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DATE: October 27, 2017

TO: Coastal Commissioners and Interested Persons

FROM: Alison Dettmer, Deputy Director
Robert S. Merrill, North Coast District Manager
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SUBJECT: **City of Eureka LCP-1-EUR-16-0047-3 (Permit Processing Procedures)**

For the Commission meeting of November 8 in Bodega Bay

SUMMARY OF STAFF RECOMMENDATION

The City of Eureka (“City”) is proposing to amend its local coastal program’s (LCP) implementation plan (IP) to modify (1) the local approval and appellate bodies for coastal development permits; (2) the lapse date on conditional use permits; (3) the procedures for design review of conditional use permit applications; and (4) the noticing requirements for public hearings on coastal development permits and other local permits. These amendments were adopted by the City under three separate ordinances, Ordinance Nos. 819, 835, and 836.

The proposed amendment only addresses permit processing procedures and noticing; the amendment does not change the uses or the priority of uses allowed in the various zoning districts or affect any non-procedural (substantive) regulations related to coastal resources or public access. Nevertheless, suggested modifications are necessary to ensure the City’s amended coastal development permitting (CDP) procedures are consistent with the minimum requirements set forth in the Coastal Act and Coastal Commission’s administrative regulations, including required procedures related to CDP hearings and noticing, CDP exemptions, and final local actions on appealable CDPs, as consistency with these procedural requirements is necessary to adequately carry out the certified land use plan (LUP). In addition, Suggested Modifications have been added to fix referencing, enumeration, and other minor errors at the request of the City staff. Commission staff has coordinated with the City staff on all of the recommended suggested modifications and the City staff indicates that all of the recommended suggested modifications are acceptable.

Thus, Commission staff recommends that the Commission reject the proposed LCP Amendment No. LCP-1-EUR-16-0047-3, and approve it only as modified to ensure that the amendment is in conformance with and adequate to carry out the policies of the certified LUP.

The appropriate motions and resolutions to adopt the staff recommendation are on [page 4](#).

DEADLINE FOR COMMISSION ACTION

The LCP amendment submittal was determined to be complete and submitted by the North Coast District Office on February 1, 2017. On March 9, 2017, the Commission granted a one-year extension to the 60-day time limit for Commission action on the requested certification of the proposed LCP amendment application. The new date by which the Commission must act upon the amendment is April 2, 2018.

ADDITIONAL INFORMATION

For additional information about the LCP amendment, please contact Cristin Kenyon at the North Coast District Office at (707) 826-8950. Please mail correspondence to the Commission at the letterhead address.

TABLE OF CONTENTS

I. MOTIONS, RECOMMENDATIONS, & RESOLUTIONS	4
A. DENIAL OF IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED	4
B. APPROVAL OF IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODS	4
II. PROCEDURAL ISSUES	5
A. STANDARD OF REVIEW	5
B. PUBLIC PARTICIPATION	5
C. PROCEDURAL REQUIREMENTS	6
III. SUGGESTED MODIFICATIONS	6
IV. FINDINGS AND DECLARATIONS	7
A. AMENDMENT DESCRIPTION	7
1. MODIFY COASTAL DEVELOPMENT PERMIT APPLICATION REVIEW PROCEDURES.....	7
2. MODIFY CONDITIONAL USE PERMIT PROCESSING PROCEDURES.....	8
3. CONSOLIDATE AND AMEND PUBLIC HEARING REQUIREMENTS.....	8
B. BACKGROUND	9
C. CONSISTENCY ANALYSIS	10
1. HEARING AND NOTICING PROCEDURES FOR COASTAL DEVELOPMENT PERMITS.....	10
2. DEVELOPMENTS AUTHORIZED WITHOUT A COASTAL DEVELOPMENT PERMIT.....	16
3. FINAL LOCAL ACTION AND APPEALS.....	18
4. ADDITIONAL FRIENDLY MODIFICATIONS.....	20
D. CALIFORNIA ENVIRONMENTAL QUALITY ACT	21

APPENDICES

[Appendix A – Suggested Modifications to Amended Article 29, Part 22](#)

[Appendix B – Suggested Modifications to Amended Article 24](#)

[Appendix C – Suggested Modifications to Amended Articles 25, 27, and 28](#)

EXHIBITS

[Exhibit 1 – Regional Location Map](#)

[Exhibit 2 – Map of Eureka’s Coastal Zone](#)

[Exhibit 3 – Resolutions of Transmittal of IP Amendment](#)

[Exhibit 4 – Ordinances of Adoption of IP Amendment](#)

I. RESOLUTION

A. DENIAL OF IP AMENDMENT NO. LCP-1-EUR-16-0047-3, AS SUBMITTED:

Motion:

I move that the Commission reject Implementation Plan Amendment No. 1-LCP-EUR-16-0047-3 as submitted by the City of Eureka.

Staff recommends a **YES** vote on the foregoing motion. Passage of the motion will result in rejection of the implementation plan amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution 1 to deny certification of the implementation plan amendment as submitted:

The Commission hereby denies certification of the Implementation Plan Amendment No. 1-LCP-EUR-16-0047-3 as submitted by the City of Eureka 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. 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.

B. CERTIFICATION OF IP AMENDMENT NO. LCP-1-EUR-16-0047-3, WITH SUGGESTED MODIFICATIONS:

Motion:

I move that the Commission certify Implementation Program Amendment No. 1-LCP-EUR-16-0047-3 for the City of Eureka if it is modified as suggested in this staff report.

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 2 to certify the implementation plan amendment with suggested modifications:

The Commission hereby certifies Implementation Plan Amendment No. 1-LCP-EUR-16-0047-3 for the City of Eureka if modified as suggested on grounds that the Implementation Program as amended, conforms with and is adequate to carry out the provisions of the certified land use plan. Certification of the implementation plan amendment will comply with the requirements of 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 or mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...

...The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30513)

The Commission may suggest modifications... (Section 30513)

The standard of review for the proposed amendment to the Implementation Plan (Zoning Ordinance) of the City of Eureka certified Local Coastal Program (LCP), pursuant to Section 30513 and 30514 (regarding amendments) of the Coastal Act, is whether the implementation plan (IP) would be in conformance with, and adequate to carry out, the provisions of the certified land use plan (LUP).

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held separate public hearings on each of the three ordinances adopted as part of the LCP amendment as follows:

- Ordinance 836 amending Article 29 of the certified IP to allow Eureka's Planning Commission to take action on coastal development permits and appeals: Eureka's Planning Commission held a public hearing on the subject ordinance on July 13, 2015. The Eureka City Council held a public hearing on May 3, 2016 and adopted the ordinance on June 7, 2016.
- Ordinance 819 amending Article 24 of the certified IP to modify the lapse time for conditional use permits and to modify the architecture review process for conditional use permit applications: Eureka's Planning Commission held public hearings on the subject ordinance on July 13, 2015 and August 10, 2015. The Eureka City Council held a public hearing on September 15, 2015 and adopted the ordinance on November 3, 2015.

- Ordinance 835 amending Articles 25, 27, 28, and 29 of the certified IP to consolidate and revise public hearing noticing requirements: Eureka’s Planning Commission held a public hearing on the subject ordinance on April 11, 2016. The Eureka City Council held a public hearing on May 3, 2016 and adopted the ordinance on June 7, 2016.

All hearings were noticed to the public consistent with Sections 13551 and 13552 of Title 14 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that a LCP Amendment will either require formal local government adoption after the Commission approval, or that it is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, the City’s four Resolutions of Transmittal of the IP amendment to the Commission for certification (Resolution Nos. 2016-58, 2016-59, 2016-57, and 2016-62) state that the amendment will take effect automatically. Therefore, if the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary. Should the Commission certify the LCP amendment subject to suggested modifications, acceptance of those suggested modifications by the Eureka City Council and a determination by the Executive Director of compliance with Section 13544 of the Commission’s regulations will be required in order for the amendment to take effect. Should the Commission deny the LCP Amendment as submitted without suggested modifications, no further action is required by either the Commission or the City, and the proposed LCP amendment will not become effective.

III. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed IP amendment, which are necessary to make the requisite LUP consistency findings. If the City accepts each of the suggested modifications within six months of Commission action, by formal resolution of the City Council, the modified amendment will become effective upon Commission concurrence with the Executive Director’s finding that this acceptance has been properly accomplished.

Suggested Modification 1: Modifications to Part 22 of Article 29 of Eureka’s Coastal Zoning Code Title 10, Chapter 5

All suggested modifications to Part 22 of Article 29 are shown in [Appendix A](#).

Suggested Modification 2: Modifications to Article 24 of Eureka’s Coastal Zoning Code Title 10, Chapter 5

All suggested modifications to Article 24 are shown in [Appendix B](#).

Suggested Modification 3: Modifications to Articles 25, 27, and 28 of Eureka’s Coastal Zoning Code Title 10, Chapter 5

All suggested modifications to Articles 25, 27, and 28 are shown in [Appendix C](#).

Suggested Modification 4: Modifications removing amendment to Title 10, Chapter 4 of the City's municipal code

Remove Sections 1-5 of Ordinance No. 915-C.S. amending Title 10, Chapter 4 of the Eureka Municipal Code (See Exhibit 4, pgs. 7-8).

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

The City of Eureka ("City") is proposing to amend its local coastal program's (LCP) implementation plan (IP) to modify coastal development permit (CDP) application review procedures and conditional use permit processing procedures, and consolidate and revise public hearing noticing requirements. The purpose of the proposed amendment is to shorten permit processing times and streamline public hearing requirements. The proposed changes to the certified IP were adopted in three ordinances, Ordinance Nos. 819, 835, and 836.

1. Modify Coastal Development Permit Application Review Procedures

Part 22 of Article 29 of the certified IP regulates coastal development permit procedures. Ordinance No. 836 amends §§10-5.29304.6 and 10-5.29310.2 of Part 22 to authorize the Planning Commission to act on CDP applications and on appeals of CDP applications acted on by the City's Planning Director ("Director").

Planning Commission Action on CDP Applications

Currently the regulations specify that either the Director or the City Council ("Council") takes action on CDP applications. The Director acts on the CDP when (1) the Director or the Planning Commission take action on other necessary permits or approvals, or (2) no other permit or approval except a CDP is required for the project. If another required permit or approval is being acted on by the Planning Commission, then the Director takes action on the CDP following the action by the Planning Commission. The Council acts on a CDP when the Council takes action on other necessary permits or approvals or when the Director, at his or her discretion, refers a CDP application to the Council for action.

Under the proposed amendment, when action on other required permits or approvals is to be taken by the Planning Commission, the Planning Commission, like the City Council, also would act on the CDP concurrently with action on the other required permits or approvals. In addition, when action on a CDP application is to be taken by the Director, the Director would be able to, at his or her discretion, refer action to the Planning Commission (rather than the Council).

Adding the Planning Commission as a reviewing body for CDP applications would reduce permit processing time if the Planning Commission is also acting on other permits or approvals required for the proposed development. For instance, pursuant to Article 24 of the certified IP, the Planning Commission hears applications for conditional use permits. Currently, if a proposed development requires a use permit and a CDP, the use permit would be heard by the Planning Commission and then the CDP would be heard by the Director. Under the proposed amendment, both the use permit and CDP would be acted on concurrently by the Planning Commission.

Planning Commission Action on CDP Appeals

With regard to local appeals of CDP decisions, under the currently certified IP, action by the Director on CDP applications may be appealed to the City Council by the applicant, an aggrieved person, or the City Council on its own motion. Because the City charges a fee for local appeals, an appellant may also appeal certain CDP decisions directly to the Coastal Commission pursuant to Section 30603 of the Coastal Act and Section 13573(a)(4) of the Coastal Commission's administrative regulations. Under the proposed amendment, action by the Director on a CDP application would be appealable to the Planning Commission, and Planning Commission action on a CDP application or appeal would in turn be appealable to Council. This modification would add an additional opportunity to appeal a project at the local level because a decision on a CDP by the Director could be appealed first to the Planning Commission and then to Council (whereas currently the decision can only be appealed to Council).

2. Modify Conditional Use Permit Processing Procedures

Article 24 of the certified IP regulates conditional uses. Ordinance No. 819 amends §§10-5.2414 and 10-5.2421 of Article 24 to modify the lapse time for conditional use permits and to modify the architectural review process for proposed conditional uses.

Lapse of Conditional Use Permits

Currently the regulations specify that a use permit lapses and becomes void one year following the date on which the use permit became effective unless the permit is vested¹ or an application for renewal of the use permit is filed with the Planning Commission. In contrast, a CDP issued by the City lapses in two years. Under the proposed amendment, use permits would lapse in two years instead of one, allowing use permit and CDP approvals for the same project to lapse concurrently. These lapse periods would allow permittees to apply for extensions for use permits and CDPs at the same time, simplifying the extension process.

Architectural Review for Conditional Uses

Under the currently certified IP, conditional uses in all districts require a conditional use permit approved by the Planning Commission (or Council on appeal), and architectural review by the City's Design Review Committee. Under the proposed amendment, the applicant for a use permit would have the option to request architectural review be conducted by the Planning Commission when action is taken on the use permit, or by the Design Review Committee at a separate meeting following action on the use permit by the Planning Commission. The proposed amendment would streamline the permitting process in some cases by allowing the Planning Commission to perform architectural review when acting on use permits rather than requiring additional review at a separate meeting of the Design Review Committee.

3. Consolidate and Amend Public Hearing Noticing Requirements

Ordinance No. 835 amends Articles 24, 25, 27, 28, and 29 of the certified IP to consolidate and revise noticing requirements for public hearings. The City's noticing requirements are currently embedded in individual code sections dealing with specific land use applications. For instance,

¹ A use permit is considered vested if a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the use permit application, or a certificate of occupancy is issued for the structure which was the subject of the use permit application, or the site is occupied if no building permit or certificate of occupancy is required [§10-5.2414(a)].

Articles 24, 25, 27, and 29 regulate conditional use permits, variances, zoning ordinance amendments, and coastal development permits respectively, and each of these articles includes its own noticing requirements. Under the proposed amendment, noticing requirements for all necessary approvals other than CDPs would be contained in Article 28, while noticing requirements for CDPs would remain in Article 29. Noticing requirements in Articles 24, 25, and 27 would be removed and instead these articles would reference Article 28.

The proposed amendment would also revise the noticing requirements for coastal development permits contained within Part 22 of Article 29 of the certified IP. Currently, the separate subsections of Part 22 address public hearing requirements, including three separate sections addressing: (1) notice for developments appealable to the Coastal Commission that require a public hearing, (2) notice of developments not appealable to the Coastal Commission that require a public hearing, and (3) notice of developments not appealable to the Coastal Commission that do not require a public hearing. Under the proposed amendment, noticing requirements for CDPs would largely be consolidated under §10-5.29307 of Part 22. The amended IP would continue to require mailed notice as required by §§13560-13568 of the Coastal Commission's administrative regulations,² but would also require a paper notice of approximately two and a-half by three feet to be posted in a conspicuous place on or near the property affected.

The currently certified IP requires notice for developments appealable to the Coastal Commission that require a public hearing to be mailed at least seven calendar days prior to the public hearing; notice of developments not appealable to the Coastal Commission that require a public hearing to be mailed at least ten calendar days prior to the public hearing; and notice of developments not appealable to the Coastal Commission that do not require a public hearing to be mailed at least seven calendar days prior to the decision on an application by the Director. Under the proposed amendment, notice of any CDP requiring a public hearing would be required at least ten (10) calendar days prior to the public hearing; and notice of a CDP not requiring a public hearing would be required at least fifteen (15) days prior to the local decision.

B. BACKGROUND

The City of Eureka is located on the north coast of California in Humboldt County, approximately 300 miles north of San Francisco and 100 miles south of the Oregon border (Exhibit 1). The City sits on the eastern shore of Humboldt Bay and has an estimated population of approximately 27,000.³

The City's LCP was certified by the Commission on July 26, 1984, and a comprehensive update of the LUP was effectively certified on April 16, 1999. The City is currently preparing another comprehensive update of the LUP, and is also planning a comprehensive update of the IP in the near future.

When the City's IP was certified by the Commission in 1984, the Commission certified Articles 1 through 29 of Title 10, Chapter 5 of Eureka's Municipal Code, including articles concerning

² California Coastal Commission Administrative Regulations Title 14, Division 5.5, Chapter 8, Article 17 (Local Coastal Program Implementation Procedures), Sections 13560-13568.

³ Information in this section is sourced from: ESA (2015, June). *City of Eureka Community Background Report*. Prepared for the City of Eureka General Plan Update.

inland zoning districts (Articles 3-14) and articles concerning local permits (Articles 24-28). The City renumbered the municipal zoning code as Chapters 155 and 156 in 1997, with the intent that Chapter 156, which pertains to coastal development, would become the City's IP. However, the City never submitted the updated code to the Coastal Commission for certification. Since then, the City has essentially been operating under two separate codes, one for inland development (Chapter 155) and one for the coastal zone (Title 10, Chapter 5). Because the City is planning a comprehensive update of the LUP and IP, the City is waiting to reconcile the codes and remove inland districts and local permitting processes from the certified IP.

C. CONSISTENCY ANALYSIS

1. Hearing and Noticing Procedures for Coastal Development Permits

Sections 13560-13568 of the Coastal Commission Administrative Regulations ("14 CCR") set minimum standards for notice and hearing requirements for local governments for decisions on coastal development permit applications. These minimum noticing requirements are meant to ensure that interested persons receive timely and sufficient notice so that they are fully aware of proposed coastal developments and may participate in the local-decision making process if they so choose.

14 CCR §13560 outlines the scope of Chapter 8, Article 17, "Local Coastal Program Implementation Regulations" [*emphasis added*]:

The provisions of this Article shall constitute minimum standards of notice and hearing requirements for local governments and for the Commission in reviewing development projects after certification of a local coastal program.

14 CCR §§13565 and 13568 outline minimum noticing requirements for appealable and non-appealable developments, respectively:

§13565. Notice of Appealable Developments.

Within ten (10) calendar days of accepting an application for an appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the first public hearing on the development proposal, the local government shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed and to the Commission. The notice shall contain the following information:

- (1) a statement that the development is within the coastal zone;*
- (2) the date of filing of the application and the name of the applicant;*
- (3) the number assigned to the application;*
- (4) a description of the development and its proposed location;*
- (5) the date, time and place at which the application will be heard by the local governing body or hearing officer;*

- (6) *a brief description of the general procedure of local government concerning the conduct of hearing and local actions;*
- (7) *the system for local and Coastal Commission appeals, including any local fees required.*

§13568. Notice of Non-Appealable Developments.

- (a) *Notice of developments within the coastal zone that require a public hearing under local ordinance, but which are not appealable pursuant to Public Resources Code Section 30603 (and which are not categorically excluded) shall be provided in accordance with existing local government notice requirements which shall provide at a minimum:*

Notice of developments shall be given at least ten (10) calendar days before a hearing in the following manner:

- (1) *if the matter is heard by the Planning Commission (city or county) notice shall be published in a newspaper of general circulation or (if there is none) posted in at least three public places in the local jurisdiction;*
- (2) *notice by first class mail to any person who has filed a written request therefore,*
- (3) *notice by first class mail to property owners within 300 feet.*
- (4) *notice by first class mail to residents within 100 feet of the proposed project.*
- (5) *notice by first class mail to the Commission.*
- (6) *the notice shall contain a statement that the proposed development is within the coastal zone.*

The local government may, instead, elect to provide notice in accordance with Section 13565.

- (b) *Notice of developments within the coastal zone which are not appealable pursuant to Public Resources Code Section 30603 and which do not require a public hearing under local ordinance (and which are not categorically excluded) shall be provided as follows:*

Within ten (10) calendar days of accepting an application for a non-appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the local decision on the application, the local government shall provide notice, by first class mail, of pending development approval. This notice shall be provided to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed, and to the Commission. The notice shall contain the following information:

- (1) *a statement that the development is within the coastal zone;*
- (2) *the date of filing of the application and the name of the applicant;*
- (3) *the number assigned to the application;*
- (4) *a description of development and its proposed location;*

- (5) *the date the application will be acted upon by the local governing body or decision-maker;*
- (6) *the general procedure of the local government concerning the submission of public comments either in writing or orally prior to the local decision;*
- (7) *a statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the local decision.*

14 CCR §13566 requires a public hearing on appealable developments [***emphasis added***]:

At least one public hearing shall be held on each application for an appealable development, thereby affording any persons the opportunity to appear at the hearing and inform the local government of the nature of their concerns regarding the project. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 13565. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

Section 30625(a) of the Coastal Act outlines who may appeal a local coastal development permitting decision to the Coastal Commission [***emphasis added***]:

*Except as otherwise specifically provided in subdivision (a) of Section 30602, **any appealable action on a coastal development permit** or claim of exemption **for any development by a local government** or port governing body **may be appealed to the commission by an applicant, any aggrieved person,** or any two members of the commission. The commission may approve, modify, or deny such proposed development, and if no action is taken within the time limit specified in Sections 30621 and 30622, the decision of the local government or port governing body, as the case may be, shall become final, unless the time limit in Section 30621 or 30622 is waived by the applicant.*

Section 30801 of the Coastal Act defines an “aggrieved person” as follows [***emphasis added***]:

Any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit and, in the case of an approval of a local coastal program, the local government involved.

The proposed amendment includes amendments to coastal development permit notice and hearing requirements contained within Part 22 (“Coastal Development Permit Procedures”) of Article 29 of the certified IP. The Commission suggests a number of modifications to ensure consistency of amended Part 22 with 14 CCR §§13560-13568. Compliance with 14 CCR §§13560-13568 is required and allows for transparency and public involvement in the local decision-making process necessary to adequately carry out the certified LUP.

As proposed to be amended, Section 10-5.29305 of the City’s IP explains the requirements for public hearings on applications for development; Section 10-5.29307 outlines how notice of public hearings on applications for development shall be given, including type, content, timing, and required recipients of notice; and Section 10-5.29308 describes noticing procedures when no public hearing is required. While amended Part 22 largely complies with 14 CCR §§13560-13568, there are a few inconsistencies, including the omission of minimum hearing and notice requirements and exceptions at variance with the minimum hearing and notice requirements. In addition, numbering and referencing errors and a lack of specificity in certain parts of the amended sections confuse the meaning of the regulations. Because amended §§10-5.29305, 10-5.29307, and 10-5.29308 are not fully consistent with the coastal development hearing and noticing requirements of 14 CCR §§13560-13568, the amendment as submitted is inadequate to carry out the certified LUP. Therefore, **Suggested Modification 1** includes edits to amended §§10-5.29305, 10-5.29307, and 10-5.29308 to bring the IP’s noticing and hearing procedures in full compliance with the Commission’s regulations (Appendix A, pgs. 27-30).

The major inconsistencies and omissions identified in amended §§10-5.29305, 10-5.29307, and 10-5.29308 and the corrections made by Suggested Modification 1 are explained in detail below:

- The proposed amendments to §10-5.29305 of the City’s IP require one public hearing on each application for development except as provided in §10-29306. However, §10-29306 is focused on noticing when a hearing is continued and does not specify when a public hearing is or is not required. While §10-29308 discusses noticing procedures when no hearing is required, nowhere in the proposed amendment to the IP is it explicitly stated when a public hearing is or is not required. Therefore **Suggested Modification 1** (1) adds language to §10-29308 specifying when a public hearing is, and is not, required consistent with 14 CCR §13566 and other applicable state and federal laws and regulations; and (2) modifies §10-5.29305 to fix the reference accordingly from §10-29306 to §10-29308 (Appendix A, pgs. 27, 29-30).
- As mentioned above, the proposed amendments to §10-5.29305 of Article 29, Part 22 discuss the hearing and noticing requirements for an “application for development.” However, Part 22 of Article 29 is only focused on coastal development permitting procedures, while noticing procedures for other types of development are included in §10-5.2808 of the proposed amendments to Article 28 of the certified IP. To ensure applications for coastal development permits are processed consistent with Part 22 of Article 29, and all other applications for development comply with Article 28 as intended by the City, **Suggested Modification 1** amends §10-5.29305 to clarify that 10-5.29305 only applies to applications for coastal development permits rather than all applications for development (Appendix A, pg. 27). Similarly, Suggested Modification 1 modifies the preamble to the proposed amendments to §10-5.29307 to clarify that the noticing procedures contained within §10-5.29307 apply when a public hearing is required on a coastal development permit application, rather than on any application for development (Appendix A, pg. 28).
- 14 CCR §13565 outlines the noticing requirements for hearings on appealable developments, including seven pieces of information that public hearing notices must contain. The proposed amendments to §10-5.29307(a) of the City’s IP specify the

required content of public hearing notices consistent with 14 CCR §13565, except that the proposed amendments to §10-5.29307(a) do not explicitly require notice to include (1) a description of the development; or (2) the general procedure of the local government concerning the conduct of the hearing and local actions, as required by 14 CCR §13565. Therefore, **Suggested Modification 1** adds these two required pieces of content to amended §10-5.29307(a) [Appendix A, pg. 28].

- 14 CCR §13565 specifies noticing requirements for appealable developments, which include noticing all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed. In contrast, 14 CCR §13568 provides two options for noticing non-appealable developments that require a public hearing: (1) a local government can elect to provide notice in accordance with §13565 (i.e. in the same manner as for appealable developments); or (2) the local government can follow a separate set of noticing requirements for non-appealable developments that includes noticing all property owners within 300 feet and all residents with 100 feet of proposed development, and, if the application is being heard by the Planning Commission, posting notice in at least three public spaces or publishing notice in a newspaper. As the City proposes to amend Part 22 of Article 29, appealable and non-appealable developments requiring hearings would both be noticed in the same manner consistent with 14 CCR §13565, except that for conditional uses not appealable to the Coastal Commission, notice would be required to be mailed to all property owners within 300 feet and all residents with 100 feet of proposed development, consistent with the separate noticing procedures contained under 14 CCR §13568. The City intends to only have one set of noticing requirements that applies to both appealable and non-appealable developments, and City staff has asked that the Commission include a suggested modification to §10-5.29307 to require mailed notice to all owners of real property and residents within 300 feet of the proposed development. As this requirement provides for even broader noticing than the minimum requirements set forth in the Commission’s regulations, **Suggested Modification 1** includes this change proposed by the City staff (Appendix A, pg. 28).
- The proposed amendments to §10-5.29307(b) lists the people to whom hearing notice must be provided: “*notice shall be mailed ...to:...* ”. However, §10-5.29307(b)(6)-(8) does not list people who should receive notice, but instead provides other noticing information that should be located elsewhere in this section. **Suggested Modification 1** adjusts the organization of this multi-level list so it is internally consistent with the structure of the code (Appendix A, pgs. 28-29).
- Consistent with 14 CCR §13565, the proposed amendments to §10-5.29307(b) require that notice be mailed to any person who has filed a written request for notice. However, inconsistent with 14 CCR §13565, the proposed amendments to §10-5.29307(b) do not acknowledge that the written request for notice could be for notice for the subject development project or more generally for all coastal development decisions within the City. **Suggested Modification 1** adds this detail (Appendix A, pg. 29). Proposed §10-5.29307 also includes a provision allowing the City to charge a fee which is reasonably related to the costs of providing the notice, and to require each request to be annually renewed. Requiring a fee for notice or annual renewal of noticing requests is not provided for in the Commission’s regulations, and 14 CCR §13560 specifies that the provisions of

the Commission's regulations constitute the minimum standards of notice. Thus **Suggested Modification 1** removes this fee provision (Appendix A, pg. 29).

- At the end of the proposed amendments to §10-5.29307, the section that sets forth requirements for noticing type, content, timing, and required recipients, the City includes the following caveats:

(c) Substantial compliance with these provisions to notice shall be sufficient and a technical failure to comply shall not affect the validity of any action taken pursuant to the procedures set forth in this chapter. Failure to post notice shall not invalidate the proceedings.

(d) The failure of any person or entity to receive notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions for which the notice was given.

14 CCR §13560 of the Commission regulations specifies that the provisions of Chapter 8, Article 17 of the Commission's regulations shall constitute minimum standards of notice and hearing requirements for local governments. Adding exceptions to the minimum standards is inconsistent with §13560; therefore, **Suggested Modification 1** removes §10-5.29307(c) and (d) as proposed by the City (Appendix A, pg. 29). However, the City's proposed requirement that a notice be posted in a conspicuous place on or near the property affected by the application for a CDP is an additional noticing provision not required by the Commission's regulations. Because posting hearing notice on the affected property is not required by the Commission's minimum regulatory standards, Suggested Modification 1 retains the City's proposed caveat that "failure to post notice shall not invalidate the proceedings," but moves the statement to renumbered Section 10-5.29307(d), the provision that actually requires posting of the notice.

Coastal Act §30625(a) specifies that any aggrieved person may appeal an appealable action on a coastal development permit by a local government to the Commission, and Coastal Act §30801 defines aggrieved person to include someone who for good cause was unable to participate at the local level by attending a hearing or otherwise informing the local government of the nature of his or her concerns prior to the hearing. If a person fails to receive notice of the local hearing, he or she may qualify as an aggrieved person under the aforementioned definition and therefore may have the right to appeal the local decision to the Commission. As a result there are cases when the City's assertion that the failure of any person to receive notice given pursuant to §10-5.29307 "shall not constitute grounds for any court to invalidate the action" is false.

- §10-5.29308 as proposed to be amended describes noticing requirements for developments that do not require a public hearing, but is titled "*Notice of developments not appealable to the Coastal Commission requiring a public hearing; permitted uses,*" which is inaccurate. Therefore **Suggested Modification 1** changes the title to "*Notice of developments that do not require a public hearing*" (Appendix A, pg. 29) Suggested Modification 1 removes the detail "*not appealable to the Coastal Commission*" from the title because there are cases when no hearing is required, but the development is still appealable to the Commission. For instance, California Government Code Section 65852.2 prohibits local public hearings on applications for accessory dwelling units, and

federal wireless telecommunication law prohibits public hearings on modifications to an existing wireless tower or base station qualifying as an eligible facilities request as specified in 47 U.S.C. 1455(a) and 47 C.F.R. 1.40001.

2. Developments Authorized without a Coastal Development Permit

Coastal Act Section 30610 provides for exceptions to coastal development permitting requirements for certain types of development. Excerpts of Coastal Act Section 30610 are included below [*emphasis added*]:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

- (a) *Improvements to existing single-family residences...*
- (b) *Improvements to any structure other than a single-family residence or a public works facility...*
- (c) *Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone...*
- (d) *Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities...*
- (e) ***Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.***
- (f) *The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division...*
- (g) *(1) The replacement of any structure, other than a public works facility, destroyed by a disaster...*
- (h) *Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code...*
- (i) *(1) Any proposed development which the executive director finds to be a temporary event which does not have any significant adverse impact upon coastal resources within the meaning of guidelines adopted pursuant to this subdivision by the commission...*

14 CCR Chapter 6, Subchapter 5, §§13240-13249 outline the procedures for considering categorical exclusions pursuant to Coastal Act §30610(e), including, but not limited to, the following provisions [*emphasis added*]:

§ 13243. Commission Action on Order Granting Exclusion.

*The commission shall, by a two-thirds (2/3) vote of its appointed members, exclude those categories of development or categories of development within specific geographic areas that it finds meet the criteria of Public Resources Code, Section 30610(e); **the commission shall require such terms and conditions as it deems necessary** pursuant to Public Resources Code, Section 30610.5(b). The commission's order granting the exclusion shall contain the following:*

- (a) A precise description of the category of development or category of development within a specific geographic area that is the subject of the exclusion in sufficient detail to permit any person to know precisely which category of development within a specific geographic area does not require a coastal development permit pursuant to Chapter 7 of the California Coastal Act of 1976.*
- (b) Specific findings supporting such determination to grant the exclusion as required by Public Resources Code Section 30610(e).*
- (c) **Any terms and conditions necessary to comply with the requirements of Section 30610.5(b). Such terms and conditions may also specify that certain categories of development or categories of development within a specific geographic area may be excluded only on a condition that local government development approvals are reviewable by the commission in the same manner as provided in Sections 13318-13323.***
- (d) Any category of development for which the commission shall receive notice of public agency approval.*
- (e) A declaration that the exclusion may be rescinded at any time, in whole or in part, if the commission finds by a majority vote of its appointed membership after public hearing that the terms and conditions of the exclusion order no longer support the findings specified in Public Resources Code, Section 30610(e) and that the order may be revoked at any time that the terms and conditions of the order are violated as provided in Public Resources Code, Section 30610.5.*

§ 13247. Effect of a Categorical Exclusion Order.

An order granting an exclusion for a category of development removes that category of development from the permit requirements of Chapter 7 of the California Coastal Act of 1976 to the extent and in the manner specifically provided in the exclusion order. *No development inconsistent with such order may take place unless the order is amended or terminated as provided in this subchapter or a final coastal development permit is issued.*

Listed exemptions

Section 10-5.29302 of Article 29, Part 22 of the City's certified IP requires that any applicant wishing to undertake development in the Coastal Zone must obtain a CDP, unless the project falls under a type or class of development listed in §10-5.29303 that is exempt from the need for a CDP. The authority to exempt certain types of development from coastal development permitting is derived from §30610 of the Coastal Act, cited above. The exemptions listed in §10-5.29303 all correspond to exemptions under Coastal Act §30610 except an exemption for "occupancy permits." In most cases, occupancy permits may not constitute development, but occupancy permits are not a category of development that can be excluded from CDP

requirements consistent with the Coastal Act. Thus **Suggested Modification 1** amends §10-5.29303 to remove “occupancy permits” from the list of exemptions (Appendix A, pg. 25).

Categorical Exclusion Order E-88-2

Pursuant to Coastal Act §30610(e), the City of Eureka has adopted a categorical exclusion order (Categorical Exclusion Order E-88-2) that excludes certain categories of development in certain geographic areas of the City’s coastal zone from the need for CDP authorization. In 1988, the Commission conditionally approved Categorical Exclusion Order E-88-2, and the order was later incorporated into the certified IP as §10-5.29304.1.

In adopting the exclusion order, the Commission imposed nine conditions on the scope and administration of allowable permit exclusions, as allowed for by 14 CCR §13243. However, when Categorical Exclusion Order E-88-2 was added to the certified IP, reference to these conditions was omitted. According to 14 CCR §13247, a categorical exclusion order removes a category of development from permitting requirements “*to the extent and in the manner specifically provided in the exclusion order.*” As categories of development are only excluded if they meet the nine conditions of the adopted order, these conditions must be included at least by reference in the certified IP.

Consequently, the Commission finds that, as proposed, the amended Part 22 of Article 29 would not adequately carry out the policies of the LUP with respect to the administration of coastal development permit requirements. Accordingly, **Suggested Modification 1** amends §10-5.29304.1 to specify that development excluded under E-88-2 must conform to the special conditions of the exclusion order (Appendix A, pg. 25).

3. Final Local Action and Appeals

CCR 14 Chapter 5, Subchapter 2 (Appeals to State Commission) states in applicable part [*emphasis added*]:

§ 13110. Commission Procedures Upon Receipt of Notice of Final Local Action.

Within three (3) working days of receipt of notice of final local decision, the executive director of the Commission shall post a description of the development in a conspicuous location in the Commission office and the appropriate district office. The executive director shall at the same time mail notice of the local action to the members of the Commission. The ten working day appeal period shall be established from the date of receipt of the notice of the final local government action.

§ 13111. Filing of Appeal.

....

(b) ***The appeal must be received in the Commission district office with jurisdiction over the local government on or before the tenth (10th) working day after receipt of the notice of the permit decision by the executive director.***

....

CCR 14 Chapter 8, Subchapter 2, Article 17 (Local Coastal Program Implementation Regulations) includes requirements for the local government coastal development permit system, including, but not limited to, the following provisions [*emphasis added*]:

....

§ 13570. Finality of Local Government Action.

A local decision on an application for a development shall not be deemed complete until (1) the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and, where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, and (2) when all local rights of appeal have been exhausted as defined in Section 13573.

§ 13571. Final Local Government Action-Notice.

(a) *Notice After Final Local Decision.* (This section shall not apply to categorically excluded developments.) Within seven (7) calendar days of a local government completing its review and meeting the requirements of Section 13570, the local government shall notify by first class mail the Commission and any persons who specifically requested notice of such action by submitting a self-addressed, stamped envelope to the local government (or, where required, who paid a reasonable fee to receive such notice) of its action. Such notice shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission.

....

§ 13572. Local Government Action-Effective Date.

A local government's final decision on an application for an appealable development shall become effective after the ten (10) working day appeal period to the Commission has expired unless either of the following occur:

- (a) *an appeal is filed in accordance with Section 13111;*
- (b) *the notice of final local government action does not meet the requirements of Section 13571;*

When either of the circumstances in Section 13572(a) or (b) occur, the Commission shall, within five (5) calendar days of receiving notice of that circumstance, notify the local government and the applicant that the effective date of the local government action has been suspended.

....

Coastal Act Section 30604(c) states [*emphasis added*]:

Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Effective date of appealable local government action

As outlined in 14 CCR §13572, a local coastal development permit for an appealable development does not become effective until the ten working day appeal period to the Commission has expired. §10-5.29314 of the City’s certified IP states that a final decision of the City on an application for an appealable development shall become effective after the ten working day appeal period to the Commission has expired or after the twenty-first calendar day following the final local action. **Suggested Modification 1** removes reference to the twenty-first calendar day to make §10-5.29314 consistent with 14 CCR §13572 (Appendix A, pg. 32).

Consistency with public access and recreation policies of the Coastal Act

Coastal Act §30604(c) requires that every CDP issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone include findings that the development is in conformity with the public access and recreation policies of the Coastal Act. 14 CCR §13570 further specifies that a local decision on an application for development shall not be deemed complete until all required finding have been made, including the public access and recreation policies of the Coastal Act where applicable. §10-5.29311 of the City’s certified IP describes when a local decision on an application for a development shall be deemed final consistent with 14 CCR §13570, except §10-5.29311 fails to mention the requisite findings of consistency with the public access and recreation policies of the Coastal Act for development between the nearest public road and the sea. **Suggested Modification 1** modifies §10-5.29311 accordingly to require findings on conformity with the public access and recreation policies of the Coastal Act when applicable (Appendix A, pg. 32).

4. Additional Friendly Modifications

During review of the proposed ordinance, Commission staff noticed a number of minor errors in amended Articles 24, 25, 27, and 28. City staff requested that the Commission include corrections to these errors as “friendly modifications.” Thus **Suggested Modifications 2, 3, and 4** are included as described below:

Suggested Modification 2: Corrections to amended Article 24

Under the currently certified IP, conditional uses require architectural review by the Design Review Committee pursuant to Article 18 of the certified IP. Under the proposed amendment, an applicant for a conditional use permit would have the option of requesting architectural review to be performed by the Design Review Committee pursuant to Article 18 as before, or by the Planning Commission pursuant to alternative procedures added under Article 24, §10-5.2421. As proposed to be amended, §10-5.2421 is missing some details necessary to clarify the intent of the section and its relationship to Article 18. For instance, the proposed amendments to §10-5.2421 mention drawings to be approved by the Planning Commission or Council on appeal, but do not clarify that the drawings are those drawing required by Section 10-5.1804 of Article 18. In addition, the proposed amendments to §10-5.2421 mention “modifications” to approved permits, but do not clarify that these modifications refer to modifications made by the applicant to a project for which architectural review has been approved. Accordingly, **Suggested Modifications 2** adds missing details to §10-5.2421 to ensure that the meaning of the amended section is clear (Appendix B, pgs. 39-40).

Suggested Modification 3: Corrections to amended Articles 25, 27, and 28

- The intent of Ordinance 915 is to consolidate public hearing noticing requirements for permits other than coastal development permits in one location in the code: Article 28, §§10-5.2808 through 10-5.2811. The City proposed to amend §10-5.2504 on variances to remove details on noticing public hearings but failed to replace this information with a reference to the noticing requirements in Article 28. Thus **Suggested Modification 3** modifies the proposed amendments to §10-5.2504 to include a reference to Article 28 for noticing requirements for public hearings (Appendix C, pg. 42).
- §10-5.2808 of Article 28 as proposed to be amended includes public hearing noticing requirements for local permits. To alert readers to the separate noticing requirements for coastal development permits contained within Article 29, **Suggested Modification 3** adds language to §10-5.2808 specifying that “notice of public hearing on a coastal development permit application shall also comply with the requirements of Article 29, Coastal Development Permit Procedures, Section 10-5.29307” (Appendix C, pg. 44).
- §10-5.2808(c) of Article 28 as proposed to be amended lists the required recipients of hearing notices (“*notice shall be mailed or delivered...to:...* ”). §10-5.2808(c)(5) and (c)(6) do not list people who should receive notice, but instead provide other noticing information that should be located elsewhere in this section. In addition Section 10-5.2808(c)(4)(A) of Article 28 is not a sub point of §10-5.2808(c)(4) but rather a sub point of 10-5.2808(b) and should be relocated accordingly. Thus **Suggested Modification 3** includes corrections to the hierarchy of the multilevel list within §10-5.2808 (Appendix C, pg. 44-45).

Suggested Modification 4: Modifications to the City’s amending Ordinance No. 915

Sections 1-5 of Ordinance No. 915 amend Title 10, Chapter 4 of the City’s municipal code (See Exhibit 4, pgs. 7-8). Chapter 4 is currently not part of the certified LCP and the City does not want to add Chapter 4 to the certified LCP. Therefore **Suggested Modification 4** removes Sections 1-5 of Ordinance 915.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As part of its local action on the subject LCP amendments, on August 16, 2016, the City of Eureka City Council, per Title 14, Section 15061 of the California Code of Regulations (“CEQA Guidelines,”) invoked the “general rule” exception to environmental review as otherwise required under CEQA, finding the permit processing ordinances (Ordinance Nos. 819, 835, and 836) not to have the potential for causing a significant effect on the environment. In such cases where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

As set forth in section 21080.9 of the California Public Resources Code, CEQA also exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Therefore, local governments are not required to prepare an EIR in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCP Amendment. Instead, the CEQA responsibilities are assigned to the Coastal Commission, and the Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA

Section 21080.5. Therefore the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment [14 CCR §§ 13542(a), 13540(f), and 13555(b)].

The City's LCP Amendment consists of an implementation plan (IP) amendment. The Commission incorporates its findings on land use plan (LUP) conformity into this CEQA finding as it is set forth in full. The IP amendment as originally submitted does not conform with and is not adequate to carry out the policies of the certified LUP with respect to coastal development permitting requirements.

The Commission, therefore, has suggested modifications to bring the IP amendment into full conformance with the certified LUP. As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts under the meaning of the California Environmental Quality Act. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made.

The Commission finds that the local coastal program amendment, as modified, will not result in significant unmitigated adverse environmental impacts under the meaning of CEQA. Further, future individual projects would require CDPs, issued by the City of Eureka, and in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the Coastal Zone, specific impacts to coastal resources resulting from individual development projects are assessed through the coastal development review process; thus, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts.

APPENDIX A:

**PART 22 OF ARTICLE 29 WITH CHANGES FROM PROPOSED
AMENDMENT & COMMISSION SUGGESTED MODIFICATIONS**

Part 22 of Article 29 is included below to show the context of the City's proposed changes to the article in concert with the Commission staff's suggested modifications.

Language of the currently certified Part 22 of Article 29 is shown in plain text.

The City's proposed additions are shown in underlined text.

The City's proposed deletions are shown in ~~strike-out text~~.

The Commission's suggested additions are shown in **bold, double-underlined text**.

The Commission's suggested deletions are shown in ~~**bold, double-strike-out text**~~.

Part 22. Coastal Development Permit Procedures

Sec. 10-5.29300. Purposes.

This part establishes the permit procedures for developments located in the coastal zone as defined in Section 30150 of the Public Resources Code. This article is based on the Local Coastal Program Implementation Regulations adopted by the California Coastal Commission pursuant to Public Resources Code Sections 30333 and 30501, and as such shall constitute the procedural requirements for review of developments in the coastal zone pursuant to Public Records Code Section 30600(d).

10-5.29301 Repealed [by 1-90 Major]

Sec. 10-5.29302. Applicability.

Except as provided in Section 10-5.29303 below, any applicant wishing to undertake a development (defined in Section 10-5.2906.2(u)) in the coastal zone shall obtain a coastal development permit in accordance with the provisions of this article, in addition to any other permit required by law. Development undertaken pursuant to a coastal development permit shall conform to the plans, specifications, terms and conditions approved in granting the permit. The procedures prescribed herein may be used in conjunction with other procedural requirements of the approving authority, provided that the minimum requirements as specified herein are assured.

Sec. 10-5.29303. Exemptions.

The developments listed below shall be exempt from the requirements for a Coastal Development Permit. Requirements for any other permits are unaffected by this section.

(a) Improvements to existing one-family dwellings, except as otherwise specified by Title 14, Section 13250 (a) and (b) of the California Administrative Code.

(b) Improvements to any structure other than a one family dwelling or a public works facility, except as otherwise specified by Title 14, Section 13253 (a) and (b) of the California Administrative Code.

(c) Maintenance dredging of existing channels, except as limited by Title 14, Section 13252 of the California Administrative Code.

(d) Repair and maintenance activities which do not result in an addition to or enlargement or expansion of the object of such activities, except as otherwise specified by Title 14, Section 13252 of the California Administrative Code.

(e) Activities of public utilities as specified in the Repair, Maintenance and Utility Hookup Exclusion adopted by the Coastal Commission on September 5, 1978.

(f) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division.

(g) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than ten (10%) percent, and shall be sited in the same location on the affected property as the destroyed structure.

(h) Any timeshare conversions of existing multiple unit residential structures. The conversion of a multiple unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a timeshare project or use for the purpose of this section.

~~(i) Occupancy permits.~~**Sec. 10-5.29304. Notice of exempt development.**

A permit issued by the City for a development which is exempt from the coastal development permit requirements, shall be exempt from the notice and hearing requirements of this article. The City shall maintain a record for all permits issued for exempt developments which shall be made available to the Coastal Commission or any interested person upon request. This record may be in the form of any record of permits issued currently maintained by the city, provided that such record includes the applicant's name, the location of the project, and brief description of the project.

Sec. 10-5.29304.1. Categorical exclusions.

The following categories of development within specified geographic areas of the coastal zone pursuant to the City of Eureka Categorical Exclusion Order E-88-2 are exempt from the permit requirements of this article. **The development shall conform to the special conditions of the exclusion order.**

(a) The construction, reconstruction, demolition, or alteration of the size, type or intensity of any development of a principally permitted use or uses in the areas of the Eureka Coastal Zone that are zoned for residential, commercial, or industrial development, except for the following:

(1) Public works facilities or improvements costing more than \$250,000.00 dollars.

(2) The development involves demolition of a structure of architectural or historic significance.

(b) The clearing of land and/or removal of vegetation.

(c) Lot line and boundary adjustments as defined in Section 66412(d) of the California Government Code (Subdivision Map Act) between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created.

(d) Grading of less than one hundred (100) cubic yards.

(e) Permits for encroachment into public rights-of-way.

(f) Construction, reconstruction, upgrading, replacement, rehabilitation, or installation of all public works and public facilities (including, but not limited to utility extensions, road improvements, sidewalks, bicycle lanes, street planting, water and sewer systems and the removal of architectural barriers to handicapped persons) costing \$250,000 or less. The upgrading of streets to current city standards within existing rights-of-way where no additional right-of-way is being obtained allowing, however for minor right-of-way acquisitions at intersections.

(g) Wall mounted signs, located on-site, less than 24 square feet in size, no higher than the vertical wall to which they are attached, located within the "CW," "CS," or "CP" zoning designations of the Eureka Local Coastal Program, except as follows:

Lots or parcels within or visible from scenic coastal resource areas, as defined in the Eureka Local Coastal Program.

(h) Subdivision and parcel maps of five (5) parcels or less.

Sec. 10-5.29304.2 Notice of excluded development.

A permit issued by the City for a development which is exempt from the Coastal Development Permit requirements, shall be exempt from the notice and hearing requirements of

this article. The City shall maintain a record for all permits issued for excluded development which shall be made available to the Coastal Commission or any interested person upon request. This record may be in the form of any record of permits issued currently maintained by the City, provided that such record include the applicant's name, the location of the project and brief description of the project.

Sec. 10-5.29304.3 Application requirements.

Applications for coastal development permits shall be filed with and on forms provided by the Community Development Department. Where required by this chapter, applications for coastal development permits shall be made prior to or concurrently with application for any other permit or approvals required for the project by this chapter. The application shall include the following data:

- (a) Name and address of the applicant;
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property on which the use is proposed to be located;
- (c) Address or description of the property; and,
- (d) Detailed project description and project information required in the supplement to the application.

Sec. 10-5.29304.4 Maps.

The application shall be accompanied by the following plans and drawings:

- (1) An accurate scale drawing of the site showing all existing and proposed improvements;
- (2) An accurate scale drawing of the development floor plan and building elevations (as applicable); and,
- (3) Any additional information determined by the Director of Community Development to be necessary for evaluation of the proposed development.

Sec. 10-5.29304.5 Fees.

The application shall be accompanied by a fee established by resolution of the Council to cover the cost of handling the application as prescribed in this article.

Sec. 10-5.29304.6 Action on coastal development permit.

Action to approve, condition or deny a coastal development permit shall be taken ~~only~~ by the Director of Community Development, the Planning Commission, or the City Council. To the extent possible, action on a coastal development permit should be taken concurrently with action on other permits or approvals required by this chapter for the project, in accordance with the following procedures:

(a) Where action on other permits or approvals is to be taken by the Director of Community Development ~~or the City Council, or should the project require no permit or approval other than a coastal development permit, the Director of Community Development shall act on the coastal development permit, then that person or Council shall also act on the coastal development permit.~~

(b) The Director of Community Development may at his or her discretion, refer the coastal development permit to the Planning Commission for action.

~~(c)~~ Where action on other permits or ~~appeals~~ approvals is to be taken by the Planning Commission, the ~~Director of Community Development~~ Planning Commission shall act on the

coastal development permit ~~following the~~ concurrently with action by the Planning Commission on the other required permit or approval.

(ed) Where action on other permits or approvals is to be taken by the City Council, the Council shall act on the coastal development permit concurrently with action on the other required permit or approval. ~~Should the project require no permit or approval other than a coastal development permit, the Director of Community Development shall act on the coastal development permit.~~

(de) Where action on other permits or approvals is to be taken by more than one decision making body, the body with the highest decision making authority shall act on the coastal development permit. ~~The Director of Community Development may at his or her discretion, refer the coastal development permit to the City Council for action.~~

Sec. 10-5.29305. Notice of developments appealable to Coastal Commission.

~~At least seven (7) calendar days prior to the first public hearing on development proposal, the City shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, the owner(s) of the property, to all persons who has requested to be on the mailing list for that development project or for coastal decisions within the City, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed, and the Coastal Commission. The notice shall contain the following information:~~

- ~~(a) A statement that the development is within the coastal zone;~~
- ~~(b) The date of filing of the application and the name of the applicant;~~
- ~~(c) The number assigned to the application;~~
- ~~(d) A description of the development and its proposed location;~~
- ~~(e) The date, time and place at which the application will be heard by the local governing body or hearing officer;~~
- ~~(f) A brief description of the general procedure of local government concerning the conduct of hearing and local actions;~~
- ~~(g) The system for local and Coastal Commission appeals, including any local fees required.~~ **Public hearing on developments—Notice.**

Except as provided in Section 10-5.29306~~8~~, at least one public hearing shall be held on each application for a coastal development permit, thereby affording any persons the opportunity to ~~appeal~~ **appear** at the hearing and inform the City of the nature of their concerns regarding the project. Notice of such hearing shall be provided pursuant to Section 10-5.29307. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

Sec. 10-5.29306. Public hearing on appealable developments.

~~At least one public hearing shall be held on each application for an appealable development, thereby affording any persons the opportunity to appeal at the hearing and inform the City of the nature of their concerns regarding the project. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 10-5.29305. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.~~ **Notice of local government action where hearing continued.**

If a decision on a development permit is continued by the City to a time which is neither (a) previously stated in the notice provided pursuant to Section 10-5.29307 nor (b) announced at the hearing as being continued to a time certain then the City shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in this chapter.

Sec. 10-5.29307. Notice of local government action where hearing continued.

~~— If a decision on a development permit is continued by the City to a time which is neither (a) previously stated in the notice provided pursuant to Section 10-5.29305 nor (b) announced at the hearing as being continued to a time certain, the city shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section 10-5.29705.~~

Public hearing notice; coastal zone procedures.

Unless specified otherwise, when a public hearing is required **for a coastal development permit application** pursuant to Title **150** for development in the coastal zone, notice of the public hearing shall be provided in the following manner:

- (a) The notice shall include:
 - (1) A statement that the development is within the coastal zone;
 - (2) The date of filing of the application and the name of the applicant;
 - (3) The number assigned to the application;
 - (4) The identity of the hearing body or officer;
 - (5) The date, time, and place of the public hearing;
 - (6) A general explanation of the matter to be considered, **including a description of the development;**
 - (7) A general description, in text and/or by diagram, of the location of the real property, if any, that is the subject of the hearing, including the Assessor's parcel number(s) and street address(es);
 - (8) The general procedure of the local government concerning the submission of public comments either in writing or orally prior to the local decision; ~~and~~
 - (9) The general procedure of the local government concerning the conduct of the hearing and local actions, and**
 - ~~(9)(10)~~ **(10) The system for local and Coastal Commission appeals, including any local fees required.**
- (b) The notice shall be mailed by first class mail or delivered at least ten (10) days prior to the hearing to:
 - (1) The owner of the subject real property, the owner's duly authorized agent, and the project applicant, if any; and
 - ~~(2) For projects appealable to the Coastal Commission: all owners and residents of real property within 100 feet of the real property that is the subject of the hearing;~~
 - ~~(3) For conditional uses not appealable to the Coastal Commission: a~~ **All owners of real property and residents within 300 feet of the perimeter of the parcel(s) on which the development is proposed and residents within 100 feet of the real property that is the subject of the hearing;**
 - (4) The Coastal Commission; and

~~(54)~~ Any person who has filed a written request for notice **for the subject development project or for coastal decisions within the City** with the City Clerk or Secretary of the Planning Commission or Historic Preservation Commission.

~~(c) (6)~~ Owner information **for noticing** shall be as shown on the latest equalized assessment roll. Instead of using the assessment roll, the City may use records of the County Assessor or Tax Collector if those records contain more recent information than the information contained on the assessment roll.

~~(d) (7)~~ A notice approximately two and a-half by three feet shall be posted in a conspicuous place on or near the property affected. **Failure to post notice shall not invalidate the proceedings.**

~~(8)~~ **The City may charge a fee which is reasonably related to the costs of providing the notice requested in Section 10-5.29307 (b) (5) and the City may require each request to be annually renewed.**

~~(bc)~~ In addition to the notice required by this section, the City may give notice of the hearing in any other manner it deems necessary or desirable.

~~(e)~~ **Substantial compliance with these provisions to notice shall be sufficient and a technical failure to comply shall not affect the validity of any action taken pursuant to the procedures set forth in this chapter. Failure to post notice shall not invalidate the proceedings.**

~~(d)~~ **The failure of any person or entity to receive notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions for which the notice was given.**

Sec. 10-5.29308. Notice of developments ~~not appealable to the Coastal Commission that require~~ requiring that do not require a public hearing; conditional; permitted uses.

~~Notice of such developments shall be given at least ten (10) calendar days before a hearing in the following manner:~~

~~(a) Notice in the manner prescribed in Section 10-5.29305 above; or,~~

~~(b) Notice as prescribed herein:~~

~~(1) If the matter is heard by the Planning Commission, notice shall be published in a newspaper of general circulation or (if there is none) posted in at least three (3) public places in the local jurisdiction;~~

~~(2) Notice by first class mail to any person who has filed a written request therefore;~~

~~(3) Notice by first class mail to residents within three hundred (300') feet;~~

~~(4) Notice by first class mail to residents within one hundred (100') feet of the proposed project;~~

~~(5) Notice by first class mail to the Commission;~~

~~(6) The notice shall contain a statement that the proposed development is within the coastal zone.~~

No public hearing is required for a coastal development permit application for (a) a development that is not appealable to the Coastal Commission pursuant to Public Resources Code Section 30603 and which does not require a public hearing under local ordinance, (b) an accessory dwelling unit, or (c) a modification to an existing wireless tower or base station that qualifies as an eligible facilities request as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law. When no public

hearing is required, a notice of pending development approval shall be provided **in the same manner** as prescribed **for public hearing notices** in Section 10-5.29307, except:

- (a) The notice shall be mailed at least fifteen (15) days prior to the local decision; and
- (b) The notice shall contain **the date the application will be acted upon and** a statement that a public comment period of at least fourteen (14) working days shall be provided to allow for the submission of comments by mail prior to the local decision.

Sec. 10-5.29309. Notice of developments not appealable to the Coastal Commission that do not require a public hearing: permitted uses.

~~At least seven (7) calendar days prior to the decision on the application by the Community Development Director, the city shall provide notice by first class mail of pending development approval. This notice shall be provided to each applicant, the owner(s) of the property, all persons who have requested to be on the mailing list for that development or for Coastal decisions within the City, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed and to the Coastal Commission. The notice shall contain the following information:~~

- ~~(a) A statement that the development is within the coastal zone.~~
- ~~(b) The date of filing of the application and the name of the applicant.~~
- ~~(c) The number assigned to the application.~~
- ~~(d) A description of the development and its proposed location.~~
- ~~(e) The date of the application will be acted upon by the approving authority.~~
- ~~(f) The general procedure of the local government concerning the submission of public comments either in writing or orally prior to the local decision.~~
- ~~(g) A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the local decision.~~

Reserved.

Sec. 10-5.29310. Determination of applicable notice and hearing procedures.

The determination of whether a development is categorically excluded, or appealable for purposes of notice, hearing and appeals shall be made by the City at the time the application for development is submitted. This determination shall be made with reference to the certified Local Coastal Program, including maps, categorical exclusions, land use designations, and zoning ordinances adopted as a part of the certified Local Coastal Program. Where an applicant, interested person, or the city has a question as to the appropriate procedures, the following procedures shall be followed:

- (a) The city shall make its determination as to what type of development is being proposed (i.e., exempt, categorically excluded, appealable nonappealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by the designated approving authority;
- (b) If the determination of the City is challenged by the applicant or an interested person, or if the City wishes to have a Commission determination as to the appropriate designation, the City shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;
- (c) The Executive Director shall within two (2) working days of City request (or upon completion of a site inspection where such an inspection is warranted) transmit a determination as to whether the development is exempt, categorically excluded, nonappealable or appealable;

(4) Where, after the Executive Director's investigation, the Executive Director's determination is not in accordance with the City determination, the Commission shall hold a hearing for the purpose of determining the appropriate designation for the next Commission meeting in the appropriate geographic region following the City request.

Sec. 10-5.29310.1. Required findings.

A coastal development permit shall be approved only upon making the finding that the proposed development conforms to the policies of the Certified Local Coastal Program.

Sec. 10-5.29310.2 Appeals.

Development pursuant to an approved coastal development permit shall not commence until all applicable appeal periods expire, or, if appealed, until all appeals, including to the Coastal Commission, if applicable, have been exhausted.

~~(a) The decisions of the Director of Community Development on coastal development permits that are not appealable to the Coastal Commission are final and cannot be appealed.~~

~~(b) The decisions of Action by the Director of Community Development on coastal development permits that are appealable to the Coastal Commission may be appealed to the City Council Planning Commission by the applicant, or an aggrieved person as defined in Section 10-5.2906.2(b), or the Planning Commission or City Council on its their own motion. The appeal and accompanying fee established by resolution of the Council, must be filed with the City Clerk within ten (10) calendar days of the decision. The appeal shall be made on forms provided by the City and shall state why the decision of the Director of Community Development is not in accord with the City's Local Coastal Program and or why it is believed that there was an error or an abuse of discretion by the Director of Community Development.~~

(b) Upon notification that an appeal of the action of the Director of Community Development has been filed with the City Clerk, the Secretary shall set a public hearing before the Planning Commission. Notice shall be sent in the manner prescribed in Section 10-5.293057.

(c) Action by the Planning Commission on coastal development permits may be appealed to the City Council by the applicant or an aggrieved person as defined in Section 10-5.2906.2(b) or the City Council on its own motion. The appeal and accompanying fee established by resolution of the Council, must be filed with the City Clerk within 10 calendar days of the decision. The appeal shall be made on forms provided by the city and shall state why the decision of the Planning Commission is not in accord with the city's Local Coastal Program and or why it is believed that there was an error or an abuse of discretion by the Planning Commission.

(ed) Upon notification that an appeal of the action of the Planning Commission has been filed with the City Clerk, the City Clerk shall set a public hearing before the City Council. Notice shall be sent in the manner prescribed in Section 10-5.2930530706.2.2(b).

(de) Coastal development permits for developments which are subject to the appeal jurisdiction of the Coastal Commission as specified in Section 10-5.2906.2(f) and Section 10-5.29310, may be appealed to the Coastal Commission once the appellant has exhausted local appeals pursuant to Section 10-5.2931565. Appeals shall be made in a manner consistent with the Coastal Commission's guidelines.

Sec. 10-5.29311. Finality of city action.

A local decision on an application for a development shall be deemed final when (1) the local decision on the application has been made and all required findings have been adopted,

including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and, where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, and that the required conditions of approval adequate to carry out the certified local coastal plan and the public access and recreation policies of Chapter 3 of the Coastal Act where applicable as required in the implementing ordinances have been imposed, and (2) when all rights of appeal have been exhausted as defined in Section 10-5.2931565.

Sec. 10-5.29312. Final city action - Notice.

Within seven (7) calendar days of a final decision on an application for any development (except categorically excluded or exempt developments) the City shall provide notice of its action by first class mail to the Commission and to any persons who specifically requested notice of such final action by submitting a self-addressed, stamped envelope to the City (or, where required, who paid a reasonable fee to receive such notice). Such notice shall include conditions of approval and written findings and the procedures for appeal to the Coastal Commission.

Sec. 10-5.29313. Failure to act - Notice.

(a) *Notification by applicant.* If the city has failed to act on an application within the time limits set forth in Government Code Sections 65950 - 65957.1, thereby approving the development by operation of law, the person claiming a right to proceed pursuant to Government Code Sections 65950 - 65057.1 shall notify, in writing, the City and the Commission of his or her claim that the development has been approved by operation of law. Such notice shall specify the application which is claimed to be approved.

(b) *Notification by city.* When the City determines that the time limits established pursuant to Government Code Sections 65950 - 65957.1 have expired, the City shall within seven (7) calendar days of such determination, notify any person entitled to receive notice pursuant to Section 10-5.29312 that it has taken final action by operation of law pursuant to Government Code Sections 65950 - 65957.1. The appeal period for projects approved by operation of law shall begin to run only upon the receipt of the City notice in the Commission office (This section shall apply equally to a City determination that the projects approved by operation of law and to a judicial determination that the project has been approved by operation of law).

Sec. 10-5.29314. Local government action - Effective date.

(a) A final decision of the City on an application for a nonappealable development shall become effective on the day the decision is made.

(b) A final decision of the City on an application for an appealable development shall become effective after the ten (10) working days appeal period to the Commission has expired ~~or after the twenty-first calendar day following the final local action~~ unless any of the following occur:

- (1) An appeal is filed in accordance with the Commission's regulations;
- (2) The notice of final local government action does not meet the requirements of Section 10-5.2931232 and 10-5.2931343.

Where any of the circumstances in Section 10-5.293145(1) or (2) occur, the Commission shall, within five (5) calendar days of receiving notice of that circumstance, notify the City and the applicant that the effective date of the City action has been suspended.

Sec. 10-5.29315. Exhaustion of local appeals.

(a) An appellant shall be deemed to have exhausted local appeals for purposes of filing an appeal under the Commission's regulations and be an aggrieved person where the appellant has pursued his appeal to the local appellate body as required by the City appeal procedures; except that exhaustion of all local appeals shall not be required if any of the following occur:

- (1) The City required an appellant to appeal to more local appellate bodies for permits in the coastal zone, in the implementation section of the Local Coastal Program;
- (2) An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision;
- (3) An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this article;
- (4) The city charges an appeal fee for the filing or processing of appeals.

Where the local government would ordinarily require an appeal fee for the processing of appeals within the appealable areas of the coastal zone, the City may elect to waive the appeal fee and apply to the Commission for a reimbursement of that fee through an SB 90 claim or similar reimbursement process.

(b) Where a project is appealed by any two (2) members of the Commission, there shall be no requirement of exhaustion of local appeals. Provided, however, that notice of Commission appeals shall be transmitted to the local appellate body (which considers appeals from the local body that rendered the final decision) and the appeal to the Commission shall be suspended pending a decision on the merits by that local appellate body. If the decision of the local appellate body modifies or reverses the previous decision, the Commissioners shall be required to file a new appeal from that decision.

Sec. 10-5.29316 Repealed

Sec. 10-5.29317. Emergency coastal development permit.

(a) Applications for development in cases of emergencies as defined in Section 10-5.2906.3(d) shall be made to the Director of Community Development in writing or if time does not allow written application, the application may be made verbally in person or by telephone. The following information shall be included in any such request:

- (1) Nature of emergency;
- (2) Cause of the emergency;
- (3) Location of the emergency;
- (4) The remedial, protective or preventative work either needed or accomplished to deal with the emergency;
- (5) The circumstances of the emergency that appeared to justify actions taken, including the probable consequences of failing to take action.

(b) The Director of Community Development shall verify the facts of the alleged emergency insofar as time allows.

(c) The Director of Community Development shall provide public notice of the emergency work, with the extent and type of notice determined on the basis of the nature of the emergency itself. Notice shall also be provided to the Executive Director of the Coastal Commission.

(d) The Director of Community Development may grant an emergency permit with reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if he or she finds that:

- (1) An emergency exists and requires action more quickly than permitted by the procedures for ordinary permits;

(2) Public comment on the proposed emergency action has been reviewed if time allows;

(3) The work proposed would be consistent with the requirements of the Local Coastal Program.

(e) Within ten (10) calendar days of the request for an emergency permit, the owner/applicant shall submit an application for a coastal development permit. Failure by the owner/applicant to follow through in a timely manner with a regular application, shall be cause for the Director of Community Development to revoke the emergency permit and to possibly direct removal of any improvements installed under the emergency permit. The Director of Community Development may conduct a public hearing prior to taking action in such situations.

(f) The Director of Community Development shall report the granting of an emergency permit, in writing, to the City Council and to the Coastal Commission. The request to the City Council shall be scheduled for its next regular meeting. The report shall be mailed to all persons who have requested such notification in writing.

The report of the Director of Community Development shall be informational only. The decision to issue an emergency permit is solely at the discretion of the Director of Community Development.

Sec. 10-5.29318. Amendments to coastal development permits.

(a) Applications for amendments to previously approved coastal development permits shall be filed with the Community Development Department. The application shall be in writing and shall contain sufficient detail to adequately assess the nature of the amendment and any potential impacts of the amendment.

(b) Applications for amendments shall be rejected if the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information which could not, with reasonable diligence, have been discovered and produced before the original permit was granted.

(c) If, in the opinion of the Director of Community Development the amendment is of a minor or trivial nature, with no impacts not already assessed in the original permit action, and generally in keeping with the action of the appropriate approving authority, the amendment may be approved by the Director of Community Development. If the Director of Community Development determines that the proposed amendment is immaterial, as described above, notice of such a determination shall be sent to the Executive Director of the Coastal Commission, to each property owner and occupant of property within one hundred (100) feet of the property and to all other parties that the Director of Community Development has reason to know who may be interested in the application. If no written objection is received by the Community Development Department within ten (10) calendar days of sending the notice, the amendment shall be deemed approved. If objections are received, the amendment shall be considered under Section 10-5.29318(d).

(d) If in the opinion of the Director of Community Development, the amendment is other than a minor or trivial nature, or may cause impacts not already assessed in the original permit, or is not in keeping with the action of the appropriate approving authority, the amendment shall be taken to the approving authority of the original permit and processed consistent with the original permit procedures.

Sec. 10-5.29319. Lapse of coastal development permit.

(a) A coastal development permit shall lapse and become void if construction or implementation of the permit has not commenced within two (2) years from the date of final approval of the application for a coastal development permit.

(b) Upon written request received prior to the expiration of the permit, a one-year extension may be granted by the approving authority. The request may be granted upon making the findings that no substantial change of circumstances has occurred and that the extension would not be detrimental to the purpose of this chapter. Notice of the requested extension shall be given to any person determined by the Director of Community Development to have been aggrieved at the original hearing. Any persons aggrieved by the Director of Community Development's decision on an extension request may appeal that decision to the City Council. The decision of the City Council on an extension request is final.

APPENDIX B:

**ARTICLE 24 WITH CHANGES FROM PROPOSED AMENDMENT &
COMMISSION SUGGESTED MODIFICATIONS**

Relevant excerpts of Article 24 are included below to show the context of the City's proposed changes to the article in concert with the Commission staff's suggested modifications.

Language of the currently certified Article 24 is shown in plain text.

The City's proposed additions are shown in underlined text.

The City's proposed deletions are shown in ~~strike-out text~~.

The Commission's suggested additions are shown in **bold, double-underlined text**.

The Commission's suggested deletions are shown in ~~**bold, double-strike-out text**~~.

Article 24

....

Sec. 10-5.2403. Public hearings; Notices.

The Planning Commission shall hold at least one public hearing on each application for a use permit following preparation of the written report by the Director and within forty five (45) sixty (60) days of the date when the application is filed determined to be exempt from CEQA, or a negative declaration is adopted, or within one hundred eighty (180) days following the certification of an EIR. The secretary shall set the time and place of the hearing. Notice of the hearing shall be given pursuant to Sections 10-5.2808 through 10-5.2811 of Article 28, (Administration and Enforcement) of this chapter, ~~not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mailing a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest adopted tax roll of the County as owning property within three hundred (300') feet of the boundaries of the area occupied or to be occupied by the use which is the subject of the hearing, or by publication in a newspaper of general circulation in the City, and by posting in conspicuous places close to the property affected. Failure to post notice shall not invalidate the proceedings.~~ In the coastal zone, notice of public hearings shall also comply with the notice requirements of Article 29, Coastal Development Permit Procedures, Section 10-5.2901 et seq.

....

Sec. 10-5.2406. Action of the Planning Commission.

- (a) Within forty-five (45) days following the closing of a public hearing on a use permit application, the Planning Commission shall act on the application. The Commission may grant by resolution an application for a use permit as the permit was applied for or in modified form, or the application may be denied. A use permit may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the Commission may prescribe. Conditions may include, but shall not be limited to, requiring special yards, open spaces, buffers, fences, and walls; requiring the installation and maintenance of landscaping; requiring street dedications and improvements; regulation of points of vehicular ingress and egress; regulation of on-site traffic circulation; regulation of signs; regulation of hours of operation and methods of operation; control of nuisances; prescribing standards for the maintenance of buildings and grounds; and the prescription of development schedules. Except as provided in Article 12 of this chapter (PD Planned Unit Development Combining Districts), a use permit may not grant variances to the regulations prescribed by this chapter for fences, walls, hedges, screening, and landscaping; site area, width, frontage, and depth; front, rear and side yards; basic floor area; height of structures; distance between structures; courts; usable open space; signs; and offstreet parking facilities and off-street loading facilities for which variance procedures are prescribed by Article 25 of this chapter (Variances).

....

Sec. 10-5.2408. Effective date of use permits.

Within five (5) days following the date of a decision of the Planning Commission on a use permit application, the Secretary shall transmit written notice of the decision to the Council and to the applicant. A use permit shall become effective ten (10) days following the date on which the use permit was granted or on the day following the next meeting of the Council, whichever is later, unless an appeal has been taken to the Council, or unless the Council shall elect to review the decision of the Commission.

Sec. 10-5.2409. Appeals to Council.

Within ten (10) days following the date of a decision of the Planning Commission on a use permit application, the decision may be appealed to the Council by the applicant or by any other person. An appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record.

Sec. 10-5.2410. Council review.

Within ten (10) days following the decision of the Planning Commission on a use permit application, or at the next meeting of the Council, whichever is later, the Council may elect to review such action. If the Council elects to review the Commission's action and declines to affirm the Commission decision, a public hearing shall be held as prescribed in Section 10-5.2412 of this article.

....

Sec. 10-5.2412. Public hearings: Notices.

The Council shall hold at least one public hearing within forty-five (45) days of the date when an appeal from a decision of the Planning Commission on a use permit application is filed or the date when the Council elects to review and declines to affirm the Commission's action. Unless otherwise directed by the Council, the City Clerk shall set the time and place of the hearing. Notice of the public hearing shall be given as prescribed in Sections 10-5.2808 through 10-5.2811 of Article 28. (Administration and Enforcement) ~~Section 10-5.2403 of this chapter article~~ and shall also be given to the Commission.

Sec. 10-5.2413. Action of Council.

Within forty-five (45) days following the closing of a public hearing on a use permit application the Council shall act on the application. The Council may by resolution affirm, reverse, or modify a decision of the Planning Commission, provided that if a decision denying a use permit is reversed or a decision granting a use permit is modified, the Council, on the basis of the record transmitted by the Secretary and such additional evidence as may be submitted, shall make the findings prerequisite to the granting of a use permit as prescribed in Section 10-5.2407 of this article. A use permit that has been the subject of an appeal to the Council or review by the Council shall become effective immediately after it is granted by resolution of the Council. Within five (5) days following the date of a decision of the Council on a use permit application, the City Clerk shall transmit written notice of the decision to the applicant and Commission and shall return the Commission record to the Secretary.

Sec. 10-5.2414. Lapse of use permits.

- (a) A use permit shall lapse and shall become void ~~one two~~ two years following the date on which the use permit became effective unless the Planning Commission specifies a shorter time period, or unless prior to the expiration of ~~one two~~ two years, a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the use permit application, or a certificate of occupancy is issued for the structure which was the subject of the use permit application, or the site is occupied if no building permit or certificate of occupancy is required.
- (b) A use permit may be renewed for an additional period of one year provided that, prior to either the expiration of the date when the use permit became effective, or one year from the date the renewal became effective ~~the expiration of one year from the date when the use permit or the renewal became effective~~, an application for renewal of the use permit is filed with the Planning Commission.
- (c) The Planning Commission may grant or deny an application for the renewal of a use permit.
- (d) Sections 10-5.2402 through 10-5.2413 of this article shall apply to an application for the renewal of a use permit.

....

Sec. 10-5.2417. Suspension and revocation.

Upon the violation of any applicable provision of this chapter, or, if granted subject to conditions, upon failure to comply with conditions, a use permit shall be suspended automatically. The Planning Commission shall hold a public hearing within forty-five (45) days, in accord with the procedure prescribed in Sections 10-5.2808 through 10-5.2811 of Article 28. (Administration and Enforcement) ~~Section 10-5.2403 of this chapter article~~, and, if not satisfied that the regulation, general provision, or condition is being complied with, may revoke the use permit or take such action as may be necessary to ensure compliance with the regulation, general provision, or condition. Within five (5) days following the date of a decision of the Planning Commission revoking a use permit, the Secretary shall transmit to the Council written notice of the decision. The decision shall become final ten (10) days following the date on which the use permit was revoked or on the day following the next meeting of the Council, whichever is later, unless an appeal has been taken to the Council, or unless the Council shall elect to review and decline to affirm the decision of the Planning Commission, in which cases Sections 10.5.2409 through 10-5.2413 of this article shall apply.

....

Sec. 10-5.2421. Architectural review.

All conditional uses shall be subject to architectural review for the purposes described in Section 10-5.1801.2 of as prescribed in Article 18 of this chapter (Site Plan Review and Architectural Review) and shall be reviewed by the Design Review Committee, Planning Commission, or the Council upon appeal of the decision of the Planning Commission.

- (a) The applicant shall have the option at the time of application **for a use permit** to

request architectural review be conducted by either the Planning Commission when action is taken on the use permit, or by the Design Review Committee at a separate meeting following action **on the use permit** by the Planning Commission.

(b) The Planning Commission, or the Council upon appeal of the decision of the Planning Commission **made pursuant to Section 10-5.2421**, shall approve, conditionally approve, or deny the architectural review at the time of review of the use permit. Should the Planning Commission or Council upon appeal deny the use permit, the architectural review is also deemed denied.

(c) Drawings **as required by Section 10-5.1804 of Article 18 of this chapter** conditionally approved by the Planning Commission or Council upon appeal **of the decision of the Planning Commission made pursuant to Section 10-5.2421** shall be revised and re-submitted to the Director of Planning, who shall determine whether the revised drawings accurately represent the drawings as conditionally approved by the Planning Commission or Council upon appeal. Drawings that are deemed not to be in substantial conformance with the conditionally approved application shall be scheduled for review by the Planning Commission or Council at the next available regularly scheduled meeting.

(d) Modifications **made by an applicant to a project for which the architectural review has been to permits** approved, or conditionally approved by the Planning Commission, or Council upon appeal **of the decision of the Planning Commission made pursuant to Section 10-5.2421**, shall be submitted to the Director of Planning who shall determine whether the use permit, architectural review, or both, requires modification.

(e) If the conditions or modifications **of the architectural review** approved by the Planning Commission are not acceptable to the applicant, **the applicant may appeal the Planning Commission's action on the architectural review taken pursuant to Section 10-5.2421 to the City Council. The appeal then the drawings** shall be scheduled on the next available meeting agenda of the City Council to review the Planning Commission's action. The drawings shall be **transmitted to the City Council** accompanied by a written report of the Planning Commission's action, prepared by the Director of Planning.

(f) Architectural review performed by the Design Review Committee pursuant to this section, shall be **conducted** as prescribed in Article 18 of this chapter (Site Plan and Architectural Review).

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APPENDIX C:

**ARTICLES 25, 27, & 28 WITH CHANGES FROM PROPOSED
AMENDMENT & COMMISSION SUGGESTED MODIFICATIONS**

Relevant excerpts of Articles 25, 27, & 28 are included below to show the context of the City's proposed changes to the article in concert with the Commission staff's suggested modifications.

Language of the currently certified articles is shown in plain text.

The City's proposed additions are shown in underlined text.

The City's proposed deletions are shown in ~~strike-out text~~.

The Commission's suggested additions are shown in **bold, double-underlined text**.

The Commission's suggested deletions are shown in ~~**bold, double-strike-out text**~~.

Article 25. Variances

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Sec. 10-5.2504. Public hearings.

The ~~Board of Zoning Adjustment~~ Planning Commission shall hold a public hearing on an application for a variance if requested by the applicant, by the Director of Planning Community Development, or by any other person in accord with Section 10-5.2503 of this article or if the ~~Board Commission~~ has not authorized the Director to make a decision on the type of variance requested. The public hearing shall be held within ~~forty-five-sixty (4560)~~ forty-five (45) days ~~for of~~ the date when the application ~~was filed~~ is determined to be exempt from CEQA or a negative declaration is adopted, or within one hundred eighty (180) days following the certification of an EIR, or the request for a public hearing is received, whichever is later. ~~Notice of the hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mailing a notice of the time and place of the hearing to all persons whose names appear on the latest adopted tax roll of the County as owning property within one hundred (100) feet of the boundaries of the site of the variance, or by publication in a newspaper of general circulation in the City, and by posting in conspicuous places close to the property affected. Failure to post notice shall not invalidate the proceedings.~~ Notice of the hearing shall be given pursuant to Sections 10-5.2808 through 10-5.2811 of Article 28 (Administration and Enforcement) of this chapter.

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Article 27. Amendments

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Sec. 10-5.2704. Public hearings: Notices.

The Planning Commission shall hold at least one public hearing on each application for a change in district boundaries or for combining a district with a -PD District, and on each proposal for a change in district boundaries or for combining a district with a -PD or an -AR District, or for a change of a district regulation, off-street parking or loading facilities requirement, general provision, exception, or other provision of this chapter initiated by the Commission or the Council within forty-five (45) days of the date when the application was filed or the proposal was initiated. Notice of the public hearing shall be given pursuant to Section 10-5.2808 through 10-5.2811 of Article 28 (Administration and Enforcement) of this chapter. ~~not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by publication in a newspaper of general circulation in the City and, in the case of an application or proposal for a change in district boundaries, by mailing notice of the time and place of the hearing to all persons whose names appear on the latest adopted tax roll of the County as owning property within 300 feet of the boundaries of the property that is the subject of the hearing, or by posting in conspicuous places close to the property affected. Failure to post notice shall not invalidate the proceedings.~~

....

Sec. 10-5.2709. Action of Council.

10-5.2709.1. All applications and proposals.

The Council shall hold a public hearing on the application or proposal within forty-five (45) days after receipt of the resolution or report of the Planning Commission, provided that no hearing shall be held on an application for a change in district boundaries that the Commission

has recommended be denied unless a request is received by the Council as prescribed in Article 28. (Public hearing notices Administration and Enforcement) Section 10-5.2708 of this article, and no hearing shall be held on a proposal initiated by the Commission that the Commission has recommended be rejected. Notice of a public hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by publication in a newspaper of general circulation in the City and shall also be given to the applicant, if any, and to the Commission. At the public hearing the Council shall review the application or the proposal and the resolution or the report of the Commission and may receive additional evidence. Within forty-five (45) days following the closing of a public hearing the Council shall make a specific finding as to whether the change is consistent with the objectives of this chapter prescribed in Section 10-5.102 of Article 1 of this chapter {Objectives}. If the Council finds that the change is consistent, it shall enact an ordinance amending the zoning map or an ordinance amending the regulations of this chapter, whichever is appropriate. If the Council finds that the change is not consistent, it shall deny the application or reject the proposal. The Council shall not modify a decision of the Commission recommending granting of an application or adoption of a proposal until it has requested and considered a report of the Commission on the modification. Failure of the Commission to report within thirty (30) days after receipt of the Council request shall be deemed concurrence. Within five (5) days following the date of final action by the Council, the City Clerk shall transmit a written notice of the decision to the applicant, if any, and to the Commission and shall return the Commission record to the Secretary.

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Article 28. Administration and Enforcement

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Sec. 10-5.2808. Public hearing notice.

Unless specified otherwise, when a public hearing is required pursuant to Title 10, notice of the public hearing shall be provided ~~in the following manner; as follows.~~ **Notice of public hearing on a coastal development permit application shall also comply with the requirements of Article 29, Coastal Development Permit Procedures, Section 10-5.29307.**

(a) The notice shall include:

- (1) The date, time, and place of the public hearing;
- (2) The identity of the hearing body or officer;
- (3) A general explanation of the matter to be considered; and
- (4) A general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing, including the Assessor's parcel number(s) and street address(es).

(b) The notice shall be published at least once, not less than 10 days nor more than 30 days prior to the date of the hearing, in a newspaper of general circulation in the City. **Publication in the newspaper may be waived if notice provided pursuant to paragraph (a) above is posted at least 10 days prior to the hearing in at least three public places within the boundaries of the City, including one public place in the area directly affected by the proceeding.**

(c) The notice shall be mailed or delivered at least 10 days prior to the hearing to:

- (1) The owner of the subject real property, and the owner's duly authorized agent and the project applicant, if any; and
- (2) All owners of real property within 300 feet of the real property that is the subject of the hearing; and
- (3) Any person who has filed a written request for notice with the City Clerk or Secretary of the Planning Commission or Historic Preservation Commission; and
- (4) Each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.

~~(A) Instead of publication in the newspaper pursuant to Section 10-5.2808 (b), notice provided pursuant to paragraph (a) above, may be posted at least 10 days prior to the hearing in at least three public places within the boundaries of the City, including one public place in the area directly affected by the proceeding.~~

~~(d) (5) Owner information for mailing notice shall be as shown on the latest equalized assessment roll. Instead of using the assessment roll, the City may use records of the County Assessor or Tax Collector if those records contain more recent information than the information contained on the assessment roll.~~

~~(e) (6) The City may charge a fee which is reasonably related to the costs of providing the notice requested in Section 10-5.2808(c)(3) and the City may require each request to be annually renewed.~~

~~(fd) If the number of owners to whom notice would be mailed or delivered pursuant to paragraphs (c) (1) and (c) (2) is greater than 1,000, the City, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the City in which the proceeding is conducted at least 10 days prior to the hearing.~~

(ge) A notice approximately two and a-half by three feet shall be posted in a conspicuous place on or near the property affected.

(hf) In addition to the notice required by this section, the City may give notice of the hearing in any other manner it deems necessary or desirable.

(ig) Substantial compliance with these provisions to notice shall be sufficient and a technical failure to comply shall not affect the validity of any action taken pursuant to the procedures set forth in this chapter. Failure to post notice shall not invalidate the proceedings.

(jh) The failure of any person or entity to receive notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions for which the notice was given.

Sec. 10-5.2809. Subdivision maps; five or more parcels.

In addition to the requirements in Section 10-5.2808 (a), above:

(a) In the case of a proposed conversion of residential real property to a condominium project, community apartment project or stock cooperative project, notice shall be given as required by Government Code Section 66451.3.

Sec. 10-5.2810. Subdivision maps; four or fewer parcels.

In lieu of the requirements above, notice of filing of an application for a tentative parcel map shall be provided by mail or delivery to all persons, including businesses, corporations or other public or private entities shown on the assessment roll as owning real property within one hundred 100 feet of the property which is the subject of the proposed subdivision.

Sec. 10-5.2811. Drive-through facilities.

Whenever the City considers the adoption or amendment of policies or ordinances affecting drive-through facilities, or a hearing is held regarding a permit for a drive-through facility or modification of an existing drive-through facility permit, the City shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of the denial of, a drive-through facility permit.