oil development and production are coastal-dependent industrial activities. On-shore support facilities for offshore oil and gas development and production, on the other hand, may or may not be coastal-dependent, depending on the type of use. For instance, a dock for transfer of supplies and personnel to and from offshore oil platforms would probably be considered coastal-dependent, because it would require a location on the shoreline to function at all. Processing facilities for oil transported from offshore, on the other hand, might not be considered coastal-dependent, because such facilities could be located outside the coastal zone. Therefore, an outright ban on coastal-dependent industrial facilities as proposed by the City is in direct conflict with the Coastal Act.

In addition, Section 30515 of the Coastal Act allows, in specified circumstances, a person proposing an energy facility development to file a direct request to the Coastal Commission to amend a Local Coastal Program, if a local government does not first approve such a request. The proposed policies do not acknowledge the ability of any person to propose an energy facility as an LCP amendment directly with the Commission if the local government does not first approve the request.

Therefore, Suggested Modification No. 2 includes, in part, (1) deleting the City's proposed Policy LC-7.3 prohibiting onshore oil and gas facilities and (2) adding a new policy consistent with the provisions of Coastal Act Section 30515 that allows for any person to propose directly

to the Commission, an LCP amendment for any proposed on-shore facility to support off-shore oil and gas exploration or development. Any such amendment shall not be effective until the proposed amendment is approved by the City and effectively certified, unless such amendment is approved by the Coastal Commission pursuant to Section 30515 of the Coastal Act.

As modified, the Commission finds that the proposed policies regarding on-shore oil and gas facilities are consistent with the Coastal Act.

d. Archaeological and Paleontological Resources

Section 30244 states:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

Coastal Act Section 30244 requires that reasonable mitigation measures be required where development would adversely impact archaeological or paleontological resources identified by the State Historic Preservation Officer.

Proposed Policy CD-6.4 of the LUP states, “*Preserve archaeological resources.*” As proposed, Policy CD-6.4 is followed by several Programs requiring archaeological resource investigation and reporting, halting all work should such resources be discovered during construction, and locating new development to avoid archaeological resources where feasible. However, as proposed, the LUP does not incorporate standards for requiring mitigation measures where development would have the potential to adversely impact archaeological or paleontological resources as required by Coastal Act Section 30244. As the provisions of proposed Program CD-6.4.2 through CD-6.4.5 include necessary mechanisms to ensure the protection of archaeological and paleontological resources as required by proposed Policy CD-6.4 and Coastal Act Section 30244, Suggested Modification No. 2 includes incorporating these proposed programs into policies that would govern the review and approval of development located in areas of known or potential archaeological or paleontological resources. The LUP lacks detail in regard to technical submittal requirements and project evaluation for development in areas of potential or known archaeological resources. Suggested Modification No. 2 would add Policy LU-ARCH-A requiring submittal of an archaeological resources report for development located in areas of known or potential archaeological or paleontological resources consistent with areas identified in the City’s proposed IP. Policy LU-ARCH-A would also identify the required content of such reports which includes, in part, recommendations for appropriate resource preservation and/or mitigation measures to adequately address any identified impacts to archaeological resources. Policy LU-ARCH-B requires such mitigation to be designed in compliance with the guidelines of the State Office of Historic Preservation and the State Native American Heritage Commission.

Therefore, the Commission finds that in regard to those provisions of the LUP dealing with the protection of archaeological and paleontological resources, the proposed Fort Bragg LUP, as modified, is consistent with Coastal Act Section 30244.

### **3. Public Facilities Element**

The Public Facilities Element of the City's proposed LUP addresses issues related to public facilities and services and includes policies and programs related to the City's public services and infrastructure. Policy areas of particular concern are those requiring the provision of adequate services for new development, and ensuring that public works facilities are designed and limited to serve development in a manner consistent with the LCP, including the protection of priority uses. Suggested Modification No. 3 includes all changes to the proposed Public Facilities Element as shown in Exhibit No. 1. Portions of Suggested Modification No. 3 are also shown in the policy chart included as Exhibit No. 7.

- a. Summary of Suggested Modification No. 3: (Public Facilities Element)
  - Add policy language to require demonstration of adequate services for new development.
  - Add the provisions of Coastal Act Section 30254 regarding limitations on new or expanded public works facilities.
  - Add policies to ensure the protection of priority uses over other types of development not afforded priority protection under the Coastal Act.
  - Clarify that the expansion of capacity of service infrastructure shall not exceed the level of development allowed by the certified LCP.

- b. Discussion

The Coastal Act Chapter 3 policies most applicable to this planning issue are Section 30250(a) and 30254.

Section 30250(a) of the Coastal Act 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...*

Section 30254 of the Coastal Act states:

*New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural*

*areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

Section 30250 of the Coastal Act requires that new development be located within, 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. Therefore, the development that would be accommodated by a proposed LCP amendment should be limited insofar as possible to the availability of water and sewer services, as well as traffic capacity to serve such development.

New development within the City of Fort Bragg is served by municipal water and sewer. The narrative included in the Public Facilities Element of the LCP amendment acknowledges that the City is planning future improvements to its water supply infrastructure facilities to serve projected development. As discussed above, the LCP amendment as proposed does not result in a significant increase in the density or intensity of allowable development in a manner that would exceed the current infrastructure capacity. However, as proposed, the LUP policies are not specific enough to clearly require that new development only be permitted when it can be demonstrated that adequate services are available, and to ensure that new or expanded public works facilities are designed and limited to accommodate development consistent with the LCP, including the protection of services for priority uses. The changes included in Suggested Modification No. 3 include, in part, adding the provisions of Coastal Act Section 30254 to the language of proposed Policy PF-2.5 regarding potential future improvements to the City's water supply infrastructure. Suggested Modification No. 3 also adds Policy PF-A that strengthens the requirement that no development be approved unless the applicant has demonstrated that such development will be served with adequate services, including but not limited to water, and roadway capacity.

Lastly, Suggested Modification No. 3 adds Policy PF-B that requires certain development, including land divisions, and other conditional uses to demonstrate that the development would not adversely impact the provision of services for priority uses including coastal dependent industrial and visitor serving, recreational uses. Preserving, protecting, and enhancing priority uses in the coastal zone, such as coastal-dependent land uses, visitor serving facilities, commercial fishing, and recreational boating are required by Sections 30250, 30254, 30220, 30221, 30222, and 30224, and 30234 of the Coastal Act.

As described in the narrative text of the City's proposed Public Facilities Element, the City's current water supply system consists of the Newman Reservoir, the Simpson diversion, and a direct diversion in the Noyo River. The City is planning to make improvements to its Noyo River diversion facility to enable the City to pump sufficient water from the Noyo River and its

other two sources to meet existing and projected demand resulting from new development allowed under the General Plan. The City is also investigating other sources of water to ensure that there will be an adequate supply to serve existing and future development. The Public Facilities narrative also describes limitations on the City's wastewater treatment system. As described by the City, spikes in the inflow to the facility during wet weather result in capacity limitations that give rise to the need for sewer infrastructure improvements. The City indicates that until the necessary improvements to the plant are fully funded and constructed, wet weather capacity at the plant will continue to be limited. Once the planned improvements are constructed, it is expected that the City will be able to meet projected wastewater treatment and disposal demands.

As noted above, the proposed LCP amendment does not involve land use changes in the coastal zone that would significantly increase demand on the City's services. Nevertheless, because the City's current water and wastewater treatment facilities face certain capacity limitations, it is necessary to include a mechanism to ensure that services needed to serve priority uses, such as visitor-serving facilities, commercial fishing, and recreational boating, would not be precluded by other types of non-priority development as required by Coastal Act Section 30254. Therefore, the Commission imposes Policy PF-B as part of Suggested Modification No. 3 that prohibits certain development that is not principally permitted under the LCP as amended unless it is demonstrated, in part, that adequate service capacity would be retained to accommodate past, present, and probable future coastal dependent industrial (including commercial fishing facilities), visitor serving, and recreational priority uses in commercial, industrial, parks and recreation, and public facilities districts. These non-principally permitted uses include, but are not limited to (i) land divisions, including lot line adjustments, mergers and issuance of conditional certificates of compliance, (ii) multi-family dwellings allowed by use permit in residential and commercial districts, (iii) mobile home parks allowed by use permit in residential districts, (iv) residential care facilities allowed by use permit in residential, commercial, and public facilities districts, (v) organizational houses allowed by use permit in residential districts, and (vi) rooming or boarding uses allowed by use permits in residential districts.

The Commission finds that as modified, the proposed LUP is consistent with Coastal Act Sections 30250(a) and 30254.

#### **4. Coastal Element**

As proposed, the Coastal Element of the City's LUP addresses issues related to Coastal Access, Recreation and Visitor-Serving Facilities, Environmentally Sensitive Habitat Areas, Commercial Fishing and Recreational Boating/Fishing, Visual Resources, Hazards, and Industrial and Energy Development. As described in Finding VIII(B)(1)(b) above, the City's LUP is being reorganized to eliminate the Coastal Element and move each section originally contained in the Coastal Element to the Element that addresses each particular policy area as follows:

<u>Policies regarding:</u>	<u>Moved to:</u>
Coastal Access	Open Space, Conservation, and Parks Element
Recreation & Visitor-Serving Facilities	Land Use Element
Environmentally Sensitive Habitat Areas	Open Space, Conservation and Parks Element.
Commercial Fishing & Boating	Land Use Element
Visual Resources	Community Design Element
Hazards	Safety Element
Industrial and Energy Development	Land Use Element.

Therefore, Suggested Modification No. 4 involves one change showing all of the proposed Coastal Element in strikethrough. The suggested modifications to the proposed policies originally contained in the Coastal Element are shown in bold double underline and strikethrough in the Element to which the policies were moved in Exhibit No. 1 and are discussed in the findings under each respective Element.

## **5. Conservation, Open Space, and Parks Element**

The Conservation, Open Space, and Parks Element of the City's proposed LUP addresses issues related to Environmentally Sensitive Habitat Areas (ESHA) and Public Access. Policy areas of particular concern are those involving the proper identification of areas containing sensitive habitat, the protection of ESHA by establishing adequate standards for development located within and adjacent to ESHA, and maximizing the provision of coastal access. Suggested Modification No. 5 includes all changes to the proposed Conservation, Open Space, and Parks Element shown in the Conservation, Open Space and Parks Element of Exhibit No. 1. Portions of Suggested Modification No. 5 concerning Environmentally Sensitive Habitat Areas and Public Access are also shown in the charts included as Exhibit Nos. 8 and 9, respectively.

### **a. Environmentally Sensitive Habitat Areas (ESHA)**

As modified, the Conservation, Open Space, and Parks Element addresses issues related to environmentally sensitive habitat areas (ESHA). Policy areas of particular concern are those involving the identification of ESHA and ensuring that ESHA is protected against any significant disruption of habitat values by, in part, establishing limitations on allowable uses within and adjacent to ESHA. Suggested Modification No. 5 includes changes to the environmentally sensitive habitat policies of the LUP as shown in the Conservation, Open Space and Parks Element of Exhibit No. 1. Portions of Suggested Modification No. 5 regarding ESHA are also included in the policy chart included as Exhibit No. 8.

#### **Summary of changes included in Suggested Modification No. 5 regarding ESHA:**

- Add additional policy language consistent with the requirements of Coastal Act Sections 30240, 30233, and 30236.

- Add the definition of ESHA consistent with Coastal Act Section 30107.5 and describe the types of habitat that constitute ESHA.
- Clarify that only portions of the City's coastal bluffs may constitute ESHA (e.g., those portions of the bluffs that contain rare, threatened, or endangered plants or plant communities).
- Clarify that the determination of what constitutes ESHA is not limited by what is mapped on LUP Map LC-2.
- Add policies that enumerate permitted uses within ESHA and ESHA buffers consistent with the allowable use limitations of Coastal Act Sections 30240, 30233, and 30236.
- Expand the criteria to be utilized when evaluating the adequacy of ESHA buffers.
- Delete general biological resource protection policies that are superseded by more specific ESHA protection policies that apply in the City's coastal zone.

The Coastal Act Chapter 3 policy most applicable to this planning issue is Section 30240.

Section 30107.5 defines ESHA 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."*

Section 30240 of the Coastal Act 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.*

*(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.*

#### Discussion:

The Coastal Act requires environmentally sensitive habitat areas (ESHA) to be protected against significant disruption of habitat values and restricts development within ESHA to resource dependent uses. Development in areas adjacent to ESHA must be sited and designed to prevent impacts that would significantly degrade those areas and must be compatible with the continuance of those habitat and recreation areas. As proposed, the City's ESHA policies provide an important framework for the protection of ESHAs. However, the proposed policies do not provide sufficient detail and guidance with which to regulate development decisions

regarding development within and adjacent to ESHA, inconsistent with the requirements of Section 30240.

The City of Fort Bragg has several types of environmentally sensitive habitat areas (ESHA) as identified in the LUP, including rocky intertidal areas, wetlands, and riparian areas. The existing certified LCP also identifies the City's coastal bluffs as ESHA. As part of the LUP amendment, the City requested to revise this designation to clarify that not all coastal bluffs constitute ESHA as defined by Section 30107.5 of the Coastal Act. Rather, it is only certain portions of the coastal bluffs, not the entirety of the bluffs themselves that constitute ESHA. For example, portions of the bluff that support rare, threatened, or endangered plants or plant communities would be considered ESHA and would be subject to the ESHA policies of the LCP. To ensure that the LUP provides sufficient guidance for the identification of ESHA, Suggested Modification No. 2 includes the addition of Policy OS-ESHA-A that (1) incorporates the Coastal Act definition of ESHA cited above, (2) clarifies that only *portions* of the coastal bluffs within the City constitute ESHA, and (3) includes rare, threatened, or endangered plants or plant communities in the list of examples of types of ESHA.

As proposed by the City, the updated LUP revises the City's "Special Review Area" procedures and policies from the existing certified LCP. As proposed, the amended LUP includes Map LC-2 which maps Special Review Areas to include environmentally sensitive habitat areas and Runoff Sensitive Areas (proposed by the City in a "friendly modification" to be combined on Map LC-2). As proposed, the Special Review Areas also include areas potentially containing cultural resources. Suggested modifications have been included to move policies regarding cultural resources to an Archaeological and Paleontological Resources section of the Land Use Element as discussed in Finding VIII(B)(2) above. Suggested Modification No. 5 includes the addition of Policy OS-ESHA-B to clarify that the determination of what constitutes ESHA is not limited by what is mapped as a Special Review Area on Map LC-2, but that any area not designated on LUP Map LC-2 that meets the definition of ESHA shall be subject to the ESHA protection policies of the LCP. The added Policy OS-ESHA-B also lists areas that are considered ESHA including, for example, areas that (1) contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law, (2) contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations, and (3) contribute to the viability of plant species for which there is compelling evidence of rarity, for example, those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society.

Proposed Policy LC-3.1 incorporates the provisions of Coastal Act 30240(a) regarding development within ESHA. Suggested Modification No. 5 also includes additions to Policy LC-3.1 to also incorporate the requirements of Coastal Act Section 30240(b), which provides criteria for development adjacent to environmentally sensitive habitat areas including requirements that ESHA be protected against any significant disruption of habitat values.

With regard to limitations on development within ESHA, Coastal Act Section 30240(a) requires uses within ESHA to be limited to uses dependent on the habitat area. The proposed LUP policies do not clarify what can be considered uses which are “dependent on” the habitat area and therefore permissible within the ESHA. Therefore, Suggested Modification No. 5 includes the addition of Policy OS-ESHA-C that specifically enumerates permitted uses within ESHA, including wetland ESHA, rivers and streams, and other types of ESHA. These allowable uses are consistent with the use limitations of Section 30233 and 30236 of the Coastal Act. Additionally, Policy OS-ESHA-C allows for nature trails which are considered resource dependent uses provided that the trails are sited and designed to protect the ESHA from significant disruption by (1) minimizing the length and width of the trail, (2) providing trail crossings within ESHA at right angles, (3) locating trails up slope from streams, and (4) minimizing ground disturbance and vegetation clearing.

Coastal Act Section 30240 (b) requires that development adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas and be compatible with the continuance of the habitat. To protect ESHA from adjacent developments, the practice has been to require stable buffer areas between the ESHA and the development. Generally, the Commission has considered 100-feet to be the standard buffer width to protect ESHA.

The City’s currently certified LUP ESHA buffer policy requires a 50-foot buffer unless it is demonstrated that 50 feet is not necessary to protect the resources of the habitat area. The currently certified LUP contains criteria to evaluate the adequacy of reducing a buffer width to less than 50 feet, but does not provide an absolute minimum width to which a buffer can be reduced based on the criteria, thus theoretically allowing a buffer width to be reduced to zero. The proposed LUP amendment would amend the ESHA buffer policies in a manner that would strengthen the protection of ESHA from potential impacts from adjacent development. As proposed, Policy LC-3.2.1 requires a minimum 100-foot buffer width unless the applicant can demonstrate that a 100-foot buffer is not necessary. Proposed Policy LC-3.2.1 further requires that in no event shall a buffer be less than 30 feet in width. Suggested Modification No. 5 additional changes to the City’s proposed buffer policy to require that reduction of the 100-foot buffer width be based, in part, on consultation and agreement with the California Department of Fish and Game and the City that 100 feet is not necessary to protect the resources of the particular habitat area.

The City proposes to utilize the criteria set forth in Program LC-3.2.2 to establish ESHA buffer areas. The proposed criteria include portions of the buffer width criteria contained in the City’s currently certified LUP with several key criteria omitted, including an evaluation of the significance of adjacent lands, sensitivity of species to disturbance, and the type and scale of development proposed. The criteria used to evaluate the necessary buffer width is essential to ensure that development in areas adjacent to ESHA would not significantly degrade the habitat and would be compatible with the continuance of the habitat area consistent with Coastal Act Section 30240(b). Therefore, Suggested Modification No. 5 adds all of the buffer width criteria from the City’s currently certified LCP that was omitted in the amended LUP and changes

Program LC-3.2.2 from a Program to a Policy to ensure that the criteria governs the evaluation of any buffer width proposed to be reduced to less than 100 feet.

To further prevent impacts from development adjacent to ESHA and to ensure the continuance of those habitat areas, it must be made clear in the LCP what uses can occur within these transitional buffer areas. As proposed, the City's LUP does not specify permissible uses within the ESHA buffer. Therefore, Suggested Modification No. 5 includes the addition of Policy OS-ESHA-D that enumerates permitted uses within ESHA buffer areas. Permissible uses in the ESHA buffer are limited to those uses permissible within the adjacent ESHA, and in riparian and other types of ESHA buffers other than wetland buffers, buried pipelines, bridges, and drainage and flood control facilities.

As proposed, the submittal of biological reports is included as a Program LC-3.1.1 in the LUP. The preparation and submittal of biological reports with applications for development located within or adjacent to ESHA is essential for informing development decisions to ensure the protection of ESHA consistent with the requirements of Coastal Act 30240. Therefore, Suggested Modification No. 5 includes changing Program LC-3.1.1 to a Policy to and to refer to the IP, which contains a detailed list of required contents for biological reports.

Furthermore, as proposed, the City's LUP contains Appendices A, B, and C that incorporate information taken from the Commission's "*Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone*". Program LC-3.1.5 directs the City to review development in accordance with the guidelines and standards of these Appendices. However, in some cases, these guidelines contain different information than requirements proposed in City's IP for reviewing development in and adjacent to ESHA. Therefore, Suggested Modification No. 5 includes deleting references to the Appendices and instead, the information contained in the Appendices has been incorporated into the IP and cross referenced in the LUP. These changes ensure consistency between information and development standards required by the LUP and the IP and prevent the reader from having to turn to Appendices where such important information requirements and standards could be easily overlooked. Suggested Modification No. 12 shows the Appendices deleted in strikethrough.

Lastly, Suggested Modification No. 5 includes the deletion of numerous policies originally proposed in the Conservation, Open Space, and Parks Element, as they have been superseded by more specific ESHA protection policies applicable to the City's coastal zone consistent with the Coastal Act.

Therefore, for all the reasons discussed above, the Commission finds that the proposed LUP amendment is inconsistent with Section 30240 in regards to proposed ESHA protection policies, and must be denied. However, if modified as suggested the LUP would be consistent with Section 30240.

b. Water Quality

As modified, the Conservation, Open Space, and Parks Element of the LUP would address issues related to water quality. Policy areas of particular concern are those involving the protection of the biological productivity and the quality of coastal waters through establishing comprehensive development standards and permitting review procedures. Suggested Modification No. 5 adds a new Water Quality subsection to the Open Space, Conservation, and Parks Element and includes all of the changes and additions shown in the Open Space, Conservation, and Parks Element in Exhibit No. 1.

Summary of Suggested Modification No. 5 Regarding Water Quality:

- Add policy to minimize introduction of pollutants to coastal waters.
- Add provisions of Coastal Act Sections 30230 and 30231.
- Add policies to minimize increases in stormwater runoff peak runoff rate by requiring:
  - All development: Minimize increases in runoff to the extent feasible, and demonstrate an effort to reduce projected peak runoff by 20% of the base 1985 10-year storm.
  - Developments of Special Water Quality Concern: Post-development peak discharge rate shall not exceed pre-development rate, if increased discharge will result in increased potential for downstream erosion or other adverse habitat impacts.
- Add construction-phase policies to require:
  - A construction-phase stormwater runoff plan for all development that requires a grading permit.
  - Eliminating discharge of sediment and other stormwater pollution from construction activities
  - Minimizing construction site runoff and erosion,
  - Minimizing land disturbance and natural vegetation disturbance
- Add post-construction policies to require:
  - A post-construction stormwater runoff plan for all development.
  - Emphasis on post-construction Site Design and Source Control BMPs.
- Add BMP Guidance tables for selecting efficient BMPs for pollutants generated by development types.
- Add policy establishing categories of Developments of Special Water Quality Concern, based on development size, land use, impervious site coverage, or proximity to coastal waters. Categories of particular note:
  - Developments that create or replace 10,000 ft<sup>2</sup> or more of impervious surface area
  - Developments that result in site coverage of 50% or more of the development site with impervious surfaces
  - Developments within 125 feet of the ocean or a coastal waterbody, that add or replace 2,500 ft<sup>2</sup> or more of impervious surface area
- Add policy with additional requirements for Developments of Special Water Quality Concern:

- Hydrological study by Certified Engineer.
- Selection of effective Treatment Control BMPs.
- Treatment Control BMPs sized to meet the 85% storm design standard.
- Maintaining pre-development peak runoff rate where necessary to protect against downstream erosion or other adverse habitat impacts.

The Coastal Act Chapter 3 policies most applicable to this planning issue are Sections 30230 and 30231.

Section 30230 of the Coastal Act 30230:

*Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

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

Discussion:

As cited above, Coastal Act Sections 30230 and 30231 require the protection of the biological productivity and quality of coastal waters by, in part, minimizing adverse effects of wastewater discharges and entrainment, controlling runoff, and maintaining natural vegetation. As proposed, the City's LUP includes only one stormwater runoff pollution policy, Policy OS-WQ-2.1, which encourages, rather than requires, the protection of water resources from pollution and sedimentation. This proposed policy is not strong enough, nor is the LUP comprehensive enough with regard to water quality protection measures, to ensure that the biological productivity and quality of coastal waters will be protected from adverse effects associated with development in the coastal zone as required by Coastal Act Sections 30230 and 30231. As submitted, the policies of the LUP are not sufficiently detailed to protect water quality in Fort Bragg's coastal zone and must be denied.

Development has the potential to impact water quality and increase storm drainage requirements in a number of ways. New development often results in the creation of impermeable surfaces, which increase runoff by limiting the amount of water able to seep into the ground. Some water uses associated with development, such as landscape irrigation, also increase runoff by adding to the amount of artificial water sources potentially leaving the site. Development can also alter natural drainage courses and drainage patterns potentially resulting in result in increased erosion and siltation. New development also increases the amount of pollutants potentially entering waterways. Typical sources of pollutants potentially entrained in runoff as a result of new development from point and non-point sources include: grease and oils from roads and pavement; pesticides and fertilizers from horticultural runoff; sediments from erosion; and various other pollutants in runoff from industrial, commercial, and residential areas. Increased development also increases demands on the limited supply of water, potentially leading to an increased concentration of pollution in water supplies. These impacts reduce the biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes, reduce optimum populations of marine organisms and have adverse impacts on human health, inconsistent with Coastal Act Sections 30230 and 30231. Therefore, it is critical that the LUP establish a comprehensive framework of development standards, applicable to all phases of development, as well as detailed permit review and approval requirements.

The Commission shares responsibility for regulating nonpoint water pollution in the Coastal Zone of California with State Water Resources Control Board (SWRCB) and the coastal Regional Water Quality Control Boards (RWQCBs). The Commission and the SWRCB have been co-leads in developing and implementing the January 2000 Plan for California's Nonpoint source Pollution Control Program (Plan), which outlines a strategy to ensure that management measures and practices that reduce or prevent polluted runoff are implemented over a fifteen-year period. Some of these management measures are best implemented at the local City planning and permitting level, since they can be most cost effective during the design stage of development.

Commission Water Quality Unit staff worked closely with City staff during the development of the water quality policies included as part of Suggested Modification No. 5, which significantly expand and strengthen the City's water quality protection provisions. Specifically, the portion of Suggested Modification No. 5 regarding water quality includes the addition of new policies that address stormwater runoff flows and pollution, including requirements to minimize both construction-phase and post-construction impacts to water quality and coastal waters. The policies require eliminating the discharge of sediment and other stormwater pollution resulting from construction activities and minimizing construction site runoff and erosion, land disturbance, and natural vegetation removal.

Suggested Modification No. 5 also includes the addition of several policies that emphasize the incorporation of post-construction Site Design and Source Control Best Management Practices (BMPs), which may reduce the need for structural Treatment Control BMPs to protect water quality and coastal waters. The Site Design policies include requirements for minimizing impervious surfaces, infiltrating stormwater runoff, and preserving natural drainage systems, as

feasible, and for the continued maintenance of all post-construction BMPs. The added policies further require Treatment Control BMPs where the City Engineer determines they are necessary, and enable the City to require additional BMPs if the installed BMPs are not effective.

The policies added as part of Suggested Modification No. 5 also establish a second tier of development identified as “Developments of Special Water Quality Concern,” which includes nine specific categories of development that have greater potential for significant adverse impacts to coastal water quality due to the development size, type of land use, impervious site coverage, and/or proximity to coastal waters. Additional development standards are added for identified Developments of Special Water Quality Concern, including a hydrological study, use of effective Treatment Control BMPs sized to meet the 85% storm design standard, and that the post-development peak runoff rate does not exceed the pre-development rate where necessary, to protect against downstream erosion and other adverse habitat impacts.

As submitted, the policies of the LUP are not sufficiently detailed to protect water quality in Fort Bragg’s coastal zone and must be denied. However, if modified by the changes and additions included as part of Suggested Modification No. 5, the Commission finds that the proposed LUP, as modified, is consistent with Coastal Act Sections 30230 and 30231.

c. Public Access

As modified, the Conservation, Open Space, and Parks Element of the LUP would address issues related to public access. Policy areas of particular concern are those involving the provision of maximum public access to the coast, the mechanisms for providing such access, and protecting access to areas of historic public use. Suggested Modification No. 5 includes changes to the public access policies of the LUP as shown in the Conservation, Open Space and Parks Element of Exhibit No. 1. Portions of Suggested Modification No. 5 regarding public access are also included in the policy chart included as Exhibit No. 9.

Summary of changes included in Suggested Modification No. 5 regarding Public Access:

- Clarify and strengthen policy language to require the provision of public access where development would have significant adverse impacts on public access.
- Add procedural details regarding the preferred implementation of public access mitigation.
- Clarify that mitigation shall not substitute for implementation of a feasible project alternative that would avoid impacts to public access.
- Add policy clarifying that public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations.
- Add provisions to avoid interference with public access where there is substantial evidence of prescriptive rights.

### Discussion

The Coastal Act Chapter 3 policies most applicable to this planning issue are Section 30210, 30211, and 30212.

Section 30210 of the Coastal Act states:

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

Section 30211:

*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:

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

(b) *For purposes of this section, "new development" does not include:*

(1) *Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*

(2) *The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.*

(3) *Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*

(4) *The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.*

(5) *Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*

*As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.*

Section 30212.5:

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

The City's public access policies, map, and inventory in the LUP have been updated to reflect current public access and recreation opportunities and recently acquired parks and open space in the City, such as access improvements at Pudding Creek, the recent acquisition of the Glass Beach Headlands by State Parks, and the recently acquired 25-acre Pomo Bluffs Park on the bluff above Noyo Bay.

To eliminate or reduce potential impacts from development on public access and recreation, the Commission, in numerous permit actions, has often required that public access to or along the shoreline be provided in new development projects as mitigation for adverse impacts to public access. This form of required mitigation has often been accomplished through an offer-to-dedicate (OTD) an easement to public use.

The requirement for the recordation of an OTD, however, does not ensure public access; the offers must be accepted by a managing entity, and, for vertical easements which often require some form of physical improvement, be "opened" for public use. Data and information assembled by Commission staff have shown that, over the years, while development has been allowed to proceed, the mitigation has, in many cases, not been fully satisfied (ReCap, 1999). Furthermore, an OTD is valid for a limited time period. OTDs, in many cases, are not required to be made available for public use until the easement is accepted for management by a public agency or non-profit organization. The time delay associated with OTDs, coupled with the fact that often times many of the public accessways are never accepted or opened, makes the use of OTDs alone as mitigation tool can leave impacts to public access not fully mitigated, inconsistent with public access Coastal Act provisions. The City's proposed public access policies do not stipulate that public access mitigation, such as the OTDs that are proposed, should be employed only when there is no feasible alternative that can eliminate or avoid all access impacts from proposed development and do not accurately or comprehensively address procedures when public prescriptive rights exist on or near a development's proposed site. Without adequate policy mechanisms regulating a development's impact on public access either through formal accessways, or public prescriptive rights, and by policies stipulating that feasible alternatives to avoid impacts must be explored before mitigation, the LUP is inconsistent with Coastal Act provisions 30210-30212.

Therefore, the Commission finds that the proposed LUP is inconsistent with the public access provisions of the Coastal Act and must be denied. However, if modified to add new language included in Suggested Modification No. 5 including, in part, (1) that for any project where public access mitigation is required, the preferred implementation be through a recorded grant of easement to the City or to a designated private nonprofit association acceptable to the City, who

is willing to accept the easement and willing to operate and maintain the accessway or trail; and (2) the addition of new policies requiring that for all grants of easement the City open the easement to the public as soon as feasible or shall grant the easement to a nonprofit association willing to accept and operate the accessway, and other policies stipulating that such mitigation shall not substitute for implementation of feasible project alternatives that would avoid impacts to public access; and (3) policies protecting public prescriptive rights, the LUP would be consistent with the public access provisions of the Coastal Act.

Therefore, the Commission imposes the changes included in Suggested Modification No. 5 relating to public access. As modified, the Commission finds the proposed LUP public access provisions are consistent with the Coastal Act.

## **6. Circulation Element**

The Circulation Element of the City's proposed LUP addresses transportation issues within the City and includes policies and programs regarding transportation system improvements to accommodate Fort Bragg's anticipated growth and development and to encourage public transportation, bicycle, and pedestrian circulation throughout the City.

Policy areas of particular concern involve ensuring that proposed circulation and traffic improvements are carried out in a manner consistent with all applicable policies of the LCP, and ensuring that Highway 1 in the rural areas surrounding Fort Bragg remains a scenic two-lane road consistent with Coastal Act Section 30254. Suggested Modification No. 6 includes all changes to the proposed Circulation Element as shown in Exhibit No. 1. Portions of Suggested Modification No. 6 are also shown in the policy chart included as Exhibit No. 10.

### **a. Summary of Suggested Modification No. 6: (Circulation Element)**

- Specify those policies contained in the Circulation Element that are not considered part of the certified LCP.
- Add the provisions of Coastal Act Section 30254 regarding maintaining Highway 1 as a scenic two-lane highway in the rural areas surrounding Fort Bragg.
- Add a policy requiring that roadway improvements in scenic areas be designed to protect public views and avoid or minimize visual impacts.
- Clarify that roadway improvements, including capacity and safety improvements, must be consistent with all applicable policies of the LCP.

### **b. Discussion**

The Coastal Act Chapter 3 policy most applicable to this planning issue is Section 30254. Section 30254 of the Coastal Act states:

*New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the*

*coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*  
[emphasis added]

The policies and programs contained in the Circulation Element contemplate various roadway improvements that would increase capacity, improve safety, and/or improve connectivity of motorized and non-motorized circulation within the City. For example, the City proposes Policy C-6.1 and C-6.2 regarding potential future access and safety improvements around the Noyo Harbor. To ensure that future roadway improvements contemplated in the LCP amendment are consistent with all applicable policies of the LCP, Suggested Modification No. 6, adds language to several of the City's proposed policies regarding future road improvements to clarify that such improvements shall be consistent with all applicable policies of the LCP including, but not limited to, the wetlands, environmentally sensitive habitat area, public access, and visual protection policies. Suggested Modification No. 6 also includes the addition of Policy C-B specifically requiring that roadway improvements in scenic areas be designed and constructed to protect public views, avoid or minimize visual impacts, and blend with the natural setting to the maximum extent feasible consistent with Coastal Act Section 30251 requiring the protection of visual resources.

Coastal Act Section 30254 requires in applicable part, that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Although all of the City of Fort Bragg is considered an urban area, development within the City has the potential to adversely impact the capacity of Highway 1 in rural portions of Mendocino County directly adjacent to the north and south of the City. Development density in neighboring rural Mendocino County has been carefully planned to ensure the preservation of Highway 1 as a scenic two-lane road. Without proper consideration of the impacts on highway capacity from increased density or land use changes within the City, development could result in potential adverse impacts on Highway 1 in contiguous rural areas. Therefore, Suggested Modification No. 6 includes the addition of Policy C-C requiring that direct, indirect, and cumulative adverse impacts to Highway 1 capacity in the rural areas surrounding Fort Bragg be considered during the review of proposed LCP amendments that would increase density or change land use classifications to ensure that Highway 1 in rural areas outside of the City remains a scenic two-lane road consistent with Section 30254 of the Coastal Act.

Policy C-1.1 proposed by the City sets forth specific level of service standards for the City's roads and intersections. Proposed Policy C-2.3 also identifies and requires mitigation for circulation impacts resulting from high trip generating developments such as drive-through facilities, fast food outlets, convenience markets, major tourist accommodations, and shopping centers. However, the proposed policy does not provide sufficient detail as to how to evaluate such development for potential impacts. Suggested Modification No. 6 supplements proposed

Policy C-2.3 by requiring submittal of a traffic study that would provide necessary information to quantify the amount of traffic that would be generated by the development, evaluate potential impacts on circulation systems, safety, and public access to the coast, and identify mitigation measures necessary to maintain the City's identified Level of Service standards.

The Commission finds that as modified, the proposed LUP is sufficiently detailed and is consistent with Coastal Act Section 30254.

## 7. Community Design Element

The Community Design Element of the City's proposed LUP addresses issues related to the protection of visual resources and community character. Policy areas of particular concern are those involving the protection of public views to and along the ocean and scenic coastal areas and minimizing the alteration of natural landforms. Suggested Modification No. 7 includes all changes to the proposed Community Design Element as shown in Exhibit No. 1. Portions of Suggested Modification No. 7 are also shown in the policy chart included as Exhibit No. 11.

- a. Summary of Suggested Modification No. 7: (Community Design Element)
  - Clarify proposed policy language to conform to the language of Coastal Act Section 30251.
  - Clarify and expand Visual Analysis requirements.
  - Add siting and design standards to ensure that development minimizes the alteration of natural landforms.
  - Add development standards regarding fencing, lighting, landscaping, and bluff development to ensure that development protects coastal views.
  - Clarify that Design Review requirements do not supersede coastal development permit requirements.

- b. Discussion

The Coastal Act Chapter 3 policy most applicable to this planning issue is Section 30251.

Section 30251 states:

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

Coastal Act Section 30251 requires permitted development to be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

The LUP as proposed by the City includes a number of policies related to the protection of visual resources. The LUP as proposed to be amended would replace the “Scenic Corridor” planning designation of the existing certified LUP with a Design Review process intended to ensure that development protects visual resources and is compatible with the character of the surrounding area. The LUP further proposes a Visual Analysis requirement, which is a more detailed analysis than the Design Review process by requiring, for example, photo simulations and the erection of story poles to evaluate the visual impacts of a proposed development. The LUP does not specifically designate “highly scenic areas,” but includes Map LC-3: Scenic Views in the Coastal Zone, which maps properties with potential scenic views of the ocean and the Noyo River.

As modified by the changes included in Suggested Modification No. 7, Design Review approval would be required for all development that has the potential to affect visual resources. As the Design Review process is separate from the coastal development permit process, the changes included in Suggested Modification No. 7 would clarify that the Design Review requirements do not supersede coastal development permit requirements and that Design Review approval. This process would ensure that visual resources are addressed during review of proposed development and would inform the coastal development permit review process. The changes included in Suggested Modification No. 7 further require that a Visual Analysis be prepared for all development located within the mapped scenic areas shown on Map LC-3, with the exception of certain types of development that would be exempt from the Visual Analysis requirement consistent with the “new development” exemptions set forth in Coastal Act Section 30212.

Furthermore, as proposed, the LUP lacks specific development standards to ensure that development would minimize the alteration of natural landforms and protect public views to and along the coast. Therefore, the changes included in Suggested Modification No. 7 include new policies that (1) provide development siting and design standards to minimize the alteration of natural landforms, (2) ensure that fences, walls, and landscaping minimize blockage of scenic views from public viewing areas, (3) limit bluff development to specific uses that are designed to be visually compatible with the surrounding area and set back from the bluff edge to protect views from the coast, and (4) minimize removal of natural vegetation.

The Commission finds that as modified, the proposed LUP is consistent with Coastal Act Section 30251.

## **8. Safety Element**

The Safety Element of the City’s proposed LUP addresses hazards including seismic, geologic, flooding, and tsunami hazards. Policy areas of particular concern are those involving evaluating

and locating development in areas of geologic hazard, establishing adequate bluff development setback requirements, establishing limitations on the construction of shoreline protection structures, and minimizing development in floodplain and tsunami run-up areas. Suggested Modification No. 8 includes all changes to the proposed Safety Element as shown in the Safety Element in Exhibit No. 1 and as also shown in the policy chart included as Exhibit No. 12.

- a. Summary of Suggested Modification No. 8: (Safety Element)
  - Add the provisions of Coastal Act Section 30253.
  - Clarify proposed policy language consistent with Coastal Act Section 30235.
  - Add policies requiring that all blufftop and shoreline development be sited and designed to (1) avoid the need for a shoreline protective structure during the life of the development and (2) take into account anticipated future changes in sea level.
  - Clarify limitations on development allowable on bluff faces and within bluff retreat setbacks.
  - Clarify requirements for geologic studies for development located in or near areas subject to geologic hazards.
  - Add standards for siting development in areas subject to tsunami impacts.

b. Discussion

The Coastal Act Chapter 3 policies most applicable to this planning issue are Section 30235 and 30253.

Section 30235 states:

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Section 30253 states (in part):

*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*

The proposed LUP addresses the review of development relative to geologic hazards in very general terms and does not provide adequate standards or a sufficient level of detail to ensure consistency with the requirements of Coastal Act Sections 30235 and 30253. For example, proposed Policy LC-6.1 requires only that development be reviewed to “minimize hazards in the Coastal Zone” and requirements for geologic studies are included only as a Program rather than a Policy. As required by Section 30253, new development must 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. The preparation of geologic reports is an essential requirement to inform the appropriate siting and design of development in or adjacent to geologic hazard areas to ensure consistency with these development standards.

Therefore, the changes included in Suggested Modification No. 8, in part, incorporate the development standards of Coastal Act Sections 30235 and 30253 and require as a policy that applications for development located in or near areas subject to geologic hazard include a geologic/geotechnical study.

Furthermore, the LUP as proposed is silent with regard to the siting of blufftop development. Suggested Modification No. 8 includes the addition of Policy SF-B requiring that all development located on a blufftop be setback from the bluff edge a sufficient distance to ensure that it will be stable for a projected 100-year economic life (consistent with the 100-year economic life proposed in the City’s IP). Suggested Modification No. 8 also includes the addition of Policy SF-C requiring that the siting and design of blufftop development take into account anticipated future changes in sea level.

Proposed Policy LC-6.4 limits bluff face development to public access purposes and pipelines to serve coastal dependent industry. Limitations on bluff face development are necessary to prevent adverse impacts from erosion and geologic instability. Suggested Modification No. 8 expands this policy to extend the development limitations to also apply to the bluff retreat setback area and lists additional types of foreseeable development that could occur in these areas in a manner consistent with the standards of Section 30235 and 30253 such as habitat restoration, hazardous materials remediation, and the restoration of landforms, provided that such allowable development neither creates nor contributes to erosion or instability of the bluff.

Proposed Policy SF-1.3 is included in the LUP to minimize development in areas subject to tsunami hazard. Suggested Modification No. 8 includes additional policy and program language to establish more comprehensive limitations and standards on development subject to tsunami hazards and to require provisions for educational programs and tsunami response and evacuation plans to ensure that development would minimize risks to life and property in areas of high tsunami hazard consistent with Coastal Act Section 30253.

The Commission finds that as modified, the proposed LUP is consistent with Coastal Act Section 30235 and Section 30253.

## **9. Noise Element**

The Noise Element of the City's proposed LUP establishes noise standards to protect the health and welfare of the community by reducing exposure to excessive noise levels generated by sources such as traffic and industrial development. The Noise Element of the City's General Plan does not raise any issues or conflicts with Coastal Act policies and the noise standards are not part of the standard of review for coastal development permits. The Noise Element would appear in the City's LUP so that the reader is aware of the City's noise standards that may apply to required City approvals other than coastal development permits. Therefore, the Noise Element proposed by the City remains unchanged with the exception of Suggested Modification No. 9 which involves adding a statement at the beginning of the Noise Element and at the beginning of Section F., Goals, Policies and Programs, as follows:

**The policies of the Noise Element are not part of the City of Fort Bragg certified Local Coastal Program and do not govern the review and approval of coastal development permits.**

## **10. Housing Element**

The Housing Element of the City's proposed LUP addresses issues related to existing and future housing needs and includes policies related to maintaining and preserving the City's existing housing stock, retaining the character of the City's residential neighborhoods, meeting the City's projected housing needs, and providing affordable housing. The main policy area of concern involves the provision of density bonuses and other affordable housing incentives proposed by the City pursuant to state housing law (Government Code §65915). Suggested Modification No. 10 includes all changes to the proposed Housing Element shown in the Housing Element in Exhibit No. 1.

- a. **Summary of Suggested Modification No. 10: (Housing Element)**
  - Ensure that the means of accommodating the density bonus standards of Government Code Section 65915 would not have adverse impacts on coastal resources.
- b. **Discussion**

The proposed LUP amendment raises an issue of consistency with the Coastal Act in that as proposed, it is not sufficiently detailed to indicate the intensity of land use allowable as a result of density increases for affordable housing developments.

The proposed amendment would include a provision in the City's LUP to provide the density bonus allowances pursuant to Government Code Section 65915 for affordable housing, which would be further implemented by the City's IP as proposed to be amended as discussed in Part

IX.(B)(3) below. The currently certified LUP does not include the City's Housing Element and has no other explicit provisions for density bonuses for affordable housing.

Government Code Section 65915 requires local governments to provide residential density increases to developers who agree to develop low-income and senior housing. The statute currently requires that local governments grant a density bonus of at least a 20% increase over the maximum allowable density when a developer agrees to construct at least 10% of the total units in a housing development for lower-income households, or 5% for very low income households, or to construct a senior housing project. The density bonus further rises up to 35% if more than the above-stated minimums of affordable housing are provided. Government Code Section 65915(b) also requires local governments to grant at least one other incentive, in addition to the density bonus, unless the local government finds that the additional incentive is not necessary to allow for affordable housing. However, the provisions of Government Code Section 65915, including the minimum and maximum allowable density bonus provisions, are frequently amended. Suggested Modification No. 10 includes language that would modify the City's proposed Policy H-3.5 regarding density bonus incentives to clarify that the density ranges may be exceeded consistent with the provisions of Government Code Section 65915, but does not include reference to the specific minimum and maximum density increases currently allowable by the Code to avoid having to amend the LUP each time the Government Code changes. However, the suggested modification to Policy H-3.5 does include additional language to ensure the protection of coastal resources as described below.

The City's proposed LUP amendment, as submitted, that would include provisions for a residential density bonus does not indicate how density increases and development incentives would be applied consistent with the resource protection policies of the Coastal Act.

As discussed above, Government Code Section 65915(b) requires local governments to grant developers of affordable housing not only a density bonus, but also at least one of the concessions or incentives identified in Section 65915(h) unless the local government finds that the additional concession or incentive is not required to make the development economically feasible. However, Government Code Section 65915 does not indicate how a local government is to choose which incentive to provide. Therefore, the type of incentive to grant is discretionary under the Government Code. Additionally, the Government Code does not specify how the density bonus is to be accommodated.

The means of accommodating the density bonus and development incentives are not specifically laid out by the proposed LUP amendment. The City's proposed residential density bonus language does not explicitly include incentives for affordable housing that rest on the relaxation of development standards intended to protect coastal resources. In other words, the City has not specifically proposed to encourage affordable housing by allowing construction in or near sensitive coastal resource areas where residential development would ordinarily be prohibited by other policies of the LCP. However, as development incentives would be determined on an individual project basis, and because the policies allow for City discretion in considering which

incentives to grant, the proposed LUP amendment could be implemented in a manner inconsistent with resource protection provisions of the Coastal Act.

Government Code Section 65915 was specifically amended in 2002 to include subsection (m) that states, “*Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coast Act (Division 29 (commencing with Section 30000) of the Public Resources Code).*” Therefore, although the Government Code requires local governments to provide certain density bonus and development incentives to encourage affordable housing, the City may not grant such bonuses or incentives if they would result in adverse impacts to coastal resources. For example, if it is determined that the density bonus could be accommodated only by filling coastal wetlands, or by reducing buffer widths needed to protect environmentally sensitive habitat areas in a manner that would lessen the effect of LCP policies intended to protect such resources, the density increase could not be granted.

Therefore, to ensure that the means of accommodating the density bonus standards of Government Code Section 65915 would not have adverse impacts on coastal resources, and would be consistent with the Chapter 3 policies of the Coastal Act, the Commission attaches a suggested modification that would expressly require the City to identify all feasible means of accommodating the density increase with specific consideration toward the effects of such means on coastal resources when reviewing a proposed density increase. The City shall only grant a density increase if it is determined that the means of accommodating the density increase proposed by the applicant would not have an adverse effect on coastal resources. If, however, the City determines that the means for accommodating the density increase proposed by the applicant would have an adverse effect on coastal resources, the City shall not grant the density increase.

Therefore, as modified, the Commission finds that the proposed density bonus provisions are consistent with the Chapter 3 policies of the Coastal Act.

## **11. Glossary**

The proposed LUP includes a Glossary of terms used in the General Plan. As submitted, the Glossary contains significant omissions, particularly of terms specific to the coastal zone and coastal development. A number of definitions within the Glossary are generally accurate, but lack detail to ensure their consistency with the Coastal Act and/or ensure that the definitions will be useful when interpreting the policies of the LUP. For example, the definition provided for Habitat states, “*The natural environment of a plant or animal.*” As discussed in Finding # above, Coastal Act Section 30107.5 sets forth a very specific definition of Environmentally Sensitive Habitat Area that is not accurately captured by the proposed definition of Habitat, or elsewhere in the proposed Glossary. Other examples of important terms that are not included are definitions pertaining to the identification of topographic and landscape features such as coastal bluff, stream, and wetland that are specifically defined by Title 14 of the California Code of Regulations. Additionally, definitions of technical terms used in various policies relating to

water quality management are not included as proposed. Furthermore, several definitions pertaining to procedural and administrative provisions are not included in the proposed Glossary. The LUP definitions must be expanded and clarified in accordance with the Coastal Act and terms that appear in the policies and/or narrative of the LUP must be defined to ensure clear understanding and application of the policies.

LUP Glossary changes are addressed in Suggested Modification No. 11. Some proposed definitions have been revised as part of Suggested Modification No. 11 while definitions to be added are included in a list at the end of the proposed Glossary. The Commission finds that as modified by Suggested Modification No. 11, the LCP definitions would be expanded and clarified so that they are consistent with the Coastal Act, California Code of Regulations and/or the Commission's use of the word or term to ensure interpretation of policies in accordance with the Coastal Act.

### **Conclusion**

The Commission finds that the proposed LUP amendment as submitted is inconsistent with the Chapter 3 policies of the Coastal Act and must be denied. If modified as suggested in this staff report, the proposed LUP amendment would be consistent with the Chapter 3 policies of the Coastal Act.

## **IX. FINDINGS FOR DENIAL OF THE CITY OF FORT BRAGG'S IMPLEMENTATION PLAN AMENDMENT, AND APPROVAL WITH MODIFICATIONS**

### **A. Amendment Description**

The City's proposed updated IP document, the Land Use and Development Code (LUDC), has a significantly changed format from the currently certified Zoning Ordinance and is substantially more comprehensive including, for example, new or expanded provisions regarding (1) site planning and design standards such as parking and signs, (2) standards for specific land uses such as aquaculture and second units, (3) locating and permitting telecommunications facilities, (4) grading permit requirements and standards, and (5) application filing, processing, and permitting procedures. The IP as proposed to be amended also includes a more comprehensive subdivision ordinance and a new affordable housing ordinance with provisions regarding density bonuses and inclusionary housing. Specific policies regarding coastal resources, including ESHA, wetlands, water quality, geologic hazards, blfftop development, visual resources, and public access are contained primarily in Article 5 of the LUDC.

## B. Findings

### 1. Article 1 – Land Use and Development Code Applicability

- a. Summary of Suggested Modification No. 15: (Article 1)
  - Clarify the relationship between the LUDC and the LCP.
  - Describe the portions of the LUDC that constitute the Implementation Program portion of the City's LCP.
  - Correct proposed zoning district nomenclature listed in Table 1-1.
- b. Discussion

Article 1 of the LUDC describes the purpose, authority, and applicability of the Development Code. As detailed in the findings in Section VIII(B)(1) above, the City's proposed General Plan and LUDC have been reorganized to apply specifically to the geographic portion of the City located within the coastal zone to provide greater clarity of the documents, improve the usability and administration of the LCP, and ensure consistency with the Coastal Act. Therefore, Suggested Modification No. 15 makes necessary changes to Article 1 of the LUDC regarding the applicability of the Development Code to accurately reflect the reorganization and to make corrections and additions necessary to clarify procedural requirements and processes of the LCP.

The Commission finds that, as modified, the proposed amendment to the IP regarding applicability of the IP conforms with and is adequate to carry out the policies of the LUP.

### 2. Article 2 – Zoning Districts and Allowable Land Uses

- a. Summary of Suggested Modification No. 16: (Article 2)
  - Clarify that a CDP is required for all development, including a change in land use
  - Delete Chapter 18.28 regarding Combining Districts, as the City's proposed new zoning district nomenclature does not include any combining districts
  - Add a new land use type, "Diking, Filling, and Dredging in Wetlands," to the Open Space zoning district that would apply to open space parcels that contain wetland ESHA, including the previous Area of Deferred Certification (ADC) known as the Noyo River Flats
- b. Discussion

Article 2 of the LUDC describes the City's general requirements for proposed development and new land uses, allowable land uses, and planning permit requirements. Suggested Modification No. 16 includes, in part, added language to the general permit requirements discussion in the residential, commercial, and industrial zoning district chapters to clarify that in addition to the planning permits listed in the allowable land use tables for each zoning district, a coastal

development permit is required for all development, including a change in land use, in compliance with the City's coastal development permit ordinance (Section 18.71.040).

Suggested Modification No. 16 also includes the addition of a new land use type in the Open Space zoning district that would apply to open space parcels that contain wetlands, including the previous Area of Deferred Certification (ADC) as discussed below.

(i) Area of Deferred Certification – Noyo Flats

Background:

The Commission certified the City of Fort Bragg's LUP in February, 1982 with the exception of a 13-acre geographic area known as the Noyo River Flats, which is located along the north bank of the Noyo River between North Harbor Drive and the extension of Cypress Avenue (see Exhibit No. 20).

In its denial of certification of this area in 1982, the Commission found that the LUP failed to identify and protect wetlands located on the Noyo River Flats area. Modifications were suggested by the Commission which included several policies and mitigations necessary to protect the wetland area. The City contended that the area was not historically wetland, but rather, was artificially created as a result of historic dredge spoils deposition and that Coastal Act wetland policies were not applicable to artificially created wetlands. The Commission found, however, that the Coastal Act definition of wetlands (Section 30121) refers to present characteristics and that a wetland's past conditions in no way affect its designation as a wetland. Thus, the suggested modifications were not accepted by the City, thereby leaving permit authority over the Noyo River Flats area to the Commission.

Following the Commission's action on the LUP in 1982, one of the landowners affected by the Commission's action (Benedetti) challenged the conditional certification of the plan and the finding that the subject property was wetlands under the Coastal Act. The minute order issued by the court dated October 9, 1984 found "the decision of respondent California Coastal Commission was supported by substantial evidence" upholding the Commission's determination that the area was wetland as defined by Section 30121 of the Coastal Act. The judgment was not appealed by the landowner.

In July 1987, the City resubmitted a Land Use Plan amendment requesting that the Commission certify a portion of the 13-acre Area of Deferred Certification (Benedetti property) with the application of a Harbor District (HD) land use designation without suggested modifications. The City did not submit any additional information to support changed circumstances and it was determined that the physical conditions of the property were the same (i.e., the property supported wetland habitat). Additionally, as part of the City's 1987 LUP resubmittal amendment, the City specifically proposed that the wetland policies of the Coastal Act carried out by the LCP "*shall not apply to the existing conditions and shall only apply to those areas which were wetlands prior to the time of the deposition...*" Therefore, the Commission again

denied certification of the area based upon inconsistency of the LUP with Coastal Act policies requiring the protection of environmentally sensitive habitat, marine habitat, and the biological productivity of coastal waters and wetlands.

Discussion:

As part of the current LCP amendment, the City again proposes to include the approximately 13-acre ADC area within its LCP with a planning and zoning designation of Harbor District (HD). The significant difference between the City's current proposal for certifying the Noyo River Flats area and the previous 1982 and 1987 LCP submittals is that the City no longer contends that the Coastal Act and LCP policies regarding the protection of wetlands are not applicable to the 13-acre ADC area. In contrast to the City's previous proposed LUP amendments regarding this area that were denied by the Commission, the proposed LCP amendment proposes to extend the allowable use and wetland protection provisions of Coastal Act Section 30233 to the ADC area. More specifically, to address the issue of wetland protection at the site, the City originally proposed Policy LC-3.3 as part of the current LCP amendment which states: "Noyo River Wetlands: Permit only wetland restoration projects in the Special Review Areas on the Noyo River [including the 13-acre ADC site], as indicated in map LC-2." The City subsequently proposed a "friendly modification" to Policy LC-3.3 to list *all* allowable uses for diking, dredging and filling in wetlands consistent with Coastal Act Section 30233(a) rather than limiting the permissible use of this area to only wetland restoration.

The Noyo River and surrounding harbor area supports a variety of Coastal Act priority uses including commercial and recreational boating and fishing. As described in the City's proposed LUP, the Harbor District designation is intended for land uses that support Noyo Harbor's functioning as a commercial fishing village and which protect and preserve parcels on, or adjacent to, the sea (the Noyo River being an inlet of the sea) for coastal-dependent and coastal-related uses. Allowable uses in the HD zoning district include fish processing, aquaculture, boat sales, construction and service, boat chartering, restaurants, gift shops, marine hardware, and retail fish sales.

The Commission acknowledges that the proposed Harbor District plan and zoning designation at the Noyo River Flats ADC area would allow for the development of land uses given priority under the Coastal Act, such as those uses described above, consistent with existing uses along the Noyo River and the Noyo Harbor. However, due to the known wetland habitat present at the ADC site, some of the permitted land uses allowable in the HD district, such as "*Boat and ship construction, repair, maintenance*" and "*Marine hardware and supplies sales*" would not be appropriate uses for this site and would not constitute the least environmentally damaging feasible use of the site. Assigning a Harbor District designation to the ADC area would create an expectation on the part of the property owner to develop these and/or other principally permitted uses allowable in the HD district that would not be compatible with the protection of the wetland habitat.

Therefore, to ensure the protection of the wetlands at the ADC site and to more effectively implement the intent of the City's proposed Policy LC-3.3, the Commission imposes Suggested Modification Nos. 13(f) and 25(d) that would assign a land use plan and zoning designation of Open Space to the 13-acre Noyo River Flats area rather than Harbor District. Suggested Modification No. 16 includes adding a new land use type to the Open Space zoning district called "*Diking, Filling, and Dredging in Wetlands*" as a permissible land use applicable only to those open space parcels that contain wetland habitat, including the 13-acre Noyo River Flats area. Suggested Modification No. 11 includes a definition of the "*Diking, Filling, and Dredging in Wetlands*" land use type in the Glossary that defines the use as including all of the allowable uses for diking, filling, and dredging in wetlands as specified under Section 30233(a) of the Coastal Act, which shall only be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

The Commission further finds that the approximately 13-acre area that would be designated and zoned Open Space by the suggested modifications, constitutes only a portion of the parcels involved. The upland portion of the subject area is planned and zoned for residential use. Thus, the suggested modifications to designate the wetland portion of the area as Open Space and limit the permitted uses to those uses allowable in wetlands under Coastal Act Section 30233(a), would not affect the property owner's ability to develop an economic use of the site.

For the reasons discussed above, the Commission finds that the proposed IP amendment regarding the previous Area of Deferred Certification is not consistent with or adequate to carryout the provisions of the LUP with respect to the protection of environmentally sensitive wetland habitat unless modified as suggested above.

### **3. Article 3 – Site Planning and Design Standards**

#### **a. Summary of Suggested Modification No. 17: (Article 3)**

- Delete the originally proposed Chapter 18.31 and Chapter 18.32 and replace with the City's revised and updated Chapter 18.31 and Chapter 18.32 as requested by the City.
- Add requirements that density bonus and affordable housing incentives shall only be granted when the means of accommodating the density bonus and incentives would not have an adverse impact on coastal resources.

#### **b. Discussion**

Article 3 of the IP includes several chapters regarding site planning and design standards relating to general standards applicable to all development and specific standards relating to landscaping, signs, and parking. Article 3 also includes the City's affordable housing ordinance contained in Chapter 18.31 (Density Bonus and Affordable Housing Incentives) and Chapter 18.32 (Inclusionary Housing Requirements) to implement Government Code Section 65915 and the Housing Element of the Coastal General Plan.

Following submittal of the LCP amendment, the City made further revisions and updates to Chapters 18.31 and 18.32 consistent with changes made to state housing law since the time the amendment was originally submitted. The City subsequently submitted an entirely new Chapter 18.31 and Chapter 18.32 to replace the previously submitted chapters. Therefore, the originally submitted versions are shown entirely in strikethrough and the chapters that replace them are shown as proposed by the City with the changes and additions included as part of Suggested Modification No. 17.

As discussed in the findings contained in Section VIII(B)(10) regarding the City's proposed Housing Element, Government Code Section 65915 was specifically amended in 2002 to include subsection (m) that states, "*Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coast Act (Division 29 (commencing with Section 30000) of the Public Resources Code).*" Therefore, the majority of the changes included in Suggested Modification No. 17 include adding supplemental language to the provisions of Chapters 18.31 and 18.32 to clarify that any modifications to development standards provided for by the City's affordable housing provisions to implement state housing law, including density bonus and development incentives or concessions, shall only be granted by the City if it is determined that the means of accommodating the proposed development standard modifications would not have an adverse effect on coastal resources.

For the reasons discussed above, the Commission finds that the proposed IP amendment regarding affordable housing is not consistent with or adequate to carryout the provisions of the LUP policies unless modified as suggested above.

#### **4. Article 4 – Standards for Specific Land Uses**

- a. Summary of Suggested Modification No. 18: (Article 4)
  - Clarify that Chapter 18.40 (Adult Oriented Business Regulations) is not part of the certified LCP.
  - Add additional design standards for Second Units.
  - Add additional application requirements and visual resource protection standards for the development of Telecommunications Facilities.
- b. Discussion
  - (i) Second Units

Section 18.42.170 of Article 4 of the City's proposed IP establishes standards for residential second units, which are allowed in all residential zoning districts under the City's proposed IP, and provides that second units that comply with the standards set forth in Section 18.42.170 shall be approved ministerially without discretionary review or a public hearing consistent with the provisions of Government Code Section 65852.2.

Government Code (and AB1866) Second Unit Requirement Background

Signed by former Governor Davis on September 29, 2002, AB 1866 added three new provisions to Section 65852.2 of the Government Code that are particularly significant for the purposes of reviewing proposed second units in residential zones within the coastal zone. The law now:

- 1) Requires local governments that adopt second unit ordinances to consider second unit applications received on or after July 1, 2003 “ministerially without discretionary review or a hearing.” (Government Code Section 65852.2(a)(3))
- 2) Requires local governments that have not adopted second unit ordinances to “approve or disapprove the [second unit] application ministerially without discretionary review.” (Government Code Section 65852.2(b)(1))
- 3) Specifies that *“nothing in [Section 65852.2] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act ... except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.”* (Government Code Section 65852.2(j))

Thus, AB 1866 significantly changes one component of local government procedures regarding coastal development permits for second units in residential zones (public hearings), but does not change the substantive standards that apply to coastal development permits for such second units.

Pursuant to AB 1866, local governments can no longer hold public hearings regarding second units in residential zones. This prohibition applies both to initial local review and any subsequent local appeals that may be allowed by the LCP. The restriction on public hearings, however, does not apply to the Coastal Commission itself. The Commission can continue to conduct public hearings on proposed second units located in areas where the Commission retains permitting jurisdiction and when locally approved coastal development permits are appealed to the Commission.

AB 1866 does not change any other procedures or the development standards that apply to second units in residential zones located within the coastal zone. Rather, it clarifies that all requirements of the Coastal Act apply to second units, aside from requirements to conduct public hearings. Thus, for example, public notice must be provided when second unit applications are filed and members of the public must be given an opportunity to submit comments regarding the proposed development. When a second unit application is appealable, local governments must still file a final local action notice with the Commission and inform interested persons of the procedures for appealing the final local action to the Commission. In addition, all development standards specified in the certified LCP and, where applicable, Chapter 3 of the Coastal Act apply to such second units.

Therefore, to ensure that the second unit design standards set forth in Section 18.42.180 are comprehensive and specific to carry out the coastal resource protection policies of the City’s LUP, Suggested Modification No. 18 includes the addition of several design standards requiring

that second units (1) have adequate services including water supply and sewage disposal, (2) not obstruct public access to and along the coast, or public trails, (3) not significantly obstruct public views from any public road, trail, or public recreation area to, and along the coast and be compatible with the character of the area, and (4) provide adequate buffers from environmentally sensitive habitat areas consistent with all LCP requirements. Additionally, Suggested Modification No. 18 includes the requirement that the City shall only grant approval of a second unit if the City determines that the means of accommodating the second unit (1) will not have an adverse effect on coastal resources, (2) will ensure adequate services will be provided to serve the proposed development, and (3) will not displace Coastal Act priority uses.

For the reasons discussed above, the Commission finds that the proposed IP amendments regarding second units are not consistent with or adequate to carryout the provisions of the LUP policies with respect to the protection of coastal resources, including services, visual resources, public access, and environmentally sensitive habitat areas unless modified as suggested above.

(ii) Telecommunications Facilities

Chapter 18.44 of Article 4 of the City's proposed IP establishes standards for the placement and design of telecommunication facilities. Suggested Modification No. 18 includes additions to Chapter 18.44 to clarify that, unless preempted by federal law, a coastal development permit is required for all communication facilities that constitute development as defined by the Coastal Act. Suggested Modification No. 18 also expands on the application requirements for telecommunications facilities to ensure that adequate information is provided to evaluate the potential visual impacts from such development in a manner consistent with the visual resource protection policies of the City's LUP. Additional application requirements include a visual impact analysis, plot plan, elevations, landscaping plan, and co-location/height justification. Furthermore, Suggested Modification No. 18 adds additional design and development standards to ensure the protection of visual resources including that (1) all building and roof-mounted wireless telecommunications facilities and antennae be designed to appear as an integral part of the structure where feasible and located to minimize visual impacts, and (2) the placement of new antennae and facilities shall not be physically obstructive or visually intrusive and shall be designed to be visually compatible with the character of the surrounding area.

The Commission finds that the proposed IP amendment regarding telecommunications facilities is not consistent with or adequate to carryout the provisions of the LUP policies with respect to the protection of visual resources unless modified as suggested above.

**5. Article 5 – Resource Management**

- a. Summary of Suggested Modification No. 19: (Article 5)
  - Add specific content requirements for required technical reports.
  - Add information originally proposed to be included as LUP Appendices to the appropriate ESHA/wetland section of the LUDC.
  - Combine and/or reorganize several sections for clarity and ease of use.

- Supplement Chapter 18.56 (Shoreline Access) with the Commission's procedures, standards, and guidelines for requiring and providing public access.

b. Discussion

Article 5 (Resource Management) of the City's proposed IP contains the majority of the implementation provisions pertaining to specific Coastal Act Chapter 3 issues, including environmentally sensitive habitat areas, wetlands and creeks, visual resources, archaeological resources, geologic hazards and shoreline/bluff development, and public access. The changes included as part of Suggested Modification No. 19 add and supplement specific content requirements for technical reports required by the LUP in each of the respective IP sections, including reports required for development located in or adjacent to ESHA, geologic hazard areas, and areas with potential archaeological or paleontological resources. Suggested Modification No. 19 also supplements Chapter 18.56, the City's proposed public access ordinance, with the procedures, standards, and guidelines for requiring and providing public access consistent with the Commission's model public access ordinance prepared for local governments. Suggested Modification No. 19 includes general changes to Article 5 of the IP to ensure consistency with the related policies of the LUP described in subsections (5), (7), and (8) of Section VIII.(B) of the findings above pertaining to ESHA, wetlands, geologic hazards, and visual resources.

The Commission finds that the proposed IP amendments regarding resource management are not consistent with or adequate to carryout the provisions of the LUP with respect to the protection of environmentally sensitive habitat areas, wetlands, visual resources, archaeological resources, geologic hazards and shoreline/bluff development, and public access unless modified as suggested above.

**6. Article 6 – Site Development Regulations**

- a. Summary of Suggested Modification No. 20: (Article 6)
- Add provisions to implement LUP water quality policies
  - Add and/or modify construction-phase and post-construction phase to minimize polluted runoff
  - Establish categories of, and requirements for, Developments of Special Water Quality Concern based on development size, land use, impervious site coverage, or proximity to coastal waters
  - Add requirements to minimize increases in peak stormwater runoff rate for all development and Developments of Special Water Quality Concern

b. Discussion

Article 6 (Site Development Regulations) of the City's proposed IP establishes grading, erosion, and sediment control standards and stormwater runoff control standards. As proposed, the water quality components of the Site Development Regulations of the City's IP address stormwater

runoff management during construction (i.e., grading, runoff, erosion, sediment, and other pollution resulting from construction activity), as well as long-term, post-construction management of stormwater runoff and pollution (i.e., site design, pollutant source controls, and pollutant treatment controls).

Commission staff of the Water Quality Unit worked with City staff and the City Engineer to develop additional water quality protection measures to adequately implement the water quality protection policies of the LUP as modified and discussed in Section VIII(B)(5) of the findings. Suggested Modification No. 20 includes additions and modifications to supplement the City's proposed regulations and standards set forth in Article 6 of the IP. Suggested Modification No. 20 modifies several construction-phase regulations to prohibit other pollutants in runoff from construction sites, in addition to sediment. The changes included in the suggested modification also require that the volume and rate of runoff flows from construction sites be minimized, in addition to minimizing erosion, as increased runoff flows have the potential for other adverse habitat impacts in addition to downstream erosion. In addition, Suggested Modification No. 20 adds a requirement that disturbance to land and natural vegetation be minimized during construction and that soil stabilization occur as soon as feasible after construction.

Suggested Modification No. 20 also modifies several post-construction regulations to address stormwater quantity (i.e., runoff flow volume and rate), in addition to stormwater quality (i.e., pollution carried by stormwater runoff). The changes included as part of the suggested modification clarify terminology in numerous sections to make the distinction clear between "urban runoff" (i.e., non-stormwater runoff resulting from residential, commercial, and industrial activities) and "stormwater runoff" (which originates from precipitation).

Furthermore, Suggested Modification No. 20 adds a new section to classify nine categories of development as "Developments of Special Water Quality Concern," which have a potential for greater adverse impacts to coastal water quality, due to the development size, type of land use, impervious site coverage, or proximity to coastal waters. The changes included in the suggested modification add requirements specific to these categories of development, including a hydrological study, use of effective Treatment Control BMPs sized to meet the 85% storm design standard, and that the post-development peak runoff rate does not exceed the pre-development rate where necessary to protect against downstream erosion or other adverse habitat impacts.

Lastly, the changes included as part of Suggested Modification No. 20 establish requirements for a Construction Pollution Prevention Plan, and for a post-construction Water Quality Management Plan, including applicability, standards, and filing requirements. The suggested modification adds requirements for the implementation of Site Design Best Management Practices (BMPs) to minimize stormwater runoff and pollution which may reduce the need for structural Treatment Control BMPs to protect water quality and coastal waters. The Site Design BMPs regulations address requirements for minimizing impervious surfaces, infiltrating stormwater runoff, and preserving natural drainage systems, and for the continued maintenance of all post-construction BMPs. The suggested modification also adds requirements for

Treatment Control BMPs where the City Engineer determines they are necessary, and enable the City to require additional BMPs if the installed BMPs are not effective.

The Commission finds that the proposed IP amendment regarding grading, and erosion, sediment, and stormwater runoff control standards is not consistent with or adequate to carryout the provisions of the LUP with respect to the protection of the biological productivity and the quality of coastal waters unless modified as suggested above.

## **7. Article 7 – Planning Permit Procedures**

### **a. Summary of Suggested Modification No. 21: (Article 7)**

- Clarify that Chapter 18.72 (Environmental Impact Assessment and Mitigation Monitoring) is not part of the certified LCP.
- Modify Section 18.71.040 (Coastal Development Permit) to conform to the procedural requirements of Title 14 of the California Code of Regulations regarding noticing and public hearings/
- Add CDP application filing requirements and required findings.
- Add language to all provisions allowing waivers of, or deviations from, development standards to require that such waivers or deviations only be granted if they (1) will not have an adverse effect on coastal resources, (2) will ensure adequate services will be provided to serve the proposed development, and (3) will not displace Coastal Act priority uses.
- Add language to clarify that other permit approvals required by the Development Code do not replace, supersede or modify the independent requirement for a CDP unless otherwise specified.
- Clarify those portions of Specific Plans that are required to be submitted to the Commission for certification as an LCP Amendment.

### **b. Discussion**

Section 18.71.040 of Article 7 sets forth the City's coastal development permit ordinance. As proposed, procedural requirements contained in Section 18.71.040 are incomplete and, in some cases, inconsistent with specific requirements of Title 14 of the California Code of Regulations (CCR). The changes included in Suggested Modification No. 21 modifies and supplements Section 18.71.040 of the IP by conforming procedural requirements regarding noticing requirements, public hearing requirements, and the effective date of local action on a coastal development permit to the respective sections of Title 14 CCR. Additionally, Section 18.71.040(I) is modified, in part, to clarify that no public hearing is required for second dwelling units in residential zones, pursuant to Government Code 65852.2 as discussed in section 4(b)(i) above. Suggested Modification No. 21 also modifies Section 18.71.040(C) to conform permit exemptions to Coastal Act 30610(a), 30610(d), and Title 14 CCR Sections 13250, 13252, and 13253, and to the Commission's guidelines for the exclusion of temporary events from CDP requirements. Furthermore, Suggested Modification No. 21 adds application filing requirements

and expands the required findings that are necessary for all decisions on coastal development permits to ensure that the development is consistent with all applicable provisions of the LCP.

Suggested Modification No. 21 also includes modifications to Chapter 18.78 regarding Specific Plans to clarify that the portions of a Specific Plan that meet the definition of “Land Use Plan” as defined by Coastal Act Section 30108.5 and “Implementing actions” as defined by Coastal Act Section 30108.4, are required to be submitted to, and effectively certified by, the Coastal Commission as an LCP amendment before those portions of the Specific Plan become effective.

Suggested Modification No. 21 also includes language to clarify that other permit approvals required by the Development Code, such as a Variance and Planned Development Permit, do not replace, supersede or modify the independent requirement for a CDP unless otherwise specified.

Lastly, where provisions of the IP allow for waivers of, or deviations from, development standards contained in the LCP, such as a Variance, a Planned Development Permit, or historic structure rehabilitation incentives, Suggested Modification No. 21 adds language requiring that such waivers or deviations shall only be granted if the City determines that the means of accommodating the particular waiver or deviation (1) will not have an adverse effect on coastal resources, (2) will ensure adequate services will be provided to serve the proposed development, and (3) will not displace Coastal Act priority uses.

The Commission finds that the proposed IP amendment regarding permit procedures is not consistent with or adequate to carryout the provisions of the LUP unless modified as suggested above.

## **8. Article 8 – Subdivision Regulations and Procedures**

### **a. Summary of Suggested Modification No. 22: (Article 8)**

- Add language to clarify that various land division approvals required under Article 8 of the IP pursuant to the Subdivision Map Act do not replace, supersede or modify the independent requirement for a CDP.
- Add provisions for the review and issuance of Certificates of Compliance relative to Coastal Act and coastal development permit requirements.

### **b. Discussion**

Article 8 of the City’s proposed IP contains regulations and procedures to implement the Subdivision Map Act. Suggested Modification No. 22 adds language to clarify that various approvals required pursuant to the Subdivision Map Act, such as Tentative Map approval, do not replace, supersede or modify the independent requirement for a CDP. Additionally, Suggested Modification No. 22 adds provisions for the review and issuance of Certificates of Compliance (COC) relative to Coastal Act and coastal development permit requirements to ensure that land divisions are consistent with all applicable LCP and Coastal Act requirements.

The Commission finds that the proposed IP amendments regarding land divisions are not consistent with or adequate to carryout the provisions of the LUP unless modified as suggested above.

**9. Article 9 – Land Use and Development Code Administration**

- a. Summary of Suggested Modification No. 23: (Article 8)
  - Add language to all provisions allowing for waivers of, or deviations from, development standards requiring that such waivers or deviations shall only be granted if they (1) will not have an adverse effect on coastal resources, (2) will ensure adequate services will be provided to serve the proposed development, and (3) will not displace Coastal Act priority uses.
  - Add language to clarify that other permit approvals required by the Development Code do not replace, supersede or modify the independent requirement for a CDP unless otherwise specified.
  - Add Chapter 18.95 as requested by the City regarding amendments other than LCP amendments.
  - Clarify that Chapter 18.98 (Enforcement and Penalties) is not part of the certified LCP.
- b. Discussion

Article 9 of the City's proposed IP addresses Nonconforming uses (Chapter 18.90), Appeals (Chapter 18.92), Amendments (Chapter 18.94), Public Hearings (Chapter 18.96), and Enforcement (Chapter 18.98).

Suggested Modification No. 23 involves similar changes to the non-conforming use provisions of Chapter 18.90 as those discussed in subsection 7. of the findings above to ensure that Minor Use Permits that would allow the continuance or expansion of non-conforming uses shall only be granted if the City determines that the means of accommodating the particular waiver or deviation (1) will not have an adverse effect on coastal resources, (2) will ensure adequate services will be provided to serve the proposed development, and (3) will not displace Coastal Act priority uses and that such approvals do not replace, supersede or modify the independent requirement for a CDP. Section 18.92.040 regarding Appeals to the Coastal Commission and Chapter 18.94 regarding LCP Amendments are modified by Suggested Modification No. 23 to conform to the requirements of the respective sections of Title 14 of the California Code of Regulations. Lastly, Suggested Modification No. 23 adds new Chapter 18.95 as requested by the City to address procedures for amendments to portions of the General Plan and Development Code that are not part of the certified LCP.

**10. Article 10 – Glossary**

Article 10 of the proposed IP includes a Glossary of terms used in the Development Code.

As submitted, the Glossary contains significant omissions, particularly of terms specific to the coastal zone and coastal development. Some proposed definitions contained in Article 10 have been revised as part of Suggested Modification No. 24. As discussed in detail in finding section VIII.(11) above, Suggested Modification No. 11 includes a list of terms and definitions to be added to the LUP and IP Glossary.

The Commission finds that as modified by Suggested Modification No. 11 and No. 24, the LCP definitions would be expanded and clarified so that they are consistent with the Coastal Act, California Code of Regulations, and/or the Commission's use of the word or term to ensure interpretation of policies in accordance with the Coastal Act and to ensure that the IP definitions are consistent with and adequate to carryout the provisions of the LUP.

### **Conclusion**

For all of the reasons discussed above, the Commission finds that the proposed Implementation Plan as submitted does not conform with and is not adequate to carry out the certified Land Use Plan, as modified. If modified as suggested in this staff report and shown in Exhibit No. 2, the proposed Implementation Plan would be adequate to carry out the certified Land Use Plan, as modified.