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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
Cristin Kenyon, Supervising Analyst

SUBJECT: **City of Eureka LCP-1-EUR-17-0007-1 (Part A: Minor Use Permits IP Amendment)**

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 establish a minor use permit process. Currently under the City's certified IP, any use listed as a conditional use within a coastal zoning district requires a use permit, and use permits are acted on by the City's Planning Commission with a public hearing and with mandatory architectural review. In contrast, under the proposed amendment, decision-making for minor use permits would be delegated to the Director of Planning, the Director's decision would be made without a public hearing unless a hearing is requested by an interested person, and architectural review would not be required. Public noticing requirements would also be different.

The proposed amendment merely establishes the process whereby minor use permit applications would be accepted and processed; the ordinance does not amend any coastal zoning district regulations to identify any specific conditional uses that would be subject to a minor use permit. Therefore until additional IP amendments are certified, all currently enumerated conditional uses would continue to require standard use permits.

The proposed IP amendment only affects the local permitting process for conditional uses and does not amend the coastal development permit process, change the uses or the priority of uses allowed in the various coastal zoning districts, or affect any regulations that directly address coastal resources or public access. However, suggested modifications are recommended to: (1) ensure internal consistency within the certified LCP; (2) fix referencing and enumeration errors

at the request of the City staff; and (3) prevent any conflict with another pending IP amendment that addresses the same section of the IP.

The City staff has indicated their agreement with all of the Commission staff's recommended suggested modifications. Therefore, staff recommends that the Commission reject the proposed amendment and approve it only as modified to ensure that the ordinance is in conformance with and adequate to carry out 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 May 16, 2017. On June 8, 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 July 15, 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.

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EXHIBITS

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[Exhibit 3 – Resolution of Transmittal](#)

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

I. RESOLUTION

A. DENIAL OF IP AMENDMENT NO. LCP-1-EUR-17-0007-1, PART A AS SUBMITTED:

Motion:

I move that the Commission reject Implementation Plan Amendment No. 1-LCP-EUR-17-0007-1, Part A 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-17-0007-1, Part A 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-17-0007-1, WITH SUGGESTED MODIFICATIONS:

Motion:

I move that the Commission certify Implementation Program Amendment No. 1-LCP-EUR-17-0007-1, Part A 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-17-0007-1, Part A for the City of Eureka if modified as suggested on grounds that the implementation plan 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 of Eureka Planning Commission and City Council held public hearings on the proposed amendment on August 8, 2016 and on September 6, 2016, respectively; and the City Council adopted the ordinance on September 20, 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's 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 Resolution of Transmittal of the minor

use permit IP amendment to the Commission for certification (Resolution Nos. 2016-67) states 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. Where applicable, text in ~~single strikeout~~ format denotes text of the certified LCP that the City proposes to delete and text in single underline format denotes text that the City proposes to add. Text in ~~bold double strikethrough~~ format denotes text to be deleted through the Commission's suggested modifications and text in **bold double underline** format denotes text to be added through the Commission's suggested modifications.

Suggested Modification 1: Internal Consistency of Certified IP

Coastal Commission staff proposes changes to the architectural review provisions for conditional uses found in Article 29 of the certified IP under the district-specific regulations for a number of coastal zoning districts. The suggested modifications are included below:

- Amend the existing certified text of Coastal Zoning Code (CZC) Article 29, Part 7, Section 10-5.2977 (Architectural review in the Coastal Agricultural District):

Sec. 10-5.2977. Architectural review.

~~Conditional uses shall be subject to architectural review as prescribed in Article 18 of this chapter (Site Plan Review and Architectural Review).~~
Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.

- Amend the existing certified text of CZC Article 29, Part 8, Section 10-5.2987 (Architectural review in the One-Family Residential District):

Sec. 10-5.2987. Architectural review.

~~Conditional uses shall be subject to architectural review as prescribed in Article 18 of this chapter (Site Plan Review and Architectural Review).~~
Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.

- Amend the existing certified text of CZC Article 29, Part 9, Section 10-5.2996 (Site plan and architectural review in the Multi-Family Residential District):

Sec. 10-5.2996. Site Plan and architectural review.

All permitted uses, except one-family dwellings, multi-family dwellings containing not more than six (6) dwelling units, and dwelling groups containing not more than six (6) units, shall be subject to site plan review as set forth in Article 18 of this chapter (Site Plan Review and Architectural Review). ~~All conditional uses shall be subject to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

- Amend the existing certified text of CZC Article 29, Part 10, Section 10-5.29107 (Site plan and architectural review in the Office and Multi-Family Residential District):

Sec. 10-5.29107. Site Plan and architectural review.

All permitted uses, except one-family dwellings, multi-family dwellings containing not more than six (6) dwelling units, and dwelling groups containing not more than six (6) units, shall be subject to site plan review as set forth in Article 18 of this chapter (Site Plan Review and Architectural Review). ~~All conditional uses shall be subject to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

- Amend the existing certified text of CZC Article 29, Part 11, Section 10-5.29117 (Site plan and architectural review in the Waterfront Commercial District):

Sec. 10-5.29117. Site Plan and architectural review.

All permitted uses shall be subject to site plan review as prescribed in Article 18 of the chapter (Site Plan Review and Architectural Review). ~~Conditional uses shall be subject to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

- Amend the existing certified text of CZC Article 29, Part 12, Section 10-5.29127 (Site plan and architectural review in the Neighborhood Commercial District):

Sec. 10-5.29127. Site Plan and architectural review.

All permitted uses shall be subject to site plan review as prescribed in Article 18 of the chapter (Site Plan Review and Architectural Review). ~~Conditional uses shall be subject to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

- Amend the existing certified text of CZC Article 29, Part 13, Section 10-5.29137 (Site plan and architectural review in the Service Commercial District):

Sec. 10-5.29137. Site Plan and architectural review.

All permitted uses shall be subject to site plan review as prescribed in Article 18 of the chapter (Site Plan Review and Architectural Review). ~~Conditional uses shall be subject to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

- Amend the existing certified text of CZC Article 29, Part 14, Section 10-5.29147 (Site plan and architectural review in the Planned Shopping Center Commercial District):

Sec. 10-5.29147. Site Plan and architectural review.

All permitted uses shall be subject to site plan review as set forth in Article 18 of this chapter. ~~Conditional uses shall be subject, in addition, to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

- Amend the existing certified text of CZC Article 29, Part 15, Section 10-5.29157 (Site plan and architectural review in the Coastal Dependent Industrial District):

Sec. 10-5.29157. Site Plan and architectural review.

All permitted uses shall be subject to site plan review as set forth in Article 18 of this chapter (Site Plan Review and Architectural Review). ~~All conditional uses shall be subject to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

- Amend the existing certified text of CZC Article 29, Part 16, Section 10-5.29167 (Site plan and architectural review in the Limited Industrial District):

Sec. 10-5.29167. Site Plan and architectural review.

All permitted uses shall be subject to site plan review as set forth in Article 18 of this chapter (Site Plan Review and Architectural Review). ~~All conditional uses shall be subject to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

- Amend the existing certified text of CZC Article 29, Part 17, Section 10-5.29177 (Site plan and architectural review in the General Industrial District):

Sec. 10-5.29177. Site Plan and architectural review.

All permitted uses shall be subject to site plan review as set forth in Article 18 of this chapter (Site Plan Review and Architectural Review). ~~All conditional uses shall be subject to architectural review.~~ **Architectural review requirements for conditional uses are specified in Article 24, Sec. 10-5.2421 of this chapter.**

Suggested Modification 2: Corrections to Enumeration and Referencing Errors

Coastal Commission staff proposes changes to amended Article 24. The suggested modifications are shown within the context of the complete amended Article 24 in **Appendix A**, and the relevant excerpts are included below:

- Under amended Section 10-5.2403, change the title of the proposed subsection on minor use permit hearings from §10-5.2093.2.2 to §10-5.2093.2.2:

Sec. 10-5.2403. Public hearings; Notices and procedure.

10-5.2403.1. Use permit.

10-5.2403.1.1. Notice.

.....

10-5.2403.1.2. Procedure.

.....

10-5.2403.2. Minor use permit.

.....

10-5.2403.2.1. Notice.

.....

10-5.2403.2.2. Hearing.

When a hearing is requested, notice of the hearing shall be provided in compliance with Sections 10-5.2808 through 10-5.2811 of Article 28 (Administration and Enforcement), except that Sections 10-5.2808(b) and 10-5.2808(c)(4)(A) shall not apply.

- Under proposed new sections 10-5.2406.2(a) and 10-5.2406.3(a), change references from §155.283 and §155.285 to §10-5.2403.2.2 and §10-5.2407, respectively.

10-5.2406.2. Action of the Director of Planning.

(a) On the date specified for action, or within 45 days following the close of a public hearing on a minor use permit application if a hearing is requested pursuant to ~~§ 155.283 (B)~~ 10-5.2403.2.2, the Director shall review the application and materials submitted therewith and any pertinent evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained, particularly with respect to the findings prescribed in ~~§ 155.285~~ 10-5.2407 of this subchapter, and shall grant by resolution the application for the minor use permit as the permit was applied for or in modified form, or the application may be denied.

.....

10-5.2406.3. Conditions of approval.

(a) In approving a use permit, the Commission or Director, or on appeal the Commission or Council, may impose reasonable conditions or restrictions deemed necessary to:

(1) Ensure that the proposal conforms in all significant respects with the General Plan and with any other applicable plans or policies adopted by the City Council;

(2) Achieve the general purposes of this title and the specific purpose of the zoning district in which the project is located;

(3) Achieve the findings for a use permit listed in ~~§ 158.285~~ 10-5.2407; and

(4) For a use permit acted upon by the Commission, mitigate any potentially significant impacts identified as a result of environmental review conducted in compliance with the California Environmental Quality Act.

.....

Suggested Modification 3: Approval Contingent on Effective Certification of LCP-1-EUR-16-0047-3

The minor use permit provisions approved by the Commission with suggested modifications in its action on LCP-1-EUR-17-0007-1 shall not become effective unless and until LCP-1-EUR-16-0047-3 is certified by the Commission and has taken effect.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

The City of Eureka (City) is proposing to amend the conditional use section of the Eureka Municipal Code (Title 5, Chapter 10, Article 24) to create a minor use permit process. The purpose of the amendment is to provide a quicker and cheaper use permit process for reviewing uses that still require special consideration, but to a lesser degree than conditional uses requiring a standard use permit. The proposed amendment only addresses the local conditional use permitting process and does not affect the coastal development permit process. However, because Article 24 is included in the certified IP, a local coastal program amendment is required for the proposed changes to the article.

Currently under the City's certified IP, all uses listed as conditional uses within the various coastal zoning districts require a use permit. Use permits are reviewed and acted upon by the Planning Commission at a public hearing, with appeals of the Planning Commission decision heard by the City Council ("Council"). Currently all conditional uses are also subject to architectural review.

The proposed amendment would create a minor use permit process for conditional uses under each zoning district that are identified as "MC" (currently there are no conditional uses identified as MC). Under the proposed minor use permit process, action on minor use permits would be taken by the Director of Planning ("Director") instead of the Planning Commission. The action of the Director would be appealable to the Planning Commission, with final appeal to the City Council.

Under the proposed process, the Director would have the ability to refer any minor use permit application "that may generate substantial public controversy or involve significant land use policy decisions" to the Planning Commission for hearing and decision subject to the procedures of typical use permits. Also minor use permit applications that could not be found exempt from the California Environmental Quality Act (CEQA) would be required to be processed as typical use permits.

Noticing requirements would remain the same as for use permits except that for minor use permits, notice would not be required to be published in the newspaper or posted in three public places within the boundaries of the City (use permits require one or the other). In addition, notice for minor use permits would be required to be mailed 15 working days prior to the Director's decision to allow a public comment period of at least 14 working days (for regular use permits, notice is mailed no less than 10 days prior to the date of the hearing). The Director would only hold a public hearing if requested in writing by any interested person during the public comment period leading up to the Director's decision.

Currently, all conditional uses are subject to architectural review. Under the proposed amendment, no architectural review would be required for minor use permits, unless the Director

determines that the proposed minor use would be inharmonious with the aesthetics of the surroundings or would have an adverse effect on the value or character of the subject parcel, or to uses, structures, property or improvements in the vicinity.

In summary, the key differences between the use and minor use permit processes are that, under the proposed minor use permit process, (1) decision-making would be delegated to the Director of Planning; (2) the Director's decision would be made without a public hearing unless a hearing is requested by an interested person; and (3) architectural review would not be required unless the Director determines otherwise.

The minor use permit ordinance (Ordinance No. 846-C.S.) merely establishes the process whereby minor use permit applications would be accepted and processed; the ordinance does not amend any coastal zoning district regulations to identify any specific conditional uses that would be subject to a minor use permit. Therefore all currently enumerated conditional uses in all coastal zoning districts would still require a standard use permit.

B. BACKGROUND

The City 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 27,000.¹

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 to 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 inland zoning districts (Articles 3-14) and articles concerning local permits (Articles 24-28). The City renumbered their municipal zoning code as Chapters 155 and 156 in 1997, with the intent of Chapter 156, which pertains to coastal development, becoming the City's IP. However, the City never submitted the updated code for certification by the Coastal Commission. 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. Internal Consistency of the Certified IP

Article 29 (Coastal Development Permit Procedures) of the certified IP contains district-specific regulations for each coastal zoning district, including each district's purpose, required conditions,

¹ 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.

Laird, A., Trinity Associates (2016). *City of Eureka Sea Level Rise Assets Vulnerability and Risk Assessment, Appendix*. Prepared for the City of Eureka.

and enumerated permitted and conditional uses. Under the district-specific regulations for most districts, there is a subsection titled “Architectural review” or “Site plan and architectural review” that specifies that conditional uses shall be subject to architectural review as prescribed in Article 18. This requirement that conditional uses shall be subject to architectural review is found under the district-specific regulations for the Coastal Agricultural (AC), Residential (R), Multi-Family Residential (RM), Office and Multi-Family Residential (OR), Waterfront Commercial (CW), Neighborhood Commercial (CN), Service Commercial (CS), Planned Shopping Center (CP), Coastal Dependent Industrial (MC), Limited Industrial (ML), and General Industrial (MG) zoning districts (§§ 10-5.2977, 10-5.2987, 10-5.2996, 10-5.29107, 10-5.29117, 10-5.29127, 10-5.29137, 10-5.29147, 10-5.29157, 10-5.29167, and 10-5.29177, respectively).

This repeated statement that conditional uses shall be subject to architectural review would no longer be accurate under the proposed amendment, because architectural review would not be required for minor use permits, unless the Director of Planning determines that architectural review is necessary. As conditional uses may or may not require architectural review depending on whether they are processed under a use permit or minor use permit, the district-specific regulations under Article 29 must be amended to maintain consistency throughout the certified IP, as internal consistency of the IP is necessary to adequately carry out the LUP. Therefore **Suggested Modification 1** amends Article 29 to remove the stipulation that conditional uses require architectural review that is found under the district-specific regulations for the AC, R, RM, OR, CW, CN, CS, CP, MC, ML, and MG zoning districts. Under the suggested modification, the district-specific regulations would instead reference Section 10-5.2421 (Architectural Review) of Article 24 (Conditional Uses) for information on architectural review requirements for conditional uses.

2. Friendly Modifications to Correct Enumeration and Referencing Errors

During initial review of the proposed ordinance, Commission staff noticed a minor enumeration error and a few minor referencing errors. City staff requested that the Commission include corrections to these errors as “friendly modifications.”

Enumeration error

The enumeration error occurs under Section 10-5.2403. This section as proposed to be amended describes noticing requirements and procedures for public hearings for use permits and minor use permits. The section includes two subsections, §10-5.2403.1 pertaining to use permits and §10-5.2093.2 pertaining to minor use permits. These subsections are further divided, so that for example, §10-5.2403.1 pertaining to use permits includes §§10-5.2403.1.1 and 10-5.2403.1.2.

The error occurs where the City proposes to add a subsection on hearings that is intended to apply only to minor use permits and therefore should fall under §10-5.2093.2. However, the City numbers the proposed subsection §10-5.2403.3. **Suggested Modification 2** changes the subsection number from §10-5.2403.3 to §10-5.2093.2.2 to clarify that the subsection is included under §10-5.2093.2 pertaining solely to minor use permits.

Referencing errors

Under newly proposed Sections 10-5.2406.2 and 10-5.2406.3, the City references the new uncertified municipal zoning code (Chapter 155) instead of subsections of Title 5, Chapter 10,

Article 24 as intended. **Suggested Modification 2** fixes these referencing errors by changing references from §155.283 and §155.285 to §10-5.2403.2.2 and §10-5.2407, respectively.

3. Relationship to LCP-1-EUR-16-0047-3

The subject amendment, LCP-1-EUR-17-0007-1 (Part A: Minor Use Permits), amends Article 24 of the certified IP. Proposed LCP Amendment LCP-1-EUR-16-0047-3 (Permit Processing Procedures) also amends Article 24 of the certified IP. Both LCP-1-EUR-17-0007-1 and LCP-1-EUR-16-0047-3 are scheduled for hearing at the November 2017 Commission meeting. LCP-1-EUR-17-0007-1 adds to changes made under previous amendment LCP-1-EUR-16-0047-3, although the changes made by this previous amendment have not yet been certified by the Coastal Commission and Commission staff is suggesting modifications to this previous amendment.

The City staff has indicated their agreement with Commission staff's suggested modifications for both LCP-1-EUR-16-0047-3 and LCP-1-EUR-17-0007-1. A version of Article 24 with text amendments and suggested modifications from both LCP-1-EUR-16-0047-3 and LCP-1-EUR-17-0007-1 is included as Appendix A of this document. If the Commission approves both amendments only as modified per Commission staff recommendation, and the Eureka City Council gives final approval of the amendments as modified, this version of Article 24 would become the certified version.

Because LCP-1-EUR-17-0007-1 builds on changes to Article 24 proposed under LCP-1-EUR-16-0047-3, LCP-1-EUR-16-0047-3 must be certified prior to LCP-1-EUR-17-0007-1 becoming certified. If instead LCP-1-EUR-16-0047-3 is the second of the amendments to be certified, the changes to Article 24 made by LCP-1-EUR-17-0007-1 would be effectively lost. To ensure the correct version of Article 24 is certified (with the inclusion of both amendments and all of the Commission's suggested modifications), **Suggested Modification 3** stipulates that LCP-1-EUR-17-0007-1 shall not become effective unless and until LCP-1-EUR-16-0047-3 is certified by the Commission and has taken effect.

4. Conclusion

The proposed IP amendment only affects the local conditional use permit process and does not amend the coastal development permit process, change the uses or the priority of uses allowed in the various zoning districts, or affect any regulations that directly address coastal resources or public access. However, suggested modifications are necessary to: (1) ensure internal consistency within the certified LCP; (2) fix referencing and enumeration errors at the request of the City staff; and (3) prevent any conflict with another pending IP amendment that addresses the same section of the IP. Therefore the IP amendment as submitted is not consistent with, and/or does not adequately carry out, the provisions of the LUP, and must be denied pursuant to Section 30513 of the Coastal Act. As the three proposed suggested modifications address the aforementioned issues, the Commission finds the City's Implementation Program, as modified, conforms with and is adequate to carry out the requirements of the certified LUP, consistent with Section 30513 of the Coastal Act.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As part of its local action on the subject LCP amendment, on September 20, 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 minor use permit ordinance (Ordinance No. 846-C.S.) 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. 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:

SUGGESTED MODIFICATIONS TO AMENDED ARTICLE 24

Article 24 is included below to show the context of the City's proposed changes to the article.

- Language of the currently certified Article 24 is shown in plain text.
- The City's proposed additions under LCP Amendment No. 1-EUR-17-0007-1 (Minor Use Permits) are shown in underlined text.
- The City's proposed deletions under LCP Amendment No. 1-EUR-17-0007-1 (Minor Use Permits) are shown in ~~strike-out text~~.
- The Commission's suggested additions under LCP Amendment No. 1-EUR-17-0007-1 (Minor Use Permits) are shown in **bold, double-underlined text**.
- The Commission's suggested deletions under LCP Amendment No. 1-EUR-17-0007-1 (Minor Use Permits) are shown in ~~**bold, double-strike-out text**~~.

The City also previously amended Article 24 under Ordinance Nos. 819-C.S. and 835-C.S. These previous changes are the subject of LCP Amendment No. LCP-1-EUR-16-0047-3 which is also being heard at the November 2017 Coastal Commission meeting. Commission staff is proposing certification of LCP Amendment No. LCP-1-EUR-16-0047-3 if modified as suggested by the Commission. These previous changes are not yet certified as of the writing of this staff report and therefore are shown in blue to distinguish them from the certified LCP.

- The City's proposed additions under LCP Amendment No. 1-EUR-16-0047-3 (Permit Processing) are shown in underlined blue text.
- The City's proposed deletions under LCP Amendment No. 1-EUR-16-0047-3 (Permit Processing) are shown in ~~blue strike-out text~~.
- The Commission's suggested additions under LCP Amendment No. 1-EUR-16-0047-3 (Permit Processing) are shown in **bold, double-underlined text**.
- The Commission's suggested deletions under LCP Amendment No. 1-EUR-16-0047-3 (Permit Processing) are shown in ~~**bold, double-strike-out text**~~.

Article 24. Conditional Uses

Sec. 10-5.2401. Purposes and authorization.

In order to give ~~the~~ a district's use regulations the flexibility necessary to achieve the objectives of this chapter, in certain districts conditional uses shall be permitted subject to the granting of a use permit or minor use permit. Use permits and minor use permits provide a process for reviewing uses and activities that may be appropriate in the applicable zoning district, but whose potential effects on a site and surroundings must be evaluated in order to determine if special conditions should be required prior to allowing the use in a proposed location. Because of their potentially unusual characteristics, conditional uses require this level of special consideration so that they may be located properly with respect to the objectives of the zoning regulations and with respect to their effects on surrounding properties. ~~In order to achieve these purposes, the Planning Commission is empowered to grant and deny applications for use permits for such conditional uses in such districts as are prescribed in the district regulations and to impose reasonable conditions upon the granting of use permits, subject to the right of appeal to the Council or to review by the Council.~~

(b) A use permit or minor use permit is required to authorize proposed land uses identified as either "C" or "MC" in the applicable zoning district. For uses listed as "C," the Planning Commission is empowered to grant and deny applications for use permits for such conditional uses in such districts as are prescribed in the district regulations and to impose reasonable conditions upon the granting of use permits, subject to the right of appeal to the City Council or to review by the Council. For uses listed as "MC," the Director of Planning is the approval authority and the Planning Commission is the appeal authority.

(c) When located in the coastal zone, projects requiring a use permit or minor use permit shall also require a coastal development permit in compliance with Sections 10-5.29300 through 10-5.29400 of Article 29 (Coastal Development Permit Procedures).

Sec. 10-5.2402. Applications and fees.

10-5.2402.1. Data to be furnished.

Applications for use permits shall be filed with the Director of Planning and shall be on forms prescribed by the Planning Commission which 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) Statement indicating the precise manner of compliance with each of the applicable provisions of this chapter, together with any other data pertinent to the findings prerequisite to the granting of a use permit as prescribed in Section 10-5.2407 of this article.

10-5.2402.2. Maps.

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

- (a) An accurate scale drawing of the site and the surrounding area for a distance of at least 300 feet from each boundary of the site showing the existing locations of streets and property lines;
- (b) An accurate scale drawing of the site showing the contours at intervals of not more than five (5') feet and existing and proposed locations of streets, property

- lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities, landscaped areas, fences, and walls; and
- (c) The Director of Planning may require additional information, plans, and drawings if they are necessary to enable the Planning Commission to determine whether the proposed use will comply with all the applicable provisions of this chapter. The Director may authorize omission of any or all of the plans and drawings required by this section if they are not necessary.

10-5.2402.3. 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, except that there shall be no fee for an application for a conditional use in an S District.

Sec. 10-5.2403. Public hearings; Notices and procedure.

10-5.2403.1. Use permit.

10-5.2403.1.1. Notice.

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.

10-5.2403.1.2. Procedure.

At the public hearing, the Commission shall review the application submitted therewith and shall receive pertinent evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained, particularly with respect to the findings prescribed in Section 10-5.2407 of this article.

10-5.2403.2. Minor use permit.

Before a decision on a minor use permit, the public notice shall be given pursuant to Sections 10-5.2808 through 10-5.2811 of Article 28 (Administration and Enforcement), and as follows, except that the provisions in Sections 10-5.2808(b) and 10-5.2808(c)(4)(A) shall not apply:

10-5.2403.2.1. Notice.

(a) The notice shall state that the Director of Planning will decide whether to approve, conditionally approve, or disapprove the minor use permit application on a date specified in the notice, and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision; and

(b) The notice shall be mailed at least fifteen (15) working days prior to the Director's decision; and

(c) The notice shall contain a statement that a public comment period of at least fourteen (14) working days shall be provided to allow for the submission of written comments prior to the Director's decision.

10-5.2403.32.2. Hearing.

When a hearing is requested, notice of the hearing shall be provided in compliance with Sections 10-5.2808 through 10-5.2811 of Article 28 (Administration and Enforcement), except that Sections 10-5.2808(b) and 10-5.2808(c)(4)(A) shall not apply.

Sec. 10-5.2404. Public hearings: Procedure.

At the public hearing the Planning Commission shall review the application and the drawings submitted therewith and shall receive pertinent evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained, particularly with respect to the findings prescribed in Section 10-5.2407 of this article. Reserved.

Sec. 10-5.2405. Investigations and reports; Review authority.

The Director of Planning shall make an investigation of the application and shall prepare a report thereon which shall be submitted to the Planning Commission.

10-5.2405.1. Use permits.

Use permits shall be approved or disapproved by the Planning Commission.

10-5.2405.2. Minor use permits.

Minor use permits shall be approved or disapproved by the Director of Planning.

(a) The Director may choose to refer any minor use permit application that may generate substantial public controversy or involve significant land use policy decisions to the Planning Commission for hearing and decision, in which case, the procedures specified in this chapter for use permits shall apply.

(b) A minor use permit application shall be determined exempt from the California Environmental Quality Act (CEQA) in compliance with State law or it shall be processed as a use permit.

Sec. 10-5.2406. Action; Conditions of approval of the Planning Commission.

10-5.2406.1 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).

(b) Failure of the Planning Commission to act within forty-five (45) days following the closing of a public hearing on a use permit application shall cause the application to be automatically referred to the City Council accompanied by a written report unless a time extension is requested by the applicant and granted by the Commission.

10-5.2406.2. Action of the Director of Planning.

(a) On the date specified for action, or within 45 days following the close of a public hearing on a minor use permit application if a hearing is requested pursuant § ~~155-283 (B)~~10-5.2403.2.2, the Director shall review the application and materials submitted therewith and any pertinent evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained, particularly with respect to the findings prescribed in § ~~155-285~~10-5.2407 of this subchapter, and shall grant by resolution the application for the minor use permit as the permit was applied for or in modified form, or the application may be denied.

(b) A minor use permit may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the Director may prescribe.

(c) Failure of the Director to act on the date specified for action, or within 45 days following the closing of a public hearing on a minor use permit application the Director shall cause the application to be automatically referred to the Commission accompanied by a written report unless a time extension is requested by the applicant and granted by the Director.

10-5.2406.3. Conditions of approval.

(a) In approving a use permit, the Commission or Director, or on appeal the Commission or Council, may impose reasonable conditions or restrictions deemed necessary to:

(1) Ensure that the proposal conforms in all significant respects with the General Plan and with any other applicable plans or policies adopted by the City Council;

(2) Achieve the general purposes of this title and the specific purpose of the zoning district in which the project is located;

(3) Achieve the findings for a use permit listed in § ~~158-285~~10-5.2407; and

(4) For a use permit acted upon by the Commission, mitigate any potentially significant impacts identified as a result of environmental review conducted in compliance with the California Environmental Quality Act.

(b) Reasonable guarantees and evidence that such conditions are being, or will be, complied with may be required.

(c) Conditions imposed may include, but shall not be limited to the following:

(1) Special yards, open spaces, or buffers;

(2) Fences or walls;

- (3) Installation and maintenance of landscaping or landscape screens;
- (4) Standards for the maintenance of buildings and grounds;
- (5) Street dedications and improvements;
- (6) On-site or off-site street, sidewalk or utility improvements and maintenance agreements;
- (7) Noise generation and attenuation;
- (8) Dedication of right-of-way or easements or access rights;
- (9) Arrangement of buildings and use areas on the site;
- (10) Regulation of points of vehicular ingress and egress or on-site traffic and pedestrian circulation;
- (11) Signs;
- (12) Hours of operation and methods of operation;
- (13) Other conditions which may be found necessary to address unusual site conditions
- (14) Control of nuisances;
- (15) The prescription of development schedules; and
- (16) Other conditions deemed necessary by the Commission, Director or Council.

10-5.2406.4.

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 parking facilities and off-street loading facilities for which variance procedures are prescribed by Article 25 of this chapter (Variances).

Sec. 10-5.2407. Findings and criteria for granting approval.

10-5.2407.1.

The Planning Commission or Director of Planning, or ~~an~~ appeal the Commission or Council, shall make the following findings before granting a use permit or minor use permit:

- (a) That the proposed location of the conditional use is in accord with the objectives of this chapter and the purposes and intent of the district in which the site is located;
- (b) That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity;
- (c) That the proposed conditional use will comply with each of the applicable provisions of this chapter; and
- (d) That the proposed conditional use, if located in the coastal zone, is consistent with the certified Local Coastal Program ~~and is consistent with the intent of the zoning district.~~

10-5.2407.2.

Actions on use permits shall be justified by written findings, based on substantial evidence in view of the whole record.

10-5.2407.3. Criteria for Approval.

In deciding whether a proposal is acceptable at a given location, the Commission or Director, or on appeal the Commission or Council, shall consider whether the proposal could be established and maintained without jeopardy to persons or property within or adjacent to the proposed site and without damage to the resources of the site and its surroundings. Appropriate criteria may be found in the following sources, without limitation:

(a) General plan elements (such as land use, circulation, housing, noise, seismic safety, public safety, open space and conservation);

(b) Standards and recommendations of City departments and other agencies commenting on environmental documents or referrals for the proposal or for similar projects.

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

10-5.2408.1. Use permit.

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.~~

10-5.2408.2. Minor use permit.

A minor use permit shall become effective ten (10) days following the date on which the minor use permit was granted, unless an appeal has been taken to the Commission.

Sec. 10-5.2409. Appeals to Council.

10-5.2409.1. Appeals to Council.

Within ten (10) days following the date of a decision of the Planning Commission on a use permit application or the appeal of the decision of the Director of Planning on a minor use permit, 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.

10-5.2409.2. Appeals to Commission.

Within ten (10) days following the decision of the Director of Planning on a minor use permit application, the decision may be appealed to the Planning Commission 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 Director or wherein the decision is not supported by the evidence in the record.

Sec. 10-5.2410. ~~Reserved.~~ 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. 10-5.2411. Transmission of records to Council.

Upon notification that an appeal has been filed with the City Clerk, or upon receipt of notice that the Council has elected to review and declines to affirm a decision of the Planning Commission, the Secretary shall transmit to the Council the complete record of the case.

Sec. 10-5.2412. Public hearings of appeals: Notices.

~~The Council, or Planning Commission for a minor use permit, 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 or minor 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 on a use permit, and the Secretary shall set the time and place of the hearing on a minor use permit. 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 on appeals of Council.

10-5.2413.1. Use permit.

Within forty-five (45) days following the closing of a public hearing on a use permit application or minor 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 or minor use permit is reversed or a decision granting a use permit or minor 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 or minor use permit as prescribed in Section 10-5.2407 of this article. A use permit or minor 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 or minor use permit application appeal, the City Clerk shall transmit written notice of the decision to the applicant and Commission and shall return the Commission record to the Secretary.

10-5.2413.2. Minor use permit.

Within forty-five (45) days following the closing of a public hearing on the appeal of a minor use permit application, the Commission shall act on the application. The Commission may by resolution affirm, reverse, or modify a decision of the Director, provided that if a decision denying a minor use permit is reversed or a decision granting a minor use permit is modified, the Commission, 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 minor use permit as prescribed in Section 10-5.2407 of this article. A minor use permit that has been the subject of an appeal to the Commission shall be appealable to the City Council pursuant to the procedures for

use permit appeal, transmission, hearing and action provided in Section 10-5.2401 through 10-5.2412 within ten (10) days following the date of the decision of the Commission.

Sec. 10-5.2414. Lapse of use permits.

- (a) A use permit or minor use permit shall lapse and shall become void one-two years following the date on which the use permit or minor use permit became effective unless the Planning Commission or Director of Planning specifies a shorter time period, or unless prior to the expiration of one-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 or minor use permit application, or a certificate of occupancy is issued for the structure which was the subject of the use permit or minor use permit application, or the site is occupied if no building permit or certificate of occupancy is required.
- (b) A use permit or minor 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 or minor use permit became effective, or one year from the date when the use permit or the renewal became effective, an application for renewal of the use permit or minor use permit is filed with the Planning Commission or the Director of Planning.
- (c) The Planning Commission or Director may grant or deny an application for the renewal of a use permit or minor 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 or minor use permit.

Sec. 10-5.2415. Preexisting conditional uses.

- (a) A conditional use legally established prior to October 16, 1966, shall be permitted to continue provided it is operated and maintained in accord with the conditions prescribed at the time of its establishment, if any.
- (b) Alteration or expansion of a preexisting conditional use shall be permitted only upon the granting of a use permit as prescribed in this article.
- (c) A use permit shall be required for the reconstruction of a structure housing a preexisting conditional use if the structure is destroyed by fire or other calamity, by act of God, or by the public enemy to a greater extent than fifty (50%) percent. The extent of damage or partial destruction shall be based upon the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior thereto. Estimates for this purpose shall be made by, or shall be reviewed and approved by, the City Engineer.

Sec. 10-5.2416. Modification of conditional uses.

Sections 10-5.2402 through 10-5.2413 of this article shall apply to an application for modification, expansion, or other change in a conditional use, provided that if the Director of Planning determines that the proposed modification, expansion, or other change would not affect the findings prescribed in Section 10.5.2407 of this article, he shall issue a zoning 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 or minor 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 minor 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 or minor use permit, the Secretary shall transmit written notice of the decision to the Council ~~written notice of the decision~~. The decision shall become final ten (10) days following the date on which the use permit or minor 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. 10-5.2418. New applications.

(a) Following the denial of a use permit or minor use permit application or the revocation of a use permit or minor use permit, no application for a use permit or minor use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the use permit or minor use permit.

(b) The City Council by motion may waive the one (1) year moratorium on filing of a new application where it finds any of the following facts exist:

(1) Inadequate or defective notice was given during the use permit or minor use permit process; or,

(2) Procedural errors were committed in the use permit or minor use permit process which errors substantially prejudiced the applicant or the public generally and the Council finds there is relevant new evidence which, in the exercise of reasonable diligence could not have been presented at the hearing, or if there was an error of fact or law that occurred which has the potential for changing the Council's original decision.

Sec. 10-5.2419. Use permits to run with the land.

A use permit or minor use permit granted pursuant to the provisions of this article shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit or minor use permit application.

Sec. 10-5.2420. Time of applications where zoning reclassification is required.

Applications for use permits may be made at the same time as applications for changes in district boundaries including the same property, in which case the Planning Commission shall hold the public hearing on the zoning reclassification and the use permit at the same meeting and may combine the two (2) hearings. For the purposes of this section, the date of the Commission decision on the use permit application shall be deemed to be the same as the date of enactment by the Council of an ordinance changing the district boundaries, provided that if the Council modifies a recommendation of the Commission on a zoning reclassification, the use permit application shall be reconsidered by the Commission in the same manner as a new application.

Sec. 10-5.2421. Architectural review.

(a) No architectural review shall be required for minor use permits, unless the Director determines that the proposed minor use would be inharmonious with the aesthetics of the surroundings or would have an adverse effect on the value or character of the subject parcel, or to uses, structures, property or improvements in the vicinity. If required, architectural review for

minor use permits shall be subject to the provisions prescribed in Article 18 of this chapter (Site Plan and Architectural Review).

~~_____ (b) All conditional~~ Unless excepted by (a) above, uses permits 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.

~~_____ (a1)~~ 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.

~~_____ (be2)~~ 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.

~~_____ (ed3)~~ 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.

~~_____ (de4)~~ 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.

~~_____ (ef5)~~ 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.

~~_____ (fg6)~~ 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).

Sec. 10-5.2422. Electric transmission lines.

Any other provision of this article or of this chapter to the contrary notwithstanding, electric transmission lines may be constructed in any district without the necessity of first obtaining a use permit therefor provided the Commission by resolution shall first have approved the routes and design thereof.