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**DATE:** May 19, 2017

**TO:** Coastal Commissioners and Interested Persons

**FROM:** Alison Dettmer, Deputy Director  
Robert S. Merrill, North Coast District Manager  
Cristin Kenyon, Coastal Planner

**SUBJECT:** **City of Eureka LCP-1-EUR-16-0018-1 (Wireless Telecommunication Facilities IP Amendment)**

For the Commission meeting of June 8 in Arcata

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## **SUMMARY OF STAFF RECOMMENDATION**

The City of Eureka is proposing to amend its Local Coastal Program's (LCP) Implementation Plan (IP) to establish regulations and permitting requirements for wireless telecommunication facilities (WTFs). The new WTF code sections contain standards requiring wireless telecommunication facilities to avoid being sited in residential zoning districts, unless no other technologically feasible alternative exists, and to be designed to blend in with their surroundings. Any such unavoidable WTF development in a residential zone or in close proximity to a residential zone would be subject to supplemental review and design standards. The proposed regulations would also encourage co-location of new wireless telecommunication facilities on existing facilities, whenever feasible, in an attempt to minimize visual impacts by reducing the total number of wireless facility sites permitted in the City.

The proposed regulations would establish a new administratively-issued "wireless telecommunication facility permit," to be authorized by either the Director of Development Services or the Planning Commission for all wireless telecommunication facilities. In addition, certain new wireless telecommunication facilities would require a conditional use permit, including all wireless telecommunication facilities in residential, Public Facility/Marina, and Coastal Agricultural zoning districts, in close proximity to residential districts, and within or in close proximity to Local or National Historic Districts, as well as certain antennas co-locating on existing utility poles. In cases where a conditional use permit is required, the conditional use permit would also act as a WTF permit. The regulations further specify that a coastal development permit (CDP) would be required in cases where a conditional use permit is required.

While the amendment as proposed includes provisions that help assure compliance with the coastal resource protection policies of the LCP's Land Use Plan (LUP), suggested modifications are recommended to insure that coastal resources are protected to the maximum extent feasible. For example, suggested modifications are proposed to expressly prohibit wireless telecommunication facilities in areas designated in the LUP as being reserved and intended for natural resources, commercial fishing facilities and coastal agriculture, and in environmentally sensitive habitat areas (ESHA) and ESHA buffer areas, unless such prohibitions are inconsistent with federal law and no feasible alternative exists. In addition, if a prohibition on siting in such areas is inconsistent with federal law and no alternative exists, suggested modifications only allow such siting if adverse impacts to coastal resources and priority uses are avoided to the maximum extent feasible, unavoidable adverse impacts are minimized and mitigated, and the facility is consistent with all other applicable LCP policies, standards, and regulations.

A suggested modification is also added to only allow wireless telecommunication facilities on lands reserved and intended for coastal-dependent industry as a conditional use. In addition, development standards, CDP application submittal requirements, and CDP approval findings are proposed to protect the scenic and historic character of Eureka's Core Area waterfront, to protect existing and future coastal-dependent industrial uses on coastal-dependent industrial zoned lands, and to avoid and minimize to the maximum extent feasible wildlife impacts from wireless telecommunication facilities, including bird-strike. Other suggested modifications would ensure that WTF permit and CDP standards are internally consistent, and clarify when facilities would need a CDP. Finally, staff recommends a number of suggested modifications to ensure consistency with federal regulation of wireless telecommunication facilities which sets certain limitations on state and local authority with respect to such facilities, including required approval of eligible facilities requests subject to 47 U.S.C. § 1455(a).

Thus, 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 coastal resource policies.

**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 25, 2016. On June 8, 2016, 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, 2017.

#### **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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### APPENDICES

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### EXHIBITS

[Exhibit 1 – Amended Article 29 with Suggested Modifications](#)

[Exhibit 2 – Resolution of Transmittal of IP Amendment](#)

[Exhibit 3 – Ordinance of Adoption of IP Amendment](#)

[Exhibit 4 – Map of Eureka’s Coastal Zone](#)

[Exhibit 5 – Location and Zoning of City of Eureka “Core Area”](#)

[Exhibit 6 – Regional Location Map](#)

## **I. MOTIONS, RECOMMENDATIONS, & RESOLUTIONS**

### **A. DENIAL OF IP AMENDMENT NO. LCP-1-EUR-16-0018-1, AS SUBMITTED:**

#### **Motion:**

*I move that the Commission reject Implementation Plan Amendment No. 1-LCP-EUR-16-0018-1 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-16-0018-1 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-16-0018-1, WITH SUGGESTED MODIFICATIONS:**

#### **Motion:**

*I move that the Commission certify Implementation Program Amendment No. 1-LCP-EUR-16-0018-1 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-16-0018-1 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)*

To certify the amendment to the Implementation Plan (IP) portion of the City of Eureka's Local Coastal Program (LCP), the Commission must find that the amended IP will conform with and adequately 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 Planning Commission held a public hearing on the subject of this amendment request on January 11, 2016. The City Council held public hearings on the subject of this amendment request on February 2, 2016 and February 16, 2016. The 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 Resolution of Transmittal of the LCP amendment to the Commission for certification states that it 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 conditions that change the nature of the amendment, final approval by the Eureka City Council will be required prior to the amendment taking 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 LCP amendment is not effective.

### III. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite LUP consistency findings. If the City of Eureka 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.

Also see **Appendix A** for suggested modifications to proposed new Article 31 and **Exhibit 1** for suggested modifications to amended Article 29.

#### **Suggested Modification 1: Modifications to new Article 31 of Eureka's Coastal Zoning Code Title 10, Chapter 5**

All suggested modifications to proposed new Article 31 are shown in **Appendix A**.

#### **Suggested Modification 2: Modifications to Article 29 of Eureka's Coastal Zoning Code Title 10, Chapter 5**

Relevant excerpts from Article 29 with changes proposed by the City and modifications suggested by Coastal Commission staff are shown in **Exhibit 1** and included below:

- Retain the existing certified text of Coastal Zoning Code (CZC) Section 10-5.29152 (Permitted Uses in the Coastal Dependent Industrial District):

**Permitted uses.**

The following uses shall be permitted:

- Boat repair and ship building;
- Commercial fishing facilities;
- Docks, piers and wharves;
- Marine services;
- Marine oil terminals;
- OCS service bases and offshore pipelines;

Seafood processing; and  
Water borne carrier import and export facilities; ~~and~~  
~~Wireless telecommunication facilities located more than 100' from an R-District~~  
~~subject to a wireless telecommunication facility permit issued pursuant to Article 31~~  
~~of this chapter (Wireless Telecommunication Facilities).~~

- Modify the amended text of CZC Section 10-5.29153 (Conditional Uses in the Coastal Dependent Industrial District):

**Conditional uses.**

The following conditional uses shall be permitted upon the granting of a use permit in accord with the provisions of Article 24 of this chapter:

- Access support facilities;
- Boat launching and berthing facilities;
- Electrical generating or other facilities which require intake, outfalls, or pipelines;
- Fish waste processing plants;
- Fishing piers;
- Ice and cold storage facilities;
- OCS oil and/or gas processing and treatment facilities;
- Oil and gas pipelines;
- Onshore petroleum production;
- Outfalls; and
- Warehouses serving permitted uses; ~~and~~  
~~Wireless telecommunication facilities located within 100' of an R-District~~  
~~subject to a wireless telecommunication facility permit issued pursuant to Article~~  
~~31 of this chapter (Wireless Telecommunication Facilities).~~

- Retain the existing certified text of Eureka CZC Section 10-5.2973 (Conditional Uses in the Coastal Agricultural District):

**Conditional uses.**

The following uses shall be permitted upon the granting of a use permit in accord with the provisions of Article 24 of this chapter (Conditional Uses):

- Aquaculture and similar resource-dependent activities;
- Coastal-dependent oil and gas wells;
- Oil and gas pipelines;
- Incidental public service purposes;
- Wetland restoration and enhancement projects; ~~and~~  
~~Wireless telecommunication facilities subject to the provisions of Article 31 of this~~  
~~chapter (Wireless Telecommunication Facilities).~~

- Retain the existing certified text of CZC Section 10-5.29188.3 (Conditional Uses in the Public Facility/Marina District):

**Conditional uses.**

A third restaurant, ~~and~~ ~~and~~ on-site incidental fish sales and processing, ~~and wireless~~  
~~telecommunication facilities subject to the Provisions of Article 31 of this chapter~~  
~~(Wireless Telecommunication Facilities)~~ shall be conditionally permitted, provided

such uses do not displace current or projected demand for permitted uses and necessary support facilities, including parking. Conditional uses shall be designed and located so as not to interfere with permitted uses.

**Suggested Modification 3: Modifications Addressing Errors in Amending Ordinance’s Citation of Coastal Zoning Regulations**

- Correct the reference in Section 2 of the amending ordinance (Ordinance No. 830-C.S.) regarding a particular section of Eureka Municipal Code Title 10, Chapter 5, Article 1 to be amended to add definitions of “public utility” and “satellite telecommunication facility” into a list of definitions organized alphabetically. The ordinance should be corrected to reference Section 10-5.106.12 rather than Section 10-5.106.11.
- Under Section 4 of the amending ordinance, correct the Eureka Municipal Code Title 10, Chapter 5, Article 2 section number for “Exceptions” from Section 10-5.210 to Section 10-5.210.2.
- Under Section 27 of the amending ordinance, correct the CZC Part 12 (Neighborhood Commercial Districts) section number for “Conditional Uses” from Section 10-5.29122 to Section 10-5.29123.

**IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares as follows:

**A. AMENDMENT DESCRIPTION**

The proposed LCP Amendment would amend Article 29 (Coastal Development Permit Procedures) of the IP to add wireless telecommunication facilities as an allowable use in all zoning districts in the Coastal Zone except the Conservation Water, Development Water, and Natural Resource Districts. Wireless telecommunication facilities would be added as a conditional use to the Coastal Agriculture, Public Facility/Marina, and residential districts (RS-6,000 One-Family Residential, Multi-Family Residential, and Office and Multi-Family Residential districts). In the remaining districts in the Coastal Zone (the four commercial districts, three industrial districts, and the “Public” district), wireless telecommunication facilities located more than 100 feet from a residential district would be added as a permitted use, while facilities located within 100 feet of a residential district would be added as a conditional use.

The proposed LCP Amendment would also add a new Article 31 to the IP to establish City-wide regulations and permitting requirements for wireless telecommunication facilities. Under the proposed regulations, all new wireless telecommunication facilities would be required to obtain an administrative wireless telecommunication facility (WTF) permit. In situations where wireless telecommunication facilities would also require a conditional use permit, the conditional use permit would act as the WTF permit, and would require the same application materials and findings of approval as a WTF permit, in addition to supplemental requirements. In addition, the



ordinance states that a coastal development permit (CDP) would be required in cases where a conditional use permit is required.

Proposed Article 31 also includes a section on general provisions for wireless telecommunication facilities, including design standards, noise standards, height limits, minimum yard setbacks, requirements for maintenance and removal, and specific requirements for co-locating on utility poles.

As for siting standards, Article 31 encourages development of wireless telecommunication facilities outside of residential districts, requiring proposed new facilities in residential districts to submit with a conditional use permit application factual information and data proving that there is no site outside the residential district where the facility could be located to provide the same level of service. Unavoidable wireless telecommunication facilities developed within or in close proximity to residential zones must employ “innovative design” and/or “camouflaging” to conceal the facility.

The proposed regulations would also encourage co-location of new wireless telecommunication facilities on existing facilities, in an attempt to minimize visual impacts by reducing the total number of wireless facility sites in the City. New facilities would be required to be co-located with existing facilities unless it is determined that co-location is not feasible.

The full text of the IP amendment request can be found in **Exhibit 3**.

## **B. FINDINGS FOR DENIAL OF IP AMENDMENT LCP-1-EUR-16-0018-1 AS SUBMITTED AND APPROVAL IF MODIFIED AS SUGGESTED**

### **1. Consistency with Federal Law**

In addition to the requirements of the City’s LCP, any proposed wireless telecommunications facility is also subject to federal regulation. A number of the modifications suggested are necessary to ensure consistency with current federal law as federal law governing wireless telecommunication facilities affects the enforceability of certain provisions in the IP amendment as proposed by the City.

#### Section 332(c)(7) of the Communications Act

In 1996, Congress amended the Communications Act of 1932 to establish federal regulation over the deployment of telecommunications facilities across the country. Section 332(c)(7) of the Communications Act, adopted as part of the Telecommunications Act of 1996, generally preserves state and local authority to regulate the placement, construction, and modification of personal wireless service facilities, but mandates that state and local governments shall not unreasonably discriminate among providers of functionally equivalent services, shall not prohibit or have the effect of prohibiting the provision of personal wireless services, and shall not regulate facilities on the basis of environmental effects of Radio Frequency emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions.<sup>1</sup> Section 332(c)(7)(B) also imposes procedural obligations on state and local governments,

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<sup>1</sup> See 47 U.S.C. §332(c)(7)(A), §332(c)(7)(B)(i), and §332(c)(7)(B)(iv).

including a requirement that they must act on requests for personal wireless service facilities sitings within a reasonable period of time; and a requirement that any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence.<sup>2</sup>

Pursuant to Section 332(c)(7) of the Communications Act, a new wireless telecommunication facility must be approved if such development is necessary in order to fill a significant gap in the carrier's service and the applicant has provided evidence that there are no other feasible alternatives. However, the City may require that the facility be designed, located, and/or conditioned in a manner to ensure that the approved project will avoid and minimize adverse impacts to coastal resources to the extent feasible. As further discussed later in this staff report, **Suggested Modification 1** adds language to the general provisions part of proposed Article 31 expressly prohibiting wireless telecommunication facilities in Natural Resources (NR), Coastal Agricultural (AC), and Public Facility/Marina (PF/M) Districts as well as in environmentally sensitive habitat areas (ESHA) or ESHA buffers. To ensure conformance with federal law, this suggested modification includes language stipulating that the siting limitations apply unless denial of such facilities would be inconsistent with federal law and no feasible alternative location exists. The modifications also stipulate that if facilities are required to be sited in prohibited areas, that the facilities shall minimize impacts to coastal resources and priority uses to the maximum extent feasible.

Similarly, Suggested Modification 1 incorporates these federal preemption caveats into application submittal requirements and required findings of approval for CDPs for wireless telecommunication facilities. As discussed further later in this staff report, Suggested Modification 1 requires that CDP applications for wireless telecommunication facilities in these prohibited locations include (1) information demonstrating that denial of such facilities would be inconsistent with federal law including an alternatives analysis demonstrating there are no feasible alternative sites available to eliminate or substantially reduce significant gaps in service coverage; and (2) proposed mitigation measures to avoid impacts to coastal resources and priority uses, and to minimize and mitigate for unavoidable impacts. Suggested Modification 1 also requires that findings for approval of CDP applications for wireless telecommunication facilities in these prohibited locations include findings that no feasible alternative exists, impacts to coastal resources and priority uses are avoided to the maximum extent feasible, unavoidable adverse impacts are minimized and mitigated, and the facility is otherwise consistent with the LCP.

In addition to the limitations on local authority described above, Section 332(c)(7)(B) of the Communications Act states that State or local governments must act on requests for personal wireless service facility sitings "within a reasonable period of time," and provides that "[a]ny person adversely affected by any final action or failure to act" by a State or local government on a personal wireless service facility siting application "may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction." In a 2009 Declaratory Ruling (24 FCC Rcd 13994), the FCC interpreted a "reasonable period of time" under Section 332(c)(7)(B)(ii) to be 90 days for processing co-location applications, and 150 days for processing applications other than co-locations, subject to certain tolling provisions. In addition,

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<sup>2</sup> *Id.* at §332(c)(7)(B)(ii) and §332(c)(7)(B)(iii).

the 2009 Declaratory Ruling specified that failure to meet the applicable timeframe presumptively constitutes a failure to act under Section 332(c)(7)(B)(v) of the Communications Act, enabling an applicant to pursue judicial relief within the next 30 days. To ensure that the coastal development permit and appeal process is completed consistent with the certified LCP and the Coastal Act, Suggested Modification 1 adds a requirement that CDPs for wireless telecommunication facilities are processed in a reasonable period of time consistent with federal law.

#### Section 1455(a) of the Communications Act

Section 1455(a) of the Communications Act, enacted as part of the Middle Class Tax Relief and Job Creation Act of 2012 (commonly known as the Spectrum Act), establishes further limitations on state and local land use authority over certain wireless facilities. Section 1455(a)(1) provides that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” Section 1455(a)(2) defines the term “eligible facilities request” as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.

The FCC also adopted a report and order on October 21, 2014 (FCC 14-153) that, among other provisions, adopted a rule to clarify and implement requirements of Section 1455(a) [47 C.F.R. § 1.40001]. 47 C.F.R. § 1.40001 interprets Section 1455(a), by, among other means, defining terms used in Section 1455(a), including the terms “base station,” “collocation,” “existing,” “substantial change,” “transmission equipment,” and “tower.”

Because federal law requires that state and local governments approve wireless telecommunication facilities that qualify as eligible facilities requests under Section 1455(a) of the Communications Act, State and local discretionary review of such specified facilities is preempted by federal law, including discretionary CDP review as detailed in Article 29 of the City’s certified IP. **Suggested Modification 1** adds a new Part 4 to Article 31 which addresses the CDP requirements for wireless telecommunication facilities. To account for the Section 1455(a) federal limitation on discretionary review of eligible facilities requests, Suggested Modification 1 adds a definition of eligible facilities requests to the “Definitions” section of Article 31 (Section 10-5.3105), and adds an “Applicability” section to suggested Part 4 of Article 31 (Section 10-5.3140) that excepts eligible facilities requests from the discretionary permitting requirements of Part 4.

While Section 1455(a) eligible facilities requests are not subject to State or local discretionary review, federal guidance indicates that State and local governments may require the filing of an application for administrative approval that verifies the eligibility of the facility request. To provide for this type of non-discretionary review process, Suggested Modification 1 adds a new Part 5 to Article 31 that prescribes the permitting procedures for Section 1455(a) eligible facilities requests in the Coastal Zone that qualify as development and are not otherwise exempt from the need for a CDP. This new Part 5 discusses both the application procedures to verify eligibility and the procedures for granting such a CDP consistent with federal law. The new Part 5 stipulates that an application for an eligible facilities request that complies with the standards

of the section shall be approved by the Director of Planning and shall not be subject to a public hearing. The new Part 5 also adds a section on noticing that requires notice of CDPs for eligible facilities requests consistent with Section 13568(b) of the California Coastal Commission's Administrative Regulations which specifies noticing requirements for local decisions on CDPs that do not require a public hearing.

With regard to the process for reviewing an application under 47 U.S.C. § 1455(a), 47 C.F.R. § 1.40001 stipulates that a state or local government may only require an applicant for a Section 1455(a) eligible facilities request to provide documentation that is reasonably related to determining whether the request meets the requirements of 47 U.S.C. § 1455(a). In addition, FCC 14-153 provides that States and localities may enforce and condition approval only "on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety." 47 C.F.R. § 1.40001 also sets a 60 day deadline for application review, subject to certain tolling provisions, that requires a State or local government to approve the application within 60 days unless it determines that the application is not covered by 47 U.S.C. § 1455(a). The Commission proposes to add these federal limitations on application requirements, conditions of approval, and application processing time to Part 5 of Article 31 as part of Suggested Modification 1. As modified, the proposed Article 31 would allow the City to regulate the deployment of wireless telecommunication facilities in the Coastal Zone under the City's certified LCP consistent with 47 U.S.C. § 1455(a).

#### Conformance of Article 31 with the Communications Act

As discussed above, Section 332(c)(7) of the Communications Act may preempt local development standards for wireless telecommunication facilities, including siting and design standards, if such standards prohibit or have the effect of prohibiting the provision of personal wireless services. In addition, Section 1455(a) of the Communications Act requires approval of certain modifications to existing wireless towers and base stations, thus exempting such modifications from local discretionary review. Proposed Article 31 includes various siting and design standards and discretionary permit requirements for wireless telecommunication facilities that may be preempted by the aforementioned federal regulations. For instance, the proposed IP amendment requires that all wireless telecommunication facilities undergo site plan and architectural review as prescribed in Article 18 of the Coastal Zoning Code (Site Plan Review and Architectural Review) and that all wireless telecommunication facilities in certain zoning districts, in close proximity to residential districts, and within or in close proximity to Local or National Historic Districts obtain a conditional use permit. As site plan and architectural review and conditional use permit processes are discretionary in nature, federal law prohibits their application to Section 1455(a) eligible facilities requests. To account for the potential for federal preemption of various provision of Article 31, **Suggested Modification 1** includes changes to the "Applicability" section of Article 31 so that the each development standard and permit requirement in Article 31 applies to all wireless telecommunication facilities, "except to the extent a specific standard or requirement is inconsistent with federal law." The Commission notes that the suggested modification language is purposely broad to not only encompass the existing Communication Act Section 332(c)(7) and Section 1455(a) limitations on local authority, but to also encompass any future additional limitations, including any other classes or

categories of wireless telecommunication facilities that the federal government may exempt from discretionary review in the future.

**2. Protection of Priority Uses**

The City’s LUP is embedded within a City-wide General Plan. Components of the General Plan designed to meet Coastal Act requirements are noted with a wave symbol. In addition, an Appendix B is attached to the General Plan that describes which of the land use maps, policies, and programs of the overall City-wide General Plan comprise the LUP.

With regard to the designated land uses, the general intent and purpose of land use designations is first described in Part II (Goals, Policies, and Programs), Section 1 (Land Use and Community Design) of the General Plan and then the more specific uses applicable in the Coastal Zone are listed in Table B-1. The “Land Use Designations” subsection of Part II, Section I of the General Plan describes the “coastal dependent industrial,” “agricultural,” and “public/quasi-public” designations within the City’s downtown “Core Area” and/or the city at large, as follows:

*Core Coastal-Dependent Industrial (C-CDI)*

*The C-CDI designation is intended to reserve and protect land adjacent to Humboldt Bay for coastal-dependent and coastal-related industrial uses. The primary intent of this designation is to encourage fisheries related industrial uses west of C Street. Certain secondary uses are also conditionally permitted (e.g., “commercial uses incidental to the primary coastal dependent industrial use” as defined) provided they are of a type and scale so as not to negatively impact the primary coastal-dependent industrial use of the site. The maximum FAR for buildings in the C-CDI designation is 0.50.*

<i>CORE COASTAL-DEPENDENT INDUSTRIAL (C-CDI)</i>	
<i>Primary Uses</i>	<i>Secondary Uses</i>
<i>Uses that require a site on, or adjacent to, the Bay in order to be able to function at all, including, but not limited to: docks, waterborne carrier import and export facilities, ship building and boat repair, commercial fishing facilities, food fish processing plants, marine services, marine oil terminals, OCS service bases and pipelines serving offshore facilities.</i>	<i>Oil and/or gas processing and treatment facilities serving offshore production, onshore petroleum production facilities, electrical generating or other facilities which require ocean intake-outfall and pipelines, fish waste processing plants, ice and cold storage facilities, fishing piers, boat launching and berthing facilities, access support facilities, warehouses, commercial uses incidental to the primary coastal dependent industrial use.<sup>3</sup></i>

<sup>3</sup> Appendix A (Policy Document Glossary) of the LUP defines “commercial uses incidental to the primary coastal dependent industrial use” as follows: *Commercial Uses Incidental to the Primary Coastal Dependent Industrial Use—Those certain commercial uses allowed within the Core Coastal-Dependent Industrial Area which are minor in significance, and subordinate and directly related to the primary*

Coastal Dependent Industrial (CDI)

The CDI designation is intended to reserve and protect land adjacent to Humboldt Bay for coastal-dependent and coastal-related industrial uses. The primary intent of this designation is to encourage industrial uses related to shipping or the fishing industry. The maximum FAR for buildings in areas designated CDI is 0.50.

Agricultural (A)

The A designation provides for protection of agricultural lands, including farmed or grazed wetlands, for long-term productive agricultural and wildlife habitat uses. The designation also ensures adequate separation between agricultural operations and adjacent development. Residential uses related to agricultural operations are also permitted. The maximum FAR for buildings in areas designated A is 0.10 and the assumed number of persons per dwelling unit is 2.7.

Public/Quasi-Public

The PQP designation provides for institutional uses such as schools, hospitals, libraries, government offices and courts, churches, meeting halls, cemeteries and mausoleums, and public or institutional laboratories. The maximum FAR for buildings in areas designated PQP is 0.50.

Table B-1 within Appendix B (Coastal Land Use Policy) of the City’s General Plan lists each of the General Plan land use designations that occur in the City’s Coastal Zone and “shows the corresponding LCP Land Use Plan designation, the corresponding zoning district designation that implements the LUP designation, and the more detailed purpose descriptions and restrictive use prescriptions contained in the coastal resource policies and standards of the LUP” (Appendix B, Land Use Diagram). Below is an excerpt from Table B-1 showing the relevant land use designations and their stated purposes [***emphasis added***]:

GP Designation(s)	LCP-LUP Designation(s)	LCP-IP (Zoning) Designation(s)	Purpose(s)
C-CDI Core Coastal Dependent Industrial	C-CDI Core Coastal Dependent Industrial	MC Coastal-Dependent Industrial	<b><i><u>To protect and reserve parcels on, or adjacent to, the Bay for coastal- dependent and coastal-related uses.</u></i></b>
CDI Coastal Dependent Industrial	CDI Coastal Dependent Industrial	MC Coastal-Dependent Industrial	<b><i><u>To protect and reserve parcels on, or adjacent to, the Bay for coastal- dependent and coastal-related uses.</u></i></b>
A Agriculture	A Agricultural	AC Coastal Agricultural	<b><i><u>To protect agricultural lands and give special protection to lands which are also farmed or grazed wetlands, for long-term productive agricultural and</u></i></b>

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*coastal-dependent industrial uses for which the area is designated. Commercial uses incidental to the primary coastal dependent use include, but are not limited to, retail sales and services of goods produced or functional work provided at the site, such as fish markets or seafood restaurants at commercial fish processing facilities, and facility tour areas.*

GP Designation(s)	LCP-LUP Designation(s)	LCP-IP (Zoning) Designation(s)	Purpose(s)
			<u>wildlife habitat uses.</u>
PQP Public/Quasi-Public (Woodley Island)	PQP Public/Quasi-Public (Woodley Island)	PF/M Public Facilities/Marina	<u>To encourage, protect, maintain, and provide public commercial marina fishing boat and related fishing industry facilities at the Woodley Island Marina consistent with all of the uses granted to the Humboldt Bay Harbor, Recreation, and Conservation Commission in permit NCR-76-C-369 and by City of Eureka Planning Commission permit resolutions 76-25 and 78-39.</u>

In addition, the following LUP policies related to agriculture, coastal-dependent industry, and commercial fishing are relevant.

LUP Agricultural Preservation Policies 6.B.2, 6.B.3, and 6.B.4 state **[emphasis added]**:

6.B.2. **The City shall require the retention in agricultural use of agricultural lands within the Coastal Zone** with soils other than Classes I or II in agriculture use, except under the following conditions:

- a. Continued or renewed agricultural use is demonstrated to be infeasible,
- b. Conversion to urban uses would locate development within, contiguous with, or in close proximity to, existing developed areas, or
- c. Farmed wetlands are proposed and funded through a wetland management and restoration program for restoration of resource-dependent activities.

6.B.3. **The City shall limit uses in grazed or farmed wetlands to the following:**

- a. **Agricultural operations** (except for green houses on slab foundations).
- b. **Farm-related structures** (including barns, sheds, and farmer-occupied housing) necessary for the continuance of the agricultural operation. Such structures may be located on an existing grazed or farmed wetland parcel only if no alternative upland location is available for such purpose and the structures are sited and designed to minimize the adverse environmental effects on the farmed wetland. No more than one primary residential structure parcel shall be allowed.
- c. Restoration and enhancement projects.
- d. Nature study, aquaculture, and similar resource-dependent activities.
- e. **Incidental public service purposes<sup>4</sup> which may temporarily impact the resources of the area, such as burying cable and pipes.**

<sup>4</sup> Appendix A (Policy Document Glossary) of the LUP defines the term “incidental public service purposes” as follows: *Incidental Public Service Purposes - Projects, such as burying cables and pipes, inspection of piers, etc., which may temporarily impact the resources of a habitat area.*

6.B.4 *The City shall ensure that expansion of public services and public facilities, which is otherwise consistent with the provisions of this General Plan, does not reduce agricultural viability through increased assessment costs.*

LUP, Land Use and Community Design, Land Use and Development Framework Policy 1.A.5 states [***emphasis added***]:

***Within the coastal zone, the City shall ensure that coastal-dependent developments have priority over other developments on or near the shoreline.***  
*Except as provided elsewhere in this General Plan, coastal-dependent development shall not be sited in a wetland. Coastal-related developments shall generally be accommodated proximate to the coastal-dependent uses they support.*

LUP Industrial Development Policy 1.M.7 states [***emphasis added***]:

***The City shall encourage coastal-dependent industrial facilities to locate or expand within existing sites. Non-coastal-dependent uses located along the waterfront shall, if feasible, be relocated to other more appropriate areas within the city.***

LUP Commercial Development Policy 1.L.11 and Water Transportation Policy 3.G.1 states [***emphasis added***]:

***The City shall protect*** and, where feasible, upgrade ***facilities serving the commercial fishing and recreational boating industries. Existing commercial fishing and recreational boating space shall not be reduced*** unless the demand for those facilities no longer exists or adequate substitute space has been provided. *New recreational boating facilities shall, to the maximum extent feasible, be designed and located so as not to interfere with the needs of the commercial fishing industry.*

LUP Water Transportation Policy 3.G.2 states [***emphasis added***]:

***The City shall limit new or expanded berthing facilities to sites at the Woodley Island Marina, the Eureka Small Boat Basin, or the Eureka Channel Inner Reach.*** *Facilities supporting party- or charter-fishing boat operations shall be provided at these sites to meet demand for them.*

LUP Coastal Recreation and Access Policy 5.B.3 states [***emphasis added***]:

***The City shall promote the maintenance of and, where feasible, shall provide, restore, or enhance facilities serving commercial and recreational boating, including party or charter fishing boats.***

#### Wireless Telecommunication Facilities Allowed as Public Utilities in Certain Land Use Classifications

The proposed IP amendment adds a definition of “public utility” to both new Article 31 and existing Article 29 that includes public or privately owned organizations that provide



telecommunications services to the public.<sup>5</sup> Public utility equipment buildings and installations and transmission lines are already an enumerated permitted or conditional use in various zoning districts.<sup>6, 7</sup> With the incorporation of the proposed definition of “public utility,” certain wireless telecommunication facilities would be allowed under the aforementioned enumerated public utilities use as a conditional use in the One-Family Residential, Multi-Family Residential, Office and Multi-Family Residential, Waterfront Commercial, and Neighborhood Commercial Districts, and as a permitted use in the Service Commercial, Limited Industrial, and General Industrial Districts. In addition, the proposed IP amendment explicitly adds wireless telecommunication facilities as an enumerated permitted and/or conditional use in all zoning districts within the City’s Coastal Zone, except the Natural Resources District and the Water Conservation and Development Districts.

Planning and zoning programs typically provide for development of certain low-impact public or quasi-public facilities affording health, safety, and convenience benefits to the public, such as wireless telecommunication facilities, on other than formally designated public facility lands, provided such infrastructure is sited and designed so as not to impact or detract from the primary purpose of the non-public land use and zoning designation. For instance, as described above, Eureka’s Coastal Zoning Code (CZC) already allows for public utility facilities in certain zoning districts. However, in the case of the City’s Coastal-Dependent Industrial (MC), Coastal Agriculture (AC), and Public Facilities Marina (P/FM) Districts and corresponding land use designations, additional land use exclusions are applied to ensure that lands are reserved and protected for coastal priority uses. As a result, these zoning districts, unlike the residential districts and other commercial and industrial districts, do not currently allow for public utilities. It is thus necessary to evaluate whether wireless telecommunication facilities can be allowed in these zoning districts consistent with the certified LUP.

#### Coastal-Dependent Industrial Lands

The amending ordinance would establish wireless telecommunication facilities as either a principally or conditionally permissible use in the Coastal Dependent Industrial (MC) District, depending on the proximity of adjoining residential zoning districts. Lands zoned Coastal-Dependent Industrial in the City have either a Coastal-Dependent Industrial (CDI) or Core Coastal-Dependent Industrial (C-CDI) land use designation. The stated purpose of the coastal-dependent industrial designations is to protect and reserve parcels on, or adjacent to, the Bay for

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<sup>5</sup> The City proposes to define “public utility” to mean “*an organization that provides an essential commodity or basic service to the public, such as water, energy, transportation, or telecommunications. Utilities may be publicly or privately owned.*”

<sup>6</sup> The full text of the enumerated use is as follows: “*Public utility and public service pumping stations, power stations, equipment buildings and installations, drainage ways and structures, storage tanks, and transmission lines found by the Planning Commission to be necessary for the public health, safety, or welfare.*”

<sup>7</sup> Section 10-5.29303 exempts from coastal development permit requirements “*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.*” This exemption does not include the types of public utility and public service facilities described as an enumerated use in various zoning districts. The exemption instead addresses development-specific utility connections, while the “public utilities” enumerated use includes public utility and public service facilities that serve a broader public.

coastal-dependent and coastal-related uses. A wireless telecommunications facility is not coastal-dependent because it does not require a site on, or adjacent to, the sea in order to be able to function at all, and it is not coastal-related because it is not dependent on a coastal-dependent development or use (these definitions are included in the list of definitions in Appendix A of the City's LUP). Therefore, the proposed IP amendment to add wireless telecommunication facilities as a use in the MC District without any qualifications to protect and reserve MC parcels for coastal-dependent industry is in conflict with the LUP's CDI and C-CDI land use designations and coastal-dependent industrial priority provisions and must be denied.

In correspondence between the City and Coastal Commission staff over the proposed IP amendment, City staff has contended that wireless telecommunication facilities would be a necessary accessory use to coastal-dependent and coastal-related uses on MC-zoned properties in the same way as electricity, water, and sewer connections are necessary and accessory uses.

The City proposes to define "wireless telecommunication facilities" broadly [under Article 29 (10-5.2906.15) and newly proposed Article 31 (10-5.3105) of Eureka's CZC] as follows:

*Public, commercial and private electromagnetic and photoelectrical transmission, broadcast, repeater and receiving stations for radio, television, telegraph, telephone, data network, and wireless communications. "Wireless telecommunication facility" shall also include the towers and other support structures, commercial satellite dishes, antennas, equipment buildings necessary for the specific facility, and facilities co-located on utility poles. "Wireless telecommunication facility" includes "Satellite telecommunication facility." "Wireless telecommunication facility" does not include "Wired telecommunication facility," or private personal wireless facilities that do not require a license from the Federal Communications Commission, including Direct-to-home satellite TV.*

Under the proposed definition, wireless telecommunication facilities do not include private personal wireless facilities that are allowed without a license from the Federal Communications Commission, nor do they include wired telecommunication facilities such as telephone, DSL internet, or cable TV and internet services that are routed over a network of wires and cables to subscribers. To the extent that properties are directly connected to telecommunication services via wires and cables or via personal satellite antennas that do not require a license from the Federal Communications Commission, these connections do not qualify as wireless telecommunication facilities under the City's LCP. While these property-specific connections may be considered similar to electricity, water, and sewer connections as necessary utility hookups for an existing use, wireless telecommunication facilities are a different category of development. In contrast to a telephone line, fiber optic internet connection, or personal wireless facility that provides direct and exclusive service to an individual property, a wireless telecommunication facility as defined by the City would provide service beyond the property on which it is located. As such, a wireless telecommunications facility is more similar to a power substation or sewer lift station. These types of facilities provide a broader service that is neither directly related nor subordinate to the primary use of the sites on which they are located.

While wireless telecommunication facilities are not considered coastal-dependent or coastal-related uses or accessory and incidental to such uses, wireless telecommunication facilities may be able to be sited on an MC-zoned parcel if they are sited and designed to protect and preserve the parcel for coastal-dependent and coastal-related uses. The City's definition of wireless telecommunication facilities includes a range of structures from antennas bolted to the top of towers with large support foundations and equipment areas, to small-cell systems installed on utility poles or buildings. Because of the variety of siting and design options for wireless telecommunication facilities, there may be cases where these facilities interfere with the use of a parcel for coastal-dependent and coastal-related uses and other cases where impacts are avoided or insignificant.

Coastal-dependent industries, even more so than wireless telecommunication facilities, come in different forms with different site characteristic needs. For instance, seafood processing plants, bulk fuel terminals, cruise ship docks, shipyards, forest product shipping, and first-responder marine services all have differing facility demands. This diversity makes it challenging to predict how best to site a wireless telecommunication facility so as not to interfere with any potential coastal-dependent industrial use. For instance, a land-intensive coastal-dependent industrial use on a smaller parcel may be negatively impacted by a telecommunication facility that could easily be accommodated on another parcel with a less expansive use.

When there is an existing coastal-dependent industrial use on a site, the operational and facility requirements of the use are known and therefore interference with that use is avoidable and avoidance is demonstrable. Furthermore, a property owner's desire for the continued effective operation of an existing coastal-dependent use will encourage siting of wireless telecommunication facilities in a way that does not supplant or displace that existing use. Therefore a wireless facility that is integrated into the siting and design of an approved coastal-dependent industrial use is likely to protect and reserve the parcel for coastal-dependent and coastal-related uses consistent with the certified LUP.

However, there are cases when the property owner is not also the business owner, such as when commercial fishermen lease sites for gear storage and maintenance on someone else's waterfront parcel, and wireless telecommunication facilities may serve as competition for needed space and/or drive up rents by increasing land value. In addition, ensuring that a wireless telecommunication facility does not interfere with an existing coastal-dependent industrial use does not guarantee that it will not interfere with future coastal-dependent uses as the economy of the waterfront changes and individual parcels see turnover and redevelopment.

Despite the diversity of coastal dependent and related uses, by definition, coastal dependent industrial uses cannot exist in a location other than adjacent to the water and coastal-related uses depend on the waterfront for their economic viability. Based on this common characteristic, reserving sites for coastal-dependent and coastal-related uses includes the reservation of bay frontage and access thereto. Therefore, siting wireless telecommunication facilities in a manner that preserves access to the waterfront is more likely to avoid impacts to coastal-dependent uses. Further, wireless telecommunication facilities that are mounted to existing structures could completely avoid occupying usable coastal-dependent industrial space or obstructing access, while freestanding facilities could be sited on the inland perimeter of a parcel to reserve access to

bay frontage. In addition, wireless telecommunication facilities that avoid occupation, conversion or demolition of existing infrastructure such as warehouses, covered storage, lifts, and docks are more likely to preserve the utility of a parcel for a wider range of potential future coastal-dependent uses.

With the understanding that wireless telecommunication facilities are increasingly being viewed as necessary public utilities, and that siting on industrial lands may have fewer visual and environmental impacts than other locations, a limited accommodation of wireless telecommunication facilities on coastal-dependent industrial land is warranted if the facilities are sited and designed so as not to supplant, displace, or prevent development of existing or future priority uses whose functionality depends on proximity to the shoreline.

Therefore, if modified as discussed below, the proposed IP amendment can be found to conform with and carry out the LUP's CDI and C-CDI land use designations and coastal dependent industrial priority provisions. **Suggested Modification 2** removes “wireless telecommunication facilities located more than 100 feet from an R District” from the list of permitted uses in the MC zone, limiting all wireless telecommunication facilities in the MC District to conditional uses. In addition, **Suggested Modification 1** includes an additional siting standard for wireless telecommunication facilities that are proposed on MC-zoned parcels. This standard requires that, unless otherwise required by federal law, new facilities in the MC District must be (1) located on a parcel that is developed with an existing functional coastal-dependent industrial use or integrated into the siting and design of an approved coastal-dependent industrial use; (2) located on, or clustered with, existing legal structures or located along the inland perimeter of the site; and (3) located to preserve priority access to roads, bay frontage, and infrastructure for coastal-dependent industrial uses. Taken together, these siting criteria ensure reservation of MC-zoned parcels for coastal-dependent industrial uses. Suggested Modification 1 also adds a parallel coastal-development permit application requirement that the applicant demonstrate the proposed wireless telecommunication facility will meet all four criteria; or provide evidence demonstrating that (1) doing so is not feasible, (2) denial of such facilities would be inconsistent with federal law, and (3) the facility will be sited and designed to avoid adverse impacts to existing or future coastal-dependent industrial uses. Furthermore, Suggested Modification 1 adds a required finding of approval for a proposed facility in the MC District that the facility will not have a detrimental impact on existing coastal-dependent industrial uses or other priority uses, nor on the future long term use of MC-zoned land for coastal-dependent industrial uses.

#### Agricultural Lands

The City proposes to add wireless telecommunication facilities as a conditional use in the Coastal Agriculture District. Similar to the City's Coastal-Dependent Industrial zoning district, the City's Coastal Agriculture District and corresponding Agriculture land use designation narrowly prescribe allowable land uses, in this case to ensure that rural lands are reserved and protected for truly resource-dependent uses. The stated purpose of the Agriculture land use designation is “to protect agricultural lands...for long-term productive agricultural and wildlife habitat uses” (LUP Appendix B, Table B-1).

A wireless telecommunication facility is not an agricultural use. As discussed in the section on coastal-dependent industrial uses above, a wireless telecommunication facility provides service

beyond the individual parcel on which it is located and thus a wireless telecommunication facility on a farm would not be directly related to the agricultural use of that particular site. Furthermore, a wireless telecommunication facility does not need to be located onsite or even on agricultural land to benefit a particular agricultural operation. As the siting of a wireless telecommunication facility on agricultural land is not necessary for the agricultural operation, the facility is not considered a farm-related or agricultural accessory use.

Consistent with Coastal Act Policies 30241 and 30242, LUP Policy 6.B.2 requires the retention in agricultural use of agricultural lands within the Coastal Zone with soils other than Classes I or II, except when (1) continued or renewed agricultural use is demonstrated to be infeasible; (2) conversion to urban uses would locate development within, contiguous with, or in close proximity to existing developed areas; or (3) farmed wetlands are restored for resource-dependent activities. In addition, LUP Policy 6.B.3 limits uses in grazed or farmed wetlands to five enumerated uses, including “incidental public service purposes<sup>8</sup> which may temporarily impact the resources of the area, such as burying cable and pipes.” Insofar as the City’s definition of wireless telecommunication facilities includes above-ground structures with permanent foundations such as support towers, allowing wireless telecommunication facilities on agricultural land could result in a conversion of agricultural land inconsistent with the aforementioned LCP policies. Freestanding wireless telecommunication facilities that occupy agricultural soils are incompatible with agriculture because both uses cannot occur on the same soil at the same time.

Wireless telecommunication facilities on agricultural lands also raise visual concerns because of the typical open appearance and rural character of agricultural land and resulting high visibility of structures on the land.

By adding wireless telecommunication facilities as a conditional use in the coastal agricultural zone without any qualifying language to prevent long-term impacts to productive resource lands or visual resources, the proposed IP amendment is in conflict with the LUP’s Agriculture land use designation and agricultural resource protection provisions and must be denied.

However, if modified to incorporate the provisions of **Suggested Modification 2** to remove wireless telecommunication facilities from the list of conditionally permitted uses in the Coastal Agriculture District, the proposed IP amendment can be found to conform with and adequately carry out the LUP’s Agriculture land use designation. In addition, **Suggested Modification 1** adds a development standard and corresponding CDP application requirement indicating that if no feasible alternative exists to locating a wireless telecommunications facility within the AC District, and denial of such facilities would be inconsistent with federal law, the facility shall, to the maximum extent feasible, be located (1) outside of areas actively used for agricultural operations; (2) outside of prime agricultural soils and wetlands; and (3) on, or clustered with, existing legal structures. By requiring avoidance of agricultural operations, prime agriculture soils, and farmed wetlands, the suggested modification ensures maximum consistency with the

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<sup>8</sup> Appendix A (Policy Document Glossary) of the LUP defines the term “incidental public service purposes” as follows: *Incidental Public Service Purposes - Projects, such as burying cables and pipes, inspection of piers, etc., which may temporarily impact the resources of a habitat area.*

agricultural protection policies of the LUP; and by requiring clustering on or adjacent to existing structures, the modification reduces potential visual impact in an agricultural setting by preserving open visual expanses.

#### The Woodley Island Marina

The City proposes to add wireless telecommunication facilities as a conditional use in the Public Facility/Marina (PF/M) District. Woodley Island Marina is the only area in the City zoned PF/M. The corresponding land use designation is PQP Public/Quasi-Public (Woodley Island). The stated purpose of this designation is to encourage, protect, maintain, and provide public commercial marina fishing boat and related fishing industry facilities at Woodley Island Marina consistent with the project description for the original permit for the marina issued by the Commission in 1979 and its subsequent amendments.<sup>9</sup> The Woodley Island CDP converted a previously undeveloped island into the array of uses that exist today. The CDP covered development of the entire island including dredging and spoils deposition, development of the marina berths, development of shoreside commercial fishing and support facilities, and preservation of a wildlife habitat preserve. The permit was approved prior to the certification of the LCP and thus the uses authorized in the permit became the basis for establishing the land use classification and zoning district.

The Woodley Island Marina is the primary commercial fishing marina in Humboldt Bay and thus a principal area supporting the fishing industry. The City's certified LUP contains policies requiring the City to protect and promote the maintenance of, and where feasible, upgrade, provide, restore, and enhance facilities serving the commercial fishing industry and to limit new or expanded berthing facilities to the Woodley Island Marina and two other locations in the City (LUP Policies 1.L.11; 3.G.2; and 5.B.3). The LUP reserves the Woodley Island Marina for existing and potential future commercial fishing facilities by only allowing uses specifically permitted in the 1979 CDP and its subsequent amendments. Certain wireless telecommunication facilities could potentially be located at the marina in such a way as to enhance rather than detract from commercial fishing facilities, for instance, by being sited on existing commercial fishing support structures rather than occupying vacant areas that could otherwise be used by the fishing industry. However, an LUP amendment would first be required to amend the purpose of the PQP (Woodley Island) designation to allow for uses other than those granted by the marina permit. As no corresponding LUP amendment is proposed, the proposed IP amendment must be denied. Therefore, **Suggested Modification 2** removes wireless telecommunication facilities from the list of conditionally permitted uses in the PF/M District.

#### WTF Objectives and Siting Standards Related to Zoning Districts

As previously discussed, the proposed IP amendment adds a new Article 31 to the City's Coastal Zoning Code that specifically regulates wireless telecommunication facilities. Article 31 includes siting priorities for wireless telecommunication facilities that focus on promoting co-location on existing facilities and avoiding residential districts. These priorities are expressly stated in the "Objectives" subsection of the article (Section 10-5.3103), and implemented through development standards that require co-location and siting outside the R District if feasible [Sections 10-5.3106.1 and 10-5.3120(b)], and requirements that applications for WTF and/or

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<sup>9</sup> See CDP NCR-76-C-369 (aka 1-84-169), and CDPs 1-84-169-A1 through A5.

conditional use permits include written justification and data demonstrating the infeasibility of alternative locations (Sections 10-5.3106.1 and 10-5.3120).

As discussed above, the City's LUP includes a number of land use designations that protect and preserve lands for commercial fishing, agricultural, and natural resource uses. The proposed IP amendment is in conflict with these designations and must be denied.

To carry out the LUP's priorities, **Suggested Modification 1** modifies the "Objectives" subsection of Article 31 to encourage and promote siting of wireless telecommunication facilities not just outside of residential areas, but also outside of the NR, AC, and PF/M Districts. In addition, as discussed earlier in the federal consistency section [Section IV(B)(1)], Suggested Modification 1 adds a development standard for wireless telecommunication facilities in the Coastal Zone prohibiting location in the aforementioned districts except when no feasible alternative exists and denial of such facilities would be inconsistent with federal law, and impacts to coastal resources and priority uses are avoided and minimized to the maximum extent feasible. In addition, Suggested Modification 1 adds coastal development permitting requirements for wireless telecommunication facilities, including additional application requirements and findings for approval for wireless telecommunication facilities proposed in the NR, AC, and PF/M Districts that only allow such siting if denial of the facility is prohibited by federal law, no feasible alternative exists, adverse impacts to coastal resources and priority uses are avoided to the maximum extent feasible, unavoidable adverse impacts are minimized and mitigated, and the facility is consistent with all other applicable LCP policies, standards, and regulations.

As modified, the proposed Article 31 conforms with and adequately carries out the Coastal-Dependent Industrial, Coastal Agriculture, and Woodley Island Marina land use designations and priority use provisions of the certified LUP.

### **3. Protection of Visual Resources**

Eureka's General Plan sets a clear vision for the commercial center of the City, referred to as the City's "Core Area," which includes areas variously defined as Downtown, Old Town, and the Central Waterfront. The majority of the Core Area is within the Coastal Zone between Humboldt Bay and 3<sup>rd</sup> Street, although a portion of the Core Area extends outside of the Coastal Zone south to 8<sup>th</sup> Street. The General Plan includes four mixed-use land use designations and nine goals with accompanying policies specific to the Core Area. These four land use designations and a number of the policies are also incorporated into the LCP, including the following policies:

LUP Section 1 (Land Use and Community Design), Core Area, Waterfront, Policy 1.D.1:

*The City shall retain the historic waterfront building<sup>10</sup> scale, building form, and general character in waterfront revitalization and development as a means of creating a "Victorian Seaport" identity for the waterfront area. New buildings*

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<sup>10</sup> "Building" is defined in Appendix A of the LUP as, "Any structure used or intended for supporting or sheltering any use or occupancy." Structure is also defined in Appendix A of the LUP as "includ[ing] but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

*developed along the waterfront north of First Street/Waterfront Drive should not exceed three stories or 50 feet in height.*

LUP Section 1 (Land Use and Community Design), Core Area, Architecture/Landscape Character Policy 1.I.1:

*The City shall ensure that structures of historic or architectural interest are preserved and, wherever feasible, rehabilitated to protect the variety and quality of older buildings in the Core Area. In cases where such structures might be used to better advantage in new surroundings, the City shall encourage relocation.*

A provision for the protection of public views is also included in LUP Section 5 (Recreational and Cultural Resources), Coastal Recreation and Access Policy 5.B.1 [***emphasis added***]:

*The City shall provide public open space and shoreline access throughout the Coastal Zone, particularly along the waterfront First Street, through all of the following:*

- (a) *Develop Waterfront Drive from the Elk River Interchange to a terminus near Eureka Slough, with provisions for bicycle lanes, pedestrian walkways, and supporting facilities.*
- (b) *Establish a walkway system located on or near the shoreline throughout the city's waterfront Core Area.*
- (c) *Establish scenic vista points at numerous locations along the waterfront, including construction of a public access vista point at the foot of Truesdale Street.*
- (d) ***Consider and protect the scenic and visual qualities of coastal areas that are visible from scenic public vista points and waterfront walkways.***
- (e) *The City, in cooperation with the Coastal Commission and Coastal Conservancy, shall provide for attractive directional signs that are meaningful on the North Coast so as to assist area residents and visitors alike in identifying visitor-serving, recreational, and historical facilities in the city.*

Consistent with the above policies for protection of scenic and visual resources, one of the stated objectives of proposed new Article 31 is to minimize adverse visual impacts of wireless telecommunication facilities through careful design, siting, landscape screening, and innovative camouflaging techniques [Section 10-5.3103(d)]. To implement this objective, the proposed article includes a list of design standards for wireless telecommunication facilities (Section 10-5.3016.2), including but not limited to requirements for selecting colors and designs that are compatible with the surroundings, installing screening and landscaping, and siting to avoid or minimize obstruction of scenic views. This section also requires that, where feasible, the wireless telecommunication facility's base station and all related wires and cables necessary for the operation are to be placed underground; or, should the base station be located within or on the roof of a building, be placed in a location that would not be visible from the surrounding neighborhood, with any wires and cables attached to the base station screened from public view.



Article 31 further implements its visual resource protection objective by requiring site plan and design review for all wireless telecommunication facilities (Section 10-5.3121). Article 31 also requires a WTF permit for all wireless telecommunication facilities, and requires as part of the application submittal for a WTF permit (and any conditional use permit acting as a WTF permit subject to Section 10-5.3130), a landscape plan and scaled photo simulations, elevations and other visual or graphic illustrations necessary to determine the visual compatibility of the proposed project with the general character, aesthetics, scenic qualities, and existing development in the surrounding neighborhood (Section 10-5.3120). In addition, Article 31 only allows a WTF permit (or any conditional use permit acting as a WTF permit subject to Section 10-5.3130) to be granted if findings are made that the proposed facility will be compatible with the general character, aesthetics, scenic qualities, and existing development in the surrounding neighborhood (Section 10-5.3123).

#### Core Area Protections

Article 31 requires that wireless telecommunication facilities located in an R District or in close proximity to an R District be camouflaged or of an innovative design to minimize negative visual impacts of the facility on the surrounding residential neighborhood. Article 31 also requires additional screening and setback distances for facilities in these locations.

While Article 31 includes more stringent visual standards for development within or in close proximity to residential districts, there are no added protections for Eureka's Core Area. The City's General Plan includes a number of visual protection policies specific to the Core Area, including policies to maintain and expand view corridors and maintain the distinctive architecture and historic character of the area. These policies include LUP Policy 1.D.1 which requires that the City retain the historic building scale, building form, and general character of the Core Area's waterfront area. In addition, the LUP's access policies include a provision for protecting scenic and visual qualities of coastal areas that are visible from scenic public vista points and waterfront walkways (LUP Policy 5.B.1). The Core Area with its historic seaport character including many structures of historic and architectural interest is one of Eureka's most visible scenic assets from public views and walkways along the waterfront, including from the Eureka Boardwalk and Woodley Island.

Wireless telecommunication facilities can be visually obtrusive and create visual clutter, and thus could potentially block views of the Core Area and detract from the scenic quality of the area inconsistent with LUP Policy 5.B.1. Wireless telecommunication facilities are also a new technology and as such could detract from the historic character of the Core Area if visible and visually incompatible with the historic character of the Core Area waterfront, inconsistent with LUP Policy 1.D.1. The IP amendment does not include development standards that will adequately assure protection of this visually sensitive area consistent with the requirements of the certified LUP and therefore must be denied.

To address these potential inconsistencies, **Suggested Modification 1** provides added visual protection to the Core Area waterfront. Suggested Modification 1 incorporates protection of the historic character of the Core Area waterfront into the stated objectives of Article 31 and adds a development standard specific to wireless telecommunication facilities in the Core Area in the Coastal Zone. To protect the historic character of the Core Area consistent with LUP Policy

1.D.1, the new development standard requires that all components of wireless telecommunication facilities in the Core Area waterfront shall be fully screened from public view or architecturally integrated into the design of a building or structure so that the wireless telecommunication facilities are visually compatible with the historic character of the Core Area waterfront. Furthermore, Suggested Modification 1 requires that CDPs only be issued for a wireless telecommunication facility when affirmative, evidence-based findings can be made that the wireless telecommunication facility, including any associated lighting and supportive structures, has been sited and designed consistent with the aforementioned Core Area development standard.

As previously discussed, the proposed design standards for wireless telecommunication facilities includes a standard that requires facilities to be designed to avoid or minimize obstruction of scenic views [proposed Section 10-5.3106.2(d)]. To adequately carry out LUP Policy 5.B.1 which requires protection of views from public vista points and waterfront walkways, Suggested Modification 1 also modifies the aforementioned design standard to require facilities to be designed to avoid and minimize to the maximum extent feasible obstruction of scenic views. This modification is necessary to adequately protect the scenic and visual qualities of visible coastal areas consistent with the requirements of the certified LUP.

As modified, the proposed IP amendment is protective of visual resources of the Core Area consistent with LUP Policies 1.D.1 and 5.B.1.

#### Maximum Height Standards

The proposed IP amendment explicitly removes wireless telecommunication facilities from the general height standards for the Coastal Zone set forth in Article 29 of the certified IP (10-5.2927.2) and instead establishes maximum height standards for wireless telecommunication facilities under new Article 31, Section 10-5.3106.4. The purpose of these changes is to consolidate the physical development standards for wireless telecommunication facilities in one location in the zoning code and to make distinctions between maximum allowable heights for free-standing and building-mounted wireless telecommunication facilities. In addition, the changes would avoid confusion in the administration of height limits on architectural building features (“towers, spires”), amateur, citizen-band, and other low-power broadcast media transceiver apparatus (“private personal wireless facilities that do not require a license from the Federal Communications Commission including Direct-to-home satellite TV”), and other public utility facilities (“transmission towers for wired communications”), with which wireless telecommunication facilities might mistakenly be grouped.

Notwithstanding these efforts at code consolidation and clarification, the proposed amendments to the IP’s height standards do not incorporate the overriding height restriction set forth in LUP Policy 1.D.1 which sets a maximum height limit of 50 feet in the Core Area along the waterfront north of First Street/Waterfront Drive. Insofar as wireless telecommunication facilities fall within the definition of “buildings” as “[a]ny structure used or intended for supporting or sheltering any use... [i]nclud[ing] but is not limited to, any building,... conduit, telephone line, and electrical power ...distribution line,” new wireless telecommunication facilities would be subject to this prescribed height limit. There are two zoning districts in the Core Area along the waterfront north of First Street/Waterfront Drive that are implicated by the 50 foot height limit

set forth in LUP Policy 1.D.1: the Waterfront Commercial (CW) and Coastal Dependent Industrial (MC) Districts. The proposed IP amendment sets 60-foot and 150-foot citywide height limits in these districts respectively. Therefore, the proposed IP amendment is inconsistent with the 50-foot height limit of Policy 1.D.1 and must be denied.

**Suggested Modification 1** modifies Section 10-5.3106.4 of Article 31 pertaining to height limits to ensure that the supplemental height limit imposed by the LUP over the CW and MC Districts within the Core Area waterfront is adequately implemented. Because there are legal nonconforming structures in the Core Area waterfront that are over 50 feet, the proposed modification includes an exception to the 50 foot height limit to allow wireless telecommunication facilities mounted to existing buildings over 50 feet to extend to the finished building height. This exception provides added flexibility in the siting of building-mounted wireless telecommunication facilities to facilitate screening and/or architectural integration consistent with the Core Area development standard. Section 10-5.3106.4 sets height limits for wireless telecommunication facilities mounted on existing buildings and for free-standing towers. Any free-standing tower in the Core Area must also satisfy the Core Area development standard to be fully screened or architecturally integrated into the design of a building or structure, as well as satisfy all other applicable standards.

While wireless telecommunication facilities are not an allowable use in the Natural Resource (NR) District, wireless telecommunication facilities must be permitted in the NR District when no feasible alternative exists and denial of such facilities would be inconsistent with federal law. Because wireless telecommunication facilities may be located in the NR District in circumstances required by federal law, Suggested Modification 1 adds a 100-foot height limit for wireless telecommunication facilities in the NR District consistent with the height limits established for facilities in the Coastal Agriculture (AC) District. In consultation with Commission staff, City staff indicates support for including this height limit in the NR District.

As previously discussed, the federal Communications Act precludes state and local governments from unreasonably discriminating among providers of functionally equivalent services or enacting ordinances that prohibit or have the effect of prohibiting the provision of telecommunications services, including wireless services. A regulation results in an “effective prohibition” of personal services if it prevents a wireless services provider from closing a “significant gap” in its own service coverage. Under the proposed IP amendment as modified, wireless telecommunication facilities will only be allowed in the NR and the AC Districts if there are no feasible alternative sites available to eliminate or substantially reduce significant gaps in coverage. If the location is necessary for one service provider’s coverage, it is likely other service providers will also require siting nearby. In this case one larger freestanding facility that can serve multiple providers may be less impactful to natural resource and agricultural lands than multiple facilities with multiple foundations. Therefore, to reduce impacts to lands zoned for natural resources and coastal agriculture, if a freestanding facility is proposed, it would be beneficial to design the facility for future co-location of multiple providers to prevent the future proliferation of facilities in the area. Therefore Suggested Modification 1 sets a relatively high height limit for wireless telecommunication facilities in the NR District (a 100 foot height limit, consistent with the AC District), but adds a caveat that new freestanding facilities in the NR and AC Districts shall be constructed so as to accommodate co-location, and shall be available for

co-location. This requirement will ensure that facilities are either mounted on existing structures where they will not impact agricultural or resource lands, or if they are freestanding, they are built to accommodate multiple providers to limit the total number of foundations necessary.

As with the NR and AC Districts, under the proposed IP amendment as modified, wireless telecommunication facilities are not an allowable use in the Public Facility/Marina (PF/M) District unless denial of such facilities would be prohibited by federal law and no feasible alternative exists. As previously discussed, Woodley Island Marina is the only area in the City zoned PF/M. The Woodley Island Marina is highly visible from various public vantage points along the Eureka waterfront so a tall, unshielded wireless telecommunication facility on Woodley Island would likely have a significant visual impact. Also, unlike land in the NR and AC Districts which is largely devoid of structures, the Woodley Island Marina is populated with buildings and other structures on which wireless telecommunication facilities could be mounted, reserving ground space for commercial fishing facilities. Therefore, Suggested Modification 1 sets a 50 foot height limit for wireless telecommunication facilities on Woodley Island, consistent with the 50 foot height limit along the Core Area waterfront across the inner reach of the Eureka Channel.

As modified, the proposed height limits as applied to new and co-located wireless telecommunication facilities will adequately implement the visual resource protections of the certified LUP.

#### Co-Location Standards

Because there are multiple wireless service providers who are competing to provide coverage, and demand for wireless communication facilities is increasing, it is likely that over time the City will receive multiple applications for wireless telecommunication facilities covering the same or similar areas, and the proliferation of facilities in any one area could have cumulative visual resource impacts.

To lessen potential cumulative visual impacts, proposed Article 31 requires that all wireless telecommunication facilities co-locate with existing facilities unless it is determined that co-location is not feasible. Applicants for facilities that are not co-located must demonstrate that co-location is infeasible by either evincing there are no other existing facilities within the geographic area of the cell required for the proposed wireless telecommunication facility; or co-location on existing facilities is otherwise infeasible because (1) existing facilities do not have sufficient height, strength, vertical and horizontal distance, or site area/ building floor area to support additional facilities, (2) co-location would cause interference among providers, or (3) the owners of the existing facilities would not consent to co-location. These proposed regulations attempt to minimize visual impacts by reducing the total number of wireless facility sites permitted in the City.

While proposed Article 31 encourages new wireless telecommunication facilities to co-locate on existing facilities, the article does not require new wireless telecommunication facilities that are not co-located to accommodate future co-location. Designing a wireless telecommunication facility for future co-location may require adding height or bulk to the facility resulting in additional visual impact. As a result, visual tradeoffs exist between larger structures that can

accommodate co-location to a greater extent and thus reduce the total number of necessary support structures, and smaller structures that can be less visually obtrusive and better camouflaged or concealed. For instance, there are now a variety of alternative technologies that are less visually obtrusive than typical stand-alone cell towers such as small-cell systems that are a fraction of the size of macrocell deployments and can be installed on utility poles, buildings, and other existing structures with little or no visual impact, but cannot themselves support future co-location.

As a result of the visual tradeoffs between co-location and facility size, it is vital to understand the potential for future co-location at the time a wireless telecommunication facility is permitted to adequately assess cumulative visual impacts. Therefore, as part of **Suggested Modification 1**, the Commission adds a coastal development permit application requirement for proposed non-eligible facilities that will not be co-located with an existing approved facility, requiring (1) a facility build-out plan that describes the maximum anticipated build-out of the site with accommodation of future co-location; and (2) a written explanation as to why accommodation of a greater extent of future co-locations than proposed is not technically feasible or would increase visual impact more than constructing a new separate facility. Understanding whether or not the facility will accommodate future co-location and how future co-location will affect the appearance of the wireless telecommunication facility will enable the permitting body to minimize cumulative impacts on visual resources and public views consistent with the City's certified LUP and the Coastal Act.

#### Facility Updates

To prevent visual blight from untended or abandoned structures, proposed Section 10-5.3106.7 of Article 31 requires that all wireless telecommunication facilities are maintained in a neat and orderly manner and Section 10-5.3106.8 requires that, within 90 days of abandonment or termination of use, towers and support structures shall be demolished, deconstructed or otherwise removed. However, the proposed IP amendment does not include any requirements for facility upgrades when feasible to improve visual compatibility. The technology associated with wireless telecommunication facilities is subject to rapid changes and upgrades as a result of industry competition and customer demands. As a result, it can be expected that over time new technologies may be developed that allow for less visually intrusive or fewer wireless telecommunication facilities with comparable or improved coverage and capacity capabilities. To encourage existing facilities to upgrade to new technologies that reduce visual and aesthetic impacts, the Commission adopts as part of **Suggested Modification 1** a new Section 10-5.3145 of Article 31 discussing the length of development authorization for wireless telecommunication facilities. This section allows the City to limit the term of authorization for CDPs for wireless telecommunication facilities to at least 10 years, and requires an application for a new permit at the end of the authorization period to incorporate all feasible new or advanced technologies that will reduce previously unavoidable environmental impacts, including visual impacts.

The Commission finds that the IP amendment as submitted does not conform with and does not adequately carry out the visual resource protection policies of the certified LUP. However, with Suggested Modification 1, conflicts with the visual resource protection policies of the certified LUP will be resolved, and the IP as modified, conforms with and adequately carries out the certified LUP.

#### 4. Protection of Environmentally Sensitive Habitat Area

LUP Natural Resources Policies 6.A.6, 6.A.7, 6.A.8, and 6.A.19 state [***emphasis added***]:

- 6.A.6. *The City declares the following to be environmentally sensitive habitat areas within the Coastal Zone:*
- a. *Rivers, creeks, sloughs, gulches and associated riparian habitats, including, but not limited to Eureka Slough, Fay Slough, CutOff Slough, Freshwater Slough, Cooper Slough, Second Slough, Third Slough, Martin Slough, Ryan Slough, Swain Slough, and Elk River.*
  - b. *Wetlands and estuaries, including that portion of Humboldt Bay within the City's jurisdiction, riparian areas, and vegetated dunes.*
  - c. *Indian Island, Daby Island, and the Woodley Island wildlife area.*
  - d. *Other unique habitat areas, such as waterbird rookeries, and habitat for all rare or endangered species on state or federal lists.*
  - e. *Grazed or farmed wetlands (i.e., diked former tidelands).*

*The areas are shown on 1500 scale maps that are available for review at the City of Eureka Community Development Department. These maps are incorporated by reference into this General Plan and are a formal part of it. However, all environmentally sensitive habitat areas may not be shown on these maps and shall, if they exist, be identified as part of any project application.*

- 6.A.7. ***Within the Coastal Zone, the City shall ensure that environmentally sensitive habitat areas are protected against any significant disruption of habitat values, and that only uses dependent on such resources shall be allowed within such areas.*** *The City shall require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas.*
- 6.A.8. *Within the Coastal Zone, prior to the approval of a development, the City shall require that all development on lots or parcels designated NR (Natural Resources) on the Land Use Diagram or within 250 feet of such designation, or development potentially affecting an environmentally sensitive habitat area, shall be found to be in conformity with the applicable habitat protection policies of the General Plan. All development plans, drainage plans, and grading plans submitted as part of an application shall show the precise location of the habitat(s) potentially affected by the proposed project and the manner in which they will be protected, enhanced, or restored.*
- 6.A.19. ***The City shall require establishment of a buffer for permitted development adjacent to all environmentally sensitive areas. The minimum width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the***

**basis of site specific information, the type and size of the proposed development, and/or proposed mitigation (such as planting of vegetation) that will achieve the purposes(s) of the buffer, that a smaller buffer will protect the resources of the habitat area.** *As necessary to protect the environmentally sensitive area, the City may require a buffer greater than 100 feet. The buffer shall be measured horizontally from the edge of the environmental sensitive area nearest the proposed development to the edge of the development nearest to the environmentally sensitive area. Maps and supplemental information submitted as part of the application shall be used to specifically define these boundaries.*

Pursuant to LUP Policy 6.A.7, as implemented verbatim within the IP “environmental resource standards” CZC Section 10-5.2942.4, development within environmentally sensitive habitat areas (ESHAs) is limited to only those uses dependent on such resources, and must protect against any significant disruption of habitat values; and development adjacent to ESHAs must be sited and designed to prevent impacts which would significantly degrade the adjoining sensitive areas, and be compatible with the continuance of such habitat areas. In addition, LUP Policy 6.A.19 and CZC Section 10-5.2942.15 require the establishment of a buffer between permitted development and ESHA necessary to protect the environmentally sensitive area. Pursuant to these LCP provisions, wireless telecommunication facilities may not be sited in ESHA or ESHA buffers as these facilities (1) do not constitute resource-dependent uses and (2) have the potential to degrade adjacent ESHAs, for example, by creating a predator perch, increasing noise or light disturbance, or increasing human and vehicular encroachment.

Under the proposed IP amendment, wireless telecommunication facilities would not be allowed to be developed in the Water Conservation (WC), Water Development (WD), and Natural Resource (NR) Districts. The WC and WD Districts are generally applied to estuarine waters of Humboldt Bay while the NR District is applied to natural resource lands that the City intends to protect as ESHAs. While these three districts include significant ESHA, ESHA and ESHA buffers also exist elsewhere in the Coastal Zone in other zoning districts, including but not limited to districts situated directly adjacent to the NR District and/or the estuarine waters of Humboldt Bay. To better ensure protection of ESHA within all zoning districts in conformance with LUP Policies 6.A.6, 6.A.7, 6.A.8, and 6.A.19, **Suggested Modification 1** adds, among other siting and design standards applicable in the Coastal Zone, a standard expressly prohibiting wireless telecommunication facilities from being located in an ESHA or ESHA buffer.

While it is true that the City’s LCP already contains policies and regulations that would prohibit wireless telecommunication facilities from siting in ESHAs and ESHA buffers, it is necessary to add a development standard directly to proposed Article 31 because of the unique implications of federal regulation over the deployment of wireless telecommunication facilities. As described earlier in the federal consistency section [Section IV(B)(1)], the City would be required to approve a wireless telecommunication facility in an ESHA or ESHA buffer if such development is necessary in order to fill a significant gap in the carrier’s service and the applicant has provided evidence that there are no other feasible alternative locations. To protect ESHA to the maximum extent feasible in the event of such a federal preemption, Suggested Modification 1 includes language specifying that when no feasible alternative exists and a denial of such facilities would be inconsistent with federal law, the facility shall minimize impacts to coastal

resources to the maximum extent feasible. In addition Suggested Modification 1 includes additional application requirements and findings for approval for CDPs for wireless telecommunication facilities proposed in ESHA and ESHA buffers that only allow such siting if denial of the facility is preempted by federal law, no feasible alternative exists, adverse impacts to coastal resources are avoided to the maximum extent feasible, unavoidable adverse impacts are minimized and mitigated, and the facility is consistent with all other applicable LCP policies, standards, and regulations. As modified, the proposed Article 31 ensures wireless telecommunication facilities that must be located in ESHA or ESHA buffers due to federal law are sited and designed to protect the resources of the habitat.

### Bird Strike Impacts

Most *in situ* coastal aquatic and biological resources within ESHAs would be protected through the prohibition of WTF development within the resource area, and/or the application of a non-development buffer between ESHA and a WTF project site. These development conditions would serve to protect the physical habitat area and the occupying sensitive species therein. However, there remains one class of potential impacts unique to WTF development not addressed in the proposed IP amendment: injuries to environmentally sensitive and other bird and bat species transiting to and from the ESHA.

The U.S. Fish and Wildlife Service estimates that between four and fifty million bird deaths occur annually from collisions with communication towers.<sup>11, 12</sup> Upwards of 350 species are affected, many of which are afforded protection by either state and federal endangered species acts, or international migratory bird treaties.<sup>13</sup> While the majority of these losses are generally associated with taller, guy wire-supported structures adorned with aircraft warning light illumination, casualties also occur with un-guyed, unlit, monopole or lattice-designed structures.

In response to these identified concerns, the two federal agencies most directly associated with the licensing of telecommunication towers, the Federal Communications Commission (FCC)<sup>14</sup>

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<sup>11</sup> Manville, A.M., II. 2005. Bird strikes and electrocutions at power lines, communication towers, and wind turbines: state of the art and state of the science - next steps toward mitigation. Pages 1051-1 064 *In* C.J. Ralph and T.D. Rich (editors), *Bird Conservation Implementation in the Americas: Proceedings 3<sup>rd</sup> International Partners in Flight Conference*, U.S.D.A. Forest Service Gen. Technical Report PSWGTR-191, Albany, CA.

<sup>12</sup> Longcore, T., C. Rich, P. Mineau, B. MacDonald, D.G. Bert, L.M. Sullivan, E. Mutrie, S.A. Gauthreaux, Jr., M.L. Avery, R.C. Crawford, A.M. Manville, II, E.R. Travis, and D. Drake. 2013. Avian mortality at communication towers in the United States and Canada: which species, how many, and where? *Biological Conservation* 158: 410-419.

<sup>13</sup> Manville, A.M. II. 2009. Towers, turbines, power lines and buildings- steps being taken by the U.S. Fish and Wildlife Service to avoid or minimize take of migratory birds at these structures. Pages 262-272 *in* T.D. Rich, C. Arizmendi, D.W. Demarest, and C. Thompson (editors). *Tundra to Tropics: Connecting Birds, Habitats and People*. Proceedings 4th International Partners in Flight Conference, McAllen, Texas.

<sup>14</sup> Federal Communications Commission. Final programmatic environmental assessment for the antenna structure registration program. DA-12-388, March 13, 2012, pp.8-1 – 8-3.



and the Federal Aviation Administration (FAA)<sup>15</sup> have conducted environmental assessments and developed guidelines for the inclusion of mitigation measures in the siting and design of wireless telecommunication facilities to avoid and minimize bird-strike impacts. Measures that can reduce attraction of birds toward these structures and the likelihood of collisions include but are not limited to: (a) replacing steady to slow-blinking aircraft warning lights with more stroboscopic-styled lighting; (b) employing high-contrast obstruction marking into the towers' exterior appearance; and (c) prohibiting or restricting development of WTF structures within or in close proximity to federal parks, wildlife refuges, and wilderness areas. In addition, the USFWS<sup>16</sup> has issued its own tower siting, construction, operation, and decommissioning recommendations stressing co-location, clustering, and minimizing heights of WTF structures such that the use of guy wires and aircraft warning lighting is eliminated.

As currently presented, the proposed IP amendment primarily address the ramifications of wireless telecommunication facilities in terms of their overall engineering integrity and structural stability, noise emissions, aviation safety, and their visual appearance with respect to human aesthetics. Other than including among its objectives an intent to “[p]rotect the City's... natural environment,” the proposed WTF regulations do not include design assessment criteria for the protection of environmentally sensitive biological resources from impacts including, but not limited to, bird-strike. The proposed amendment does include a prohibition on lighting for wireless telecommunication facilities co-located on utility poles,<sup>17</sup> but otherwise is silent on lighting and other WTF design features' impacts on ESHA or effects on bird-strike. Therefore, to ensure that the policies of the LUP regarding the protection of natural resources are adequately implemented, the Commission adopts, as part of **Suggested Modification 1**, a development standard and required finding of CDP approval addressing potential bird-strike impacts. The added development standard prohibits lighting on wireless telecommunication facilities unless required by federal or state law, and requires that any lighting be sited and designed to minimize impacts to environmentally sensitive habitat areas and wildlife, including bird-strike impacts. The added required finding for coastal development permit approval stipulates that a CDP only be issued for wireless telecommunication facilities when affirmative, evidence-based findings can be made that the wireless telecommunication facility, including any associated lighting and supportive structures, has been sited and designed to avoid and minimize to the maximum extent feasible impacts to wildlife, including bird-strike impacts.

The Commission finds that, as modified by Suggested Modification 1, the IP amendment conforms with and is adequate to carry out the ESHA protection policies of the certified LUP.

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<sup>15</sup> U.S. Department of Transportation – Federal Aviation Administration. Advisory Circular 70/7460-1L, Obstruction marking and lighting. December 4, 2015, 90 pp.

<sup>16</sup> Manville, A.M., II. 2013. Revised voluntary guidelines for communication tower design, siting, construction, operation, retrofitting, and decommissioning. *In* USFWS recommendations to FCC regarding WT Docket No. 03-187, FCC 06-164, Notice of Proposed Rulemaking, “Effects of communication towers on migratory birds” (2007), Docket No. 08-61, FCC’s Antenna Structure Registration Program (2011), Service 2012 Wind Energy Guidelines, and Service 2013 Eagle Conservation Plan Guidance, 5 pp.

<sup>17</sup> Section 10-5.3016.6 (Utility Poles), subsection (j) states:  
*Lighting for aircraft is prohibited except where required by federal law.*

## 5. Coastal Development Permit Requirements

The City of Eureka's Coastal Zoning Code (CZC), Article 29 (Coastal Development Permit Procedures), Section 10-5.29302 requires coastal development permit authorization for proposed development within the Coastal Zone [***Emphasis added***]:

***Except as provided in Section 10-5.29303 below, any applicant wishing to undertake a development (defined in Section 10-5.2906.2(u))<sup>18</sup> 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.***

Eureka CZC Section 10-5.29303 (cited in the preceding quotation) sets forth provisions for exempting certain types and classes of development from the need to obtain a CDP [***Emphasis added***]:

*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***

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<sup>18</sup> Cited Eureka CZC §10-5.2906.2(u), reiterates the definition of “development” as set forth in § 30106 of the Coastal Act.

- 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.*

Eureka has also adopted a categorical exclusion order (Categorical Exclusion Order E-88-2) approved by the Commission that excludes certain development from the need for CDP authorization. Eureka CZC Section 10-5.29304.1 incorporates Eureka's Categorical Exclusion Order E-88-2 into the certified IP. The order excludes public works projects costing less than \$250,000 in certain geographic areas of the City [***Emphasis added***]:

***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:***

- (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.*

Certain wireless telecommunication facilities qualify as public works. LUP Appendix A – Definitions defines “public works,” in applicable part, as follows [*Emphasis added*]:

1. All production, storage, *transmission, and recovery facilities for* water, sewerage, *telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission* except for energy facilities.

Section 10-5.29302 of Article 29 of the City’s 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 Section 10-5.29303 that is exempt from the need for a CDP. “Development” as defined by Section 30106 of the Coastal Act and Section 10-5.2906.2(v) of the City of Eureka’s Coastal Zoning Code includes wholly new structures, or improvement to an existing structure which changes the intensity of use of the structure. Consequently, both new wireless telecommunication facilities, as well as the addition of a co-located facility to an existing wireless telecommunication facility, utility pole, building, or other structure, would constitute development. In addition to any applicable federal law limitations, some WTF developments may be exempt from the need for a CDP under Section 10-5.29303 if they constitute an improvement to an existing structure other than a one family dwelling or public works facility (except as otherwise specified by Title 14, Section 13253 (a) and (b) of the California Administrative Code) or repair and maintenance activities that do not result in an enlargement or expansion of the object of such activities (except as otherwise specified by Title 14, Section 13252 of the California Administrative Code).

Proposed Article 31 does not clearly indicate that CDPs are required for wireless telecommunication facilities except for those that are exempted under Section 30610 of the Coastal Act. As proposed, the only reference to CDP requirements in Article 31 is within Part 3, the part of the ordinance that outlines Conditional Use Permit (CUP) requirements and regulations for wireless telecommunication facilities. In regards to coastal development permitting, this section states:

*In addition to the conditional use permit a wireless telecommunication facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as required pursuant to the Eureka Municipal Code.*  
[Proposed Section 10-5.3130(c)]

The proposed Article 31 language implies that only wireless telecommunication facilities that require a conditional use permit (CUP) would require a CDP in the Coastal Zone. However, even if a wireless communication facility does not need a CUP, the facility may still qualify as development and require a CDP, as described in Article 29 of the City’s IP (Coastal Development Permit Procedures). Therefore **Suggested Modification 1** moves the language regarding the potential need to obtain a CDP from Part 3 of Article 31 (CUP Requirements and Regulations) to a new Part 4, Coastal Development Permit Requirements and Regulations. This modification is necessary to clarify that all wireless telecommunications facilities may require a CDP, whether a use permit is required or not. Suggested Modification 1 also includes in new Part 4 an “Applicability” section (Section 10-5.3140) that clarifies that a CDP is needed unless

preempted by federal law or exempted by the Coastal Act and the Commission's regulations as reflected in Article 29, Section 10-5.29303 of Eureka's Coastal Zoning Code.

Pursuant to Coastal Act Section 30610(e), in addition to the CDP exemptions listed under 10-5.29303, the Commission has approved a categorical exclusion in the City of Eureka (Categorical Exclusion Order E-88-2) that excludes from coastal development permitting requirements certain categories of development within a specifically defined geographic area. These categories of development include, with noted exceptions, (1) construction, reconstruction, demolition, or alteration of the size, type, or intensity of any development of a principally permitted use or uses that are zoned for residential, commercial, or industrial development; (2) vegetation removal; (3) lot line adjustments; (4) grading of less than 100 cubic yards; (5) encroachment permits; (6) public works project costing less than \$250,000; (7) signs less than 24 square feet in size; and (8) subdivisions of five parcels or less.

As part of Categorical Exclusion Order E-88-2, construction, reconstruction, upgrading, replacement, rehabilitation, or installation of all public works costing \$250,000 or less in certain mapped areas of the City's Coastal Zone are excluded from the need for a CDP if the development conforms with the City of Eureka's certified LCP and the conditions of the order. Because public works is defined to include all transmission facilities for telephone and similar utilities owned by any utility subject to the jurisdiction of the Public Utilities Commission<sup>19</sup> except for energy facilities, certain wireless telecommunication facilities may qualify as public works. As a result, certain wireless telecommunication facilities may be covered under Categorical Exclusion Order E-88-2 as public works costing \$250,000 or less and thus would be excluded from the need to obtain a CDP.

To ensure that applicants for proposed wireless telecommunication facilities understand the applicability of the categorical exclusion order, the CDP "Applicability" section (Section 10-5.3140) added as part of Suggested Modification 1 specifies that a wireless telecommunication facility meeting the definition of public works and costing less than \$250,000 is excluded from the requirement of securing a CDP under Categorical Exclusion Order No. E-88-2, as long as the facility is (1) within a geographic area covered by the order; (2) consistent with the conditions of the order; and (3) consistent with the certified LCP as amended. Adding this discussion of Categorical Exclusion Order E-88-2 to proposed Article 31 of the IP prevents misapplication of the LCP's CDP requirements, which would prevent the IP amendment from adequately carrying out the policies of the LCP with respect to the administration of CDPs.

As discussed in previous sections, Suggested Modification 1 also adds application requirements and required findings for CDPs for wireless telecommunication facilities (other than eligible facilities requests as discussed in the section on federal preemption) to ensure facilities requiring CDPs can be found consistent with all applicable policies of the LCP.

## **6. Corrections to Amendment Numeration and Amending Ordinance Citations**

The following section addresses superficial errors in proposed Article 31 and in the City's amending ordinance.

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<sup>19</sup> The California Public Utilities Commission regulates privately owned telecommunication companies.

Addressing Numbering Errors in New Article 31

Within Part 2 (WTF permit – requirement and regulations) of proposed Article 31, Subsection (a) of Section 10-5.3120 specifies the applicability of the WTF permit regulations; subsection (b) requires co-location of all wireless telecommunication facilities if feasible; and subsection (c) includes a list of the application requirements for a WTF permit. Five of the required components of a WTF permit application are erroneously labeled subsections (f) through (j) rather than being included under subsection (c) as part of the list of required application information. **Suggested Modification 1** fixes the section hierarchy by moving subsections (f) through (j) under subsection (c) and relabeling accordingly as (6) through (10).

Addressing Code Citation Errors in the Amending Ordinance

**Suggested Modification 3** corrects the following three errors in the City’s amending ordinance (Ordinance No. 830-C.S.):

- Section 2 of the amending ordinance adds “public utility” and “satellite telecommunication facility” to the alphabetical list of definitions in Eureka Municipal Code Title 10, Chapter 5, Article 1. These terms are located in Article 1, Section 10-5.106.12, yet the ordinance incorrectly references Article 1, Section 10-5.106.11.
- Section 4 of the amending ordinance amends the “Exceptions” subsection of the height limitation regulations within Eureka Municipal Code Title 10, Chapter 5, Article 2. This “Exceptions” subsection of Article 2 of the CZC is numbered 10-5.210.2, yet the amending ordinance incorrectly cites the subsection as 10-5.210.
- Section 27 of the amending ordinance adds wireless telecommunication facilities to the list of conditional uses in the Neighborhood Commercial District. The conditional uses for the Neighborhood Commercial District are listed with Eureka Municipal Code Title 10, Chapter 5, Article 29, Section 10-5.29123, yet the ordinance incorrectly cites Section 10-5.29122.

**7. Conclusion**

The IP Amendment as submitted does not conform with, and does not adequately carry out, the provisions of the LUP, and must be denied pursuant to Section 30513 of the Coastal Act. However, with the suggested modifications to the proposed wireless telecommunication facilities regulations, conflicts with the policies of the LUP regarding priority land uses, protection of visual resources, and environmentally sensitive biological resources; administration of the LCP’s coastal development permitting requirements; and preemptions within federal law will be resolved. Therefore, 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.

**C. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As part of its local action on the subject LCP amendment, on February 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 wireless telecommunication facilities ordinance 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 priority land uses, visual resources, sensitive habitats, and 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:  
SUGGESTED MODIFICATIONS TO PROPOSED ARTICLE 31**

Modifications suggested by Commission staff to proposed new Article 31 have been added to the text of the proposed article to better provide context for the changes.

Language of proposed Article 31 is shown in plain 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 31. Wireless Telecommunications Facilities**

**Part 1. General Provisions**

**Sec. 10-5.3101. Purpose**

The purpose of this chapter is to provide a uniform and comprehensive set of standards for the development and operation of wireless telecommunications facilities. The regulations contained herein are intended to protect and promote the public health, safety, community welfare and the aesthetic quality of the City while at the same time providing reasonable opportunities for providers of wireless telecommunications services to provide such services in a safe, effective and efficient manner.

**Sec. 10-5.3102. Findings.**

**Sec. 10-5.3102.1. Community benefit.**

The City believes that access to wireless telecommunication is an essential service and should be made available to all persons, agencies, organizations and businesses desiring such service.

**Sec. 10-5.3102.2. Community welfare.**

The City acknowledges that there are concerns over the exposure of people and animals to electromagnetic and radio frequency radiation. The City also acknowledges that regulations promulgated by the Federal Communications Commission limit the City's ability to regulate the electromagnetic and radio frequency radiation emitted by wireless telecommunication facilities.

**Sec. 10-5.3103. Objectives.**

The objectives of this chapter are to:

- (a) Encourage and promote the location of new wireless telecommunications facilities in areas that are not zoned for residential use, **and in areas outside of the Natural Resource (NR), Coastal Agriculture (AC), and Woodley Island Marina (PF/M) Districts;**
- (b) Provide for the appropriate location and development of wireless telecommunication facilities;
- (c) Protect the City's built and natural environment by promoting compatible design standards for wireless telecommunications facilities;
- (d) Minimize adverse visual impacts of wireless telecommunication facilities **and protect the historic character of the Core Area waterfront** through careful design, siting, landscape screening, and innovative, **visually compatible** camouflaging techniques;
- (e) Avoid potential damage to adjacent properties from tower or antenna failure through engineering and careful siting of wireless telecommunications tower structures and antennas;
- (f) Maximize use of existing wireless telecommunication towers and alternative structures so as to minimize the need to construct new towers and minimize the total number of towers throughout the City.

**Sec. 10-5.3104. Applicability.**

~~All wireless telecommunication facilities located in the City are controlled by the provisions of this chapter.~~ **All wireless telecommunication facilities shall comply with each**

**of the development standards and permit requirements set forth in this Article, except to the extent a specific standard or requirement is inconsistent with federal law.** A tower or other wireless telecommunication support structure built on speculation and for which there is no wireless tenant is prohibited within city limits.

**Sec. 10-5.3105. Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**(a) “Eligible facilities request” shall mean modifications to an existing wireless tower or base station that (1) involve collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment; and (2) do not substantially change the physical dimensions of such tower or base station, as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law. The terms “existing,” “tower,” “base station,” “collocation,” “transmission equipment,” and “substantial change” are as defined in 47 C.F.R. 1.40001.**

**(ab)** “Local historic district” shall mean an historic district listed on the City's Local Register of Historic Places.

**(bc)** “National historic district” shall mean an historic district listed on the National Register of Historic Places.

**(ed)** “Public utility” shall mean an organization that provides an essential commodity or basic service to the public, such as water, energy, transportation, or telecommunications. Utilities may be publicly or privately owned.

**(de)** “Satellite telecommunication facility” shall mean government and private facilities that transmit a variety of data through satellites, including photos of the earth, messages to and from public safety officials, and a variety of other information.

**(ef)** “Wired telecommunication facility shall mean telecommunications services such as wired (land line) telephone, digital subscriber line (DSL) internet, and cable TV and internet services where TV, voice, internet, data, and other content are routed over a network of wires and cables and that do not require an antenna for transmission or reception.

**(fg)** “Wireless telecommunication facility” shall mean public, commercial and private electromagnetic and photoelectrical transmission, broadcast, repeater and receiving stations for radio, television, telegraph, telephone, data network, and wireless communications. “Wireless telecommunication facility” shall also include the towers and other support structures, commercial satellite dishes, antennas, equipment buildings necessary for the specific facility, and facilities co-located on utility poles. “Wireless telecommunication facility” includes “Satellite telecommunication facility.” “Wireless telecommunication facility” does not include “Wired telecommunication facility,” or private personal wireless facilities that do not require a license from the Federal Communications Commission, including Direct-to-home satellite TV.

**(gh)** “Wireless telecommunication facility permit” shall mean an administrative permit issued by the Director of Development Services or the Planning Commission.

**Sec. 10-5.3106. Development standards.**

**Sec. 10-5.3106.1. Residential neighborhoods.**

It is strongly preferred that the location of new wireless telecommunication facilities be located outside of residential neighborhoods. In an R District, all new wireless telecommunications

facilities, not including co-location with an existing permitted facility, shall submit with the conditional use permit application factual information and data proving that there is no site outside the R District where the facility can be located to provide the same level of service.

**Sec. 10-5.3106.2. Design standards.**

All wireless telecommunication facilities are subject to the following design standards:

(a) Facilities shall be designed to be visually unobtrusive. Colors and designs should be compatible with the existing improvements on or adjacent to the site;

(b) In an R District or within 100 feet of an R District, or in the HM District within 150 feet of an R District, facilities located shall be camouflaged or of an innovative design to minimize negative visual impacts of the facility on the surrounding residential neighborhood;

(c) Screening and landscaping:

(1) In an R, OR, or C District, or within 100 feet of an R District, or in the HM District within 150 feet of an R District, for facilities located at or near ground level screening six feet in height shall be located adjoining the facility, and an area ten feet in depth adjoining the facility shall be landscaped with plant materials including a buffer of trees, unless the Planning Commission finds that topographic or other conditions make screening or landscaping unnecessary;

(2) In all other districts, for facilities located at or near ground level screening six feet in height shall be located adjoining the facility including a buffer of trees, unless the Planning Commission finds that topographic or other conditions make screening unnecessary;

(3) Screening of the facility should take into account the existing improvements on or adjacent to the site, including landscaping, walls, fences, berms or other devices specifically designed to screen development.

(d) Facilities shall be sited to avoid ~~or~~ and minimize to the maximum extent feasible obstruction of scenic views;

(e) Facilities shall not be of a bright, shiny or glare reflective finish;

(f) If feasible, the base station and all wires and cables necessary for the operation shall be placed underground; and

(g) If the base station is located within or on the roof of a building, it may be placed in any location not visible from the surrounding neighborhood, with any wires and cables attached to the base station screened from public view.

**(h) In the City's Core Area in the Coastal Zone, all components of wireless telecommunication facilities shall be fully screened from public view or architecturally integrated into the design of a building or structure so that the wireless telecommunication facilities are visually compatible with the historic character of the Core Area waterfront.**

**Sec. 10-5.3106.3. Noise.**

(a) For a wireless telecommunication facility in an R District, non-transportation noise levels generated by the proposed wireless telecommunication facility, measured immediately within the property line on which the facility is located, shall not exceed the following performance standards:

<i>Noise level descriptor</i>	<i>Daytime (7:00 a.m. to 10:00 p.m.)</i>	<i>Nighttime (10:00 p.m. to 7:00 a.m.)</i>
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Hourly $L_{eq}$ , dB	50	45
Maximum level, dB	70	65
<i>Each of the noise levels specified above shall be lowered by five dB for simple tone noises, noises consisting primarily of speech or music, or for recurring impulsive noises.</i>		

(b) For a wireless telecommunication facility located in an HM District within 150 feet of an R District, or in any other district within 100 feet of an R District, the noise performance standards listed above shall be measured at the boundary of the R District.

**Sec.10-5.3106.4. Height limits.**

The maximum height of all structures and accessory structures shall be as prescribed for the district in which the facility is located. The maximum height of towers and other support structures for a wireless telecommunication facility and including the maximum height of all antennas, dishes, and the like shall be in accordance with the following schedule:

<i>District</i>	<i>Maximum Height (feet)</i>	
	<i>Free-standing</i>	<i>On top of building</i>
<b><u>NR</u></b>	<b><u>100*</u></b>	<b><u>25 feet above the height of the building, not to exceed 100 feet</u></b>
A	100*	25 feet above the height of the building, not to exceed 100 feet
RS-6000	60	25 feet above the height of the building, not to exceed 60 feet
RS-12000	60	25 feet above the height of the building, not to exceed 60 feet
RM-2500	60	25 feet above the height of the building, not to exceed 60 feet
RM-1000	60	25 feet above the height of the building, not to exceed 100 feet
OR	60	25 feet above the height of the building, not to exceed 60 feet
HM	60	25 feet above the height of the building, not to exceed 100 feet
CN	60	25 feet above the height of the building, not to exceed 60 feet
CP	60	25 feet above the height of the building, not to exceed 100 feet
CC	60	25 feet above the height of the building, not to exceed 100 feet
CW	60°	25 feet above the height of the building, not to exceed 60° feet
CS	100	25 feet above the height of the building, not to exceed 100 feet
ML	100	25 feet above the height of the building, not to exceed 100 feet
MG	150	25 feet above the height of the building, not to exceed 150 feet
MC	150°	25 feet above the height of the building, not to exceed 150° feet
P	100**	25 feet above the height of the building, not to exceed 100** feet

**\* New wireless telecommunication facilities shall not be allowed in the NR, AC, and PF/M Districts except when no feasible alternative exists and denial of such facilities would be inconsistent with federal law. In such cases, new freestanding wireless telecommunication facilities in the natural resource (NR) and coastal agricultural (AC) zones shall be constructed so as to accommodate co-location, and must be made available for co-location.**

**◦ The maximum height in the Core Area north of 1st Street /Waterfront Drive shall be 50 feet. If the wireless telecommunication facility is mounted on an existing building that is over 50 feet in height, the wireless telecommunication facility may extend to the finished building height provided the facility does not exceed 60 feet in the CW zone and 150 feet in the MC zone.**

**\*\* The maximum height in the PF/M zone shall not exceed 50 feet in all areas.**

**Sec. 10-5.3106.5. Minimum yards.**

The minimum yards for all structures and accessory structures shall be as prescribed for the district in which the facility is located. The minimum yards for free standing towers and other free-standing support structures for a wireless telecommunication facility shall be in accordance with the following schedule:

<i>District</i>	<i>Minimum yards (feet)</i>					
	<i>Within 100 feet of an R District</i>			<i>More than 100 feet from an R District</i>		
	<i>front</i>	<i>side</i>	<i>rear</i>	<i>front</i>	<i>side</i>	<i>rear</i>
A	30	30	30	30	30	30
RS-6000	25	25	25	-	-	-
RS-12000	25	25	25	-	-	-
RM-2500	20	20	20	-	-	-
RM-1000	20	20	20	-	-	-
OR	20	20	20	-	-	-
HM	20*	20*	20*	0*	0*	0*
CN	20	20	20	5	5	5
CP	50	50	50	50	50	50
CC	20	20	20	5	5	5
CW	20	20	20	5	5	5
CS	20	20	20	0	0	0
ML	20	20	20	0	0	0
MG	20	20	20	0	0	0
MC	20	20	20	0	0	0
P	20	20	20	0	0	0

\* in the HM District the distance from an R District is measured at one hundred fifty (150') feet not one hundred (100') feet.

**Sec. 10-5.3106.6. Utility poles.**

Co-location of wireless telecommunication facility antennas on utility poles shall be subject to the same permit requirements for all other wireless telecommunication facilities, and shall be subject to the following standards:

(a) The utility pole shall be located in a public right-of-way or in a utility easement and subject to any applicable franchise fees or lease agreements required by the City;

(b) The antenna(s) shall not extend more than ten feet above the top of the utility pole;

(c) If the utility pole must be replaced to accommodate the antenna(s), the replacement pole shall not be more than ten feet higher than the existing utility pole. If the replacement pole exceeds the height of the existing pole, the antenna(s) shall be mounted to the sides of the pole and shall not extend above the top of the replacement pole. Replacement of a utility pole shall be subject to a conditional use permit;

(d) Antenna(s) including the mounting structure with an outside diameter between 24 inches and 36 inches shall be subject to a conditional use permit;

(e) Antenna(s) including the mounting structure with an outside diameter greater than 36 inches are not permitted on utility poles;

(f) If the antenna(s) and mounting structure are narrower than the top of the utility pole, stealth shielding of the antenna(s) shall be used to make the antenna(s) appear as a vertical extension of the utility pole;

(g) Electrical equipment shall either be attached directly to the utility pole or placed underground. If the electrical equipment is attached to the pole, the box(es) shall not be larger than 36 inches in height, 12 inches deep and no wider than 20 inches. Not more than five such boxes shall be mounted on any one utility pole (excluding the power meter and network interface box). The boxes shall be stacked vertically, one above the other, and shall be at least ten feet above the ground. The power meter and network interface box may be installed below the ten-foot level;

(h) Antenna(s) and electrical boxes shall be painted to match the utility pole to minimize visual impact;

(i) Generators or noise-producing venting systems shall not be permitted;

(j) Lighting for aircraft is prohibited except where required by federal law;

(k) Electrical and utility cables between the utility pole and electrical boxes shall be placed underground;

(l) Prior to co-location the utility pole shall be certified by the utility company or an independent structural engineer as being structurally capable of supporting the existing and proposed equipment; and

(m) If the wired utilities using the pole are relocated or placed underground, the telecommunications antennas and equipment shall be relocated so that the utility pole can be removed at the same time as adjoining poles.

#### **Sec. 10-5.3106.7. Maintenance.**

All wireless telecommunication facilities shall be maintained in a neat and orderly manner on a regular and as-needed basis. Maintenance shall include but not be limited to the following:

(a) Mowing, weeding, gardening and general maintenance of landscaping, and including replacement of diseased or dying plant material;

(b) Painting;

(c) Removal of debris, garbage and waste; and

(d) Graffiti removal.

#### **Sec. 10-5.3106.8. Removal.**

Wireless telecommunication towers or support structures shall be demolished, deconstructed or otherwise removed upon abandonment or termination of use, and all debris shall be recycled and/or disposed of in an appropriate manner. Removal shall be completed within 90 days of abandonment or termination of use. Upon notification by the City to the property owner that the tower or support structure appears abandoned, the property owner shall remove the tower or support structure within 90 days, or the property owner shall provide satisfactory evidence to the City that the tower or support structure has not been abandoned. Expenses incurred to demolish, deconstruct or otherwise remove wireless communication towers or support structures shall be fully paid by the company owning the tower or support structure and/or the property owner where the tower or support structure is located. Nothing in this provision shall have the effect nor shall it be construed to interfere with private contracts for facility uses in existence at the time of adoption of this chapter.

## **Part 2. Wireless telecommunication facility permit - requirements and regulations.**

### **Sec. 10-5.3120. Applications and fees.**

(a) Except as provided in this chapter, all wireless telecommunication facilities shall require a wireless telecommunication facility permit.

(b) All wireless telecommunication facilities shall be co-located with existing facilities, unless it is determined that co-location is not feasible.

(c) An application for a wireless telecommunication facility permit shall include the following:

(1) All application materials otherwise required for design review as prescribed in the Eureka Municipal Code;

(2) Scaled photo simulations, elevations and other visual or graphic illustrations necessary to determine the visual compatibility of the proposed project, including all equipment and antennae associated with future co-located telecommunications, with the general character, aesthetics, scenic qualities, and existing development in the surrounding neighborhood;

(3) A landscape plan that shows existing vegetation, vegetation to be removed and proposed landscaping by type, size and location with the expectation that maturity will occur in three to five years;

(4) A geographic service area map showing:

(i) The applicant's existing and anticipated future wireless telecommunications network within three miles in all directions of the proposed wireless telecommunication facility;

(ii) The handoff sites within the area described in (a) above;

(iii) The geographic area of the "cell" in which the proposed wireless telecommunication facility could be located to provide the new or expanded wireless service;

(iv) All other existing facilities that could be used for co-location within three miles in all directions of the proposed wireless telecommunication facility.

(5) If the proposed wireless telecommunication facility will not be co-located with an existing approved facility, written justification why co-location is not feasible shall be submitted. Feasibility shall include the following:

(i) Whether there are any existing facilities within the geographic area of the cell required for the proposed wireless telecommunication facility;

(ii) If there are existing facilities within the geographic area of the cell for the proposed wireless telecommunication facility, feasibility shall consider whether:

- A. The existing facility(ies) is of sufficient height to meet the needs of the proposed wireless telecommunication facility;
- B. The existing tower(s) or support structure(s) have sufficient structural strength to support the proposed new wireless telecommunication antennas or antenna arrays and related equipment;
- C. There is adequate vertical and horizontal distance available on the existing tower(s) or support structure(s) to accommodate the proposed wireless telecommunication antennas or antenna arrays and related equipment;
- D. The proposed wireless telecommunication facility would cause adverse electromagnetic interference with the existing facility(ies);
- E. There is adequate site area and/or building floor area at the existing facility(ies) to accommodate the proposed wireless telecommunications ground equipment; and
- F. The owner of the existing facility(ies) will consent to co-location.

~~(f)~~ (6) A Federal Communications Commission TOWAIR Determination that the antenna structure does not require registration, or an aircraft and airport safety analysis providing a copy of the Federal Aviation Administration approval letter that the project conforms to Federal Aviation Administration regulations (Form FAA 7460-1 "Notice of Proposed Construction or Alteration" and "The Determination of No Hazard to Air Navigation") and including specific safety requirements such as lighting, facility color, and the like;

~~(g)~~ (7) A structural analysis prepared by a qualified California licensed civil engineer showing that the proposed wireless telecommunication facility meets manufacturer's specifications and the requirements of the state's building code contained in Title 24 of the California Administrative Code, as may be amended from time to time, relating to structural design, wind, ice and snow loads;

~~(h)~~ (8) A public health report, prepared by a qualified radio frequency engineer written in plain English and in conformance with the Federal Communications Commission OET 65. The public health report shall state the maximum electromagnetic and radio frequency radiation to be emitted by the proposed facility and whether those emissions conform to safety standards adopted by the Federal Communications Commission. The public health report shall include the cumulative analysis of the electromagnetic and radio frequency radiation of all other existing and anticipated future wireless telecommunication facilities within 2,000 feet of the proposed facility;

~~(i)~~ (9) Noise and acoustical information for non-transportation noise sources, including the base transceiver station(s), equipment building(s) and associated equipment, such as cooling equipment and back-up generator(s) showing compliance with Sec. 10-5.3106 of this chapter (Development Standards);

~~(j)~~ (10) Application fees as established by Resolution of the City Council.

**Sec. 10-5.3121. Design Review.**

(a) All wireless telecommunications facilities shall be subject to site plan and architectural review as prescribed in Article 18 of this chapter (Site Plan Review and Architectural Review).



(b) The Design Review Committee may adopt pre-approved designs for wireless telecommunications facilities. For proposed wireless telecommunication facilities that use pre-approved designs the site plan or architectural review required by Article 18 of this chapter (Site Plan Review and Architectural Review) may be approved by the Director of Planning.

**Sec. 10-5.3122. Action on wireless telecommunication facility permit.**

(a) Action to approve or deny a wireless telecommunication facility permit shall be taken by the Director of Planning. The action of the Director on the wireless telecommunication facility permit shall be after design review as prescribed in Article 18 of this chapter (Site Plan Review and Architectural Review).

(b) The Director of Planning may at his or her discretion refer the wireless telecommunication facility permit to the Planning Commission for action.

**Sec. 10-5.3123. Required findings.**

A wireless telecommunication facility permit may be granted only if the following findings are made:

(a) The proposed wireless telecommunication facility will not generate electromagnetic or radio frequency radiation in excess of the Federal Communications Commission adopted standards for human exposure; and

(b) The proposed wireless telecommunication facility will be compatible with the general character, aesthetics, scenic qualities, and existing development in the surrounding neighborhood.

**Sec. 10-5.3124. Historic resources.**

In addition to the wireless telecommunication facility permit, all wireless telecommunications facilities located within a Local or National Historic District or within 100 feet of a Local or National Historic District shall require a conditional use permit as prescribed in this chapter.

**Part 3. Conditional use permit - requirements and regulations**

**Sec. 10-5.3130. Application requirements; fees.**

(a) Where a wireless telecommunication facility requires a conditional use permit, the conditional use permit shall also act as the wireless telecommunication facility permit otherwise required by this chapter.

(b) An application for a conditional use permit for a wireless telecommunication facility shall include the following:

(1) All application materials otherwise required for a conditional use permit pursuant to the Eureka Municipal Code;

(2) All materials listed as required for a wireless telecommunications facility permit application as prescribed in this chapter;

(3) In an R District, all new wireless telecommunications facilities, not including co-location with an existing permitted facility, factual information and data proving that there is no site outside the R District where the facility can be located to provide the same level of service; and

(4) Application fees as established by Resolution of the City Council.

~~(c) In addition to the conditional use permit a wireless telecommunication facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as required pursuant to the Eureka Municipal Code.~~

**Sec. 10-5.3131. Education/outreach.**

(a) Within 60 days of submittal of a complete application for a conditional use permit to locate a wireless telecommunication facility in an R District, or in an HM District within 150 feet of an R District, or in any other district within 100 feet of an R District, the applicant shall host a neighborhood education and informational meeting at which, at a minimum, a summary of the information provided with the conditional use permit application shall be presented and made available to attendees in electronic and/or hard copy.

(b) The education and informational meeting shall be noticed by the applicant in conformance with Section 10-5.3132 of this chapter (Noticing). The notice shall be printed on brightly-colored (preferably fluorescent) heavy stock post cards. Additionally, a sign of a minimum size of two and one half feet tall by three feet wide of a visible color other than yellow advertising the education and informational meeting shall be posted in a conspicuous place on or near the location of the proposed wireless telecommunication facility. The sign shall state the date, time and location of the education and informational meeting, the location of the proposed wireless telecommunication facility, and a contact phone number of the applicant or agent.

(c) The applicant shall prepare and submit to the Planning Department within 21 days of the education and informational meeting, at a minimum, the following:

(1) A copy of the information presented and made available (in all formats) by the applicant at the meeting;

(2) A summary of the issues and concerns, if any, that were presented either verbally or in writing at the meeting along with proposed mitigation to address them;

(3) A copy of all written correspondence received at the meeting;

(4) Information and/or documentation prepared by the applicant addressing each of the issues and/or concerns, if any, expressed at the meeting; and

(5) A list of names and email addresses of persons requesting to receive notice of the public hearing for the conditional use permit.

**Sec. 10-5.3132. Noticing.**

(a) All noticing for hearings on a conditional use permit application for a wireless telecommunications facility shall be as otherwise required for a conditional use permit pursuant to the Eureka Municipal Code;

(b) For a proposed wireless telecommunication facility greater than 60 feet in height in an R District, or in an HM District within 150 feet of an R District, or in any other district within 100 feet of an R District, notice shall also be provided to all owners and tenants of real property within 500 feet of the site proposed for the wireless telecommunication facility.

**Sec. 10-5.3133. Design review.**

(a) All wireless telecommunications facilities shall be subject to site plan and architectural review as prescribed in Article 18 of this chapter (Site Plan Review and Architectural Review).

(b) No conditional use permit for a wireless telecommunications facility shall be approved until the site plan and architectural review required by this chapter are approved by the Planning Commission.

**Sec. 10-5.3134. Action on conditional use permit.**

All conditional use permits for a wireless telecommunication facility shall be acted upon as otherwise required for a conditional use permit pursuant to the Eureka Municipal Code.

**Sec. 10-5.3135. Required findings.**

A conditional use permit for a wireless telecommunication facility may be granted only if the following findings are made:

(a) All findings otherwise required for a conditional use permit pursuant to the Eureka Municipal Code; and

(b) All findings required for a wireless telecommunication facility permit as prescribed in Section 10-5.3102 of this chapter (Findings).

**Sec. 10-5.3136. Lapse of permit.**

Lapse of a conditional use permit for a wireless telecommunications facility shall be the same as the lapse of all other conditional use permits as prescribed in the Eureka Municipal Code.

**Sec.10-5.3137 Penalties.**

(a) It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this code or the provisions of any code adopted by reference by this code. Any person violating any of such provisions or failing to comply with any of the mandatory requirements of this code shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this code shall be punishable by a fine of not more than \$1,000 or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code, or the provisions of any code adopted by reference by this code, is committed, continued, or permitted by such person and shall be punishable accordingly. Any violation of this code which is declared to be a misdemeanor shall be considered and treated as an infraction subject to the procedures described in Cal. Penal Code §§ 19.6 and 19.7, when:

(1) The City Attorney files a complaint charging the offense as an infraction unless the defendant, at the time he is arraigned, after being informed of his rights, elects to have the case proceed as a misdemeanor; or

(2) The court, with the consent of the defendant, determines that the offense is an infraction, in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(b) In addition to the penalties provided by this section, any condition caused or permitted to exist in violation of any of the provisions of this code, or the provisions of any code adopted by reference by this code, shall be deemed a public nuisance and may be summarily abated by this city, and each day such condition continues shall be regarded as a new and separate offense.

**Part 4. Coastal Development Permit For Wireless Telecommunication Facilities Other Than Eligible Facilities Requests – Requirements and Regulations**

**Sec. 10-5.3140. Applicability.**

**(a) Unless the need for a coastal development permit is either preempted by federal law or exempted by Article 29, Section 10-5.29303, in addition to other permit requirements of this chapter, the coastal development permit requirements of Article 29 (Coastal Development Permit Procedures) remain applicable.**

**(b) A wireless telecommunication facility that meets the definition of public works and costs less than \$250,000 is excluded from the requirement of securing a coastal development permit under Categorical Exclusion Order No. E-88-2 if the facility is (1) within a geographic area covered by Categorical Exclusion Order No. E-88-2; (2) consistent with the conditions of the exclusion order; and (3) consistent with the certified LCP as amended.**

**(c) Eligible facilities requests that do not result in a substantial change in physical dimensions to a wireless tower or base station as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law, are exempt from the permitting requirements of this section and instead shall be subject to the granting of a coastal development permit pursuant to Section 10-5.3150.**

**Sec. 10-5.3141. Additional siting and design standards in the Coastal Zone.**

**In addition to all of the design standards of Section 10-5.3106.2, all proposed wireless telecommunication facilities in the Coastal Zone that require a coastal development permit are subject to the following additional siting and design standards:**

**(a) New wireless telecommunication facilities shall not be located in Natural Resources (NR), Coastal Agricultural (AC), or Public Facility/Marina (PF/M) Districts, except when no feasible alternative exists and denial of such facilities would be inconsistent with federal law. Where no feasible alternative exists and a denial of such facilities would be inconsistent with federal law, the facility shall minimize impacts to coastal resources and priority uses to the maximum extent feasible. If no feasible alternative exists to locating a wireless telecommunications facility within the AC District, and denial of such facilities would be inconsistent with federal law, the facility shall, to the maximum extent feasible, be (1) located outside of areas actively used for agricultural operations; (2) located outside of prime agricultural soils and wetlands; and (3) located on, or clustered with, existing legal structures. If no feasible alternative exists to locating a wireless telecommunications facility within the AC or NR Districts, and denial of such facilities would be inconsistent with federal law, any proposed freestanding wireless telecommunication facility shall accommodate future co-location and shall be made available for co-location;**

**(b) No new wireless communication facilities shall be located in an environmentally sensitive habitat or an environmentally sensitive habitat buffer, except when no feasible alternative exists and denial of such facilities would be inconsistent with federal law. Where no feasible alternative exists and a denial of such facilities would be inconsistent with federal law, the facility shall minimize the impacts to the resources of the habitat to the maximum extent feasible;**

(c) Wireless telecommunication facilities shall not be lighted unless required by federal or state law. Any lighting shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and wildlife, including bird-strike;

(d) In the Coastal Dependent Industrial (MC) District, wireless telecommunication facilities shall be sited and designed to be compatible with, and not interfere with, the operation of existing and future coastal-dependent industrial uses. Except when no feasible alternative exists and denial of such facilities would be inconsistent with federal law, wireless telecommunication facilities in the MC district shall meet all of the following:

(1) The facility shall be located on a parcel developed with existing functioning coastal-dependent industrial uses or the facility shall be integrated into the siting and design of an approved coastal-dependent industrial use;

(2) The facility shall be located on, or clustered with, existing legal structures or located along the inland perimeter of the site; and

(3) The location of the facility preserves priority access to roads, bay frontage, and infrastructure for coastal-dependent industrial uses.

**Sec. 10-5.3142. Application requirements.**

Unless governed by Section 10-5.3150, an application for a coastal development permit for a wireless telecommunication facility shall include the following:

(a) All materials listed as required for a wireless telecommunications facility permit application under Section 10-5.3120(c)(1)-(7) of this chapter;

(b) All materials required for a coastal development permit application set forth in Article 29, Sections 29304.3 through 29304.5 of this Title;

(c) If the proposed wireless telecommunication facility will not be co-located with an existing approved facility:

(1) A facility build-out plan that describes the maximum anticipated build-out of the site with accommodation of future co-location. The plan shall include the full extent of wireless telecommunications facility expansion associated with future co-location facilities, including the location, footprint, maximum tower height, and general arrangement of future co-locations; and

(2) A written explanation as to why accommodation of a greater extent of future co-locations than proposed is not technically feasible or would increase visual impact more than constructing a new separate facility.

(d) If the facility is proposed to be located in the Natural Resources (NR), Coastal Agricultural (AC), or Public Facility/Marina (PF/M) Districts; in an environmentally sensitive habitat; or within an environmentally sensitive habitat buffer:

(1) Written documentation evidencing that the Coastal Act authority to prohibit siting in these areas is preempted by federal law. Such written documentation shall include a detailed alternatives analysis that demonstrates that there are no feasible alternative sites available to eliminate or substantially reduce significant gaps in coverage. The alternatives analysis shall state the radio frequency coverage and capacity needs and objectives of the applicant and shall include maps of existing coverage and predicted new coverage with the proposed facility; and

(2) Mitigation measures to avoid adverse impacts to coastal resources and protect coastal priority uses to the maximum extent feasible and to minimize and mitigate for unavoidable impacts consistent with the provisions of the LCP.

(3) In the Coastal Agricultural (AC) District, evidence demonstrating that the facility shall, to the maximum extent feasible, be located (1) outside of areas actively used for agricultural operations; (2) outside of prime agricultural soils and wetlands; and (3) on, or clustered with, existing legal structures.

(e) If the facility is proposed to be located in the Coastal Dependent Industrial (MC) District, not including co-location with an existing permitted facility:

(1) Evidence demonstrating that (1) the facility shall be located on a parcel that is developed with an existing functional coastal-dependent industrial use or the facility shall be integrated into the siting and design of an approved coastal-dependent industrial use; (2) the facility shall be located on, or clustered with, existing legal structures or located along the inland perimeter of the site; and (3) the facility shall be located to preserve priority access to roads, bay frontage, and infrastructure for coastal-dependent industrial uses; or

(2) Evidence demonstrating that locating the facility consistent with the requirements of part (1) is not feasible, denial of such facilities would be inconsistent with federal law, and the facility will be sited and designed to avoid adverse impacts to existing or future coastal-dependent industrial uses.

**Sec. 10-5.3143. Required findings.**

**A coastal development permit for a wireless telecommunications facility may be granted only if the following findings are made:**

**(a) The facility is consistent with all applicable policies of the LCP;**

**(b) The facility, including any associated lighting and supportive structures, has been sited and designed to avoid and minimize to the maximum extent feasible impacts to wildlife, including bird-strike;**

**(c) The facility is consistent with the siting and design standards of Section 10-5.3106.2 and Section 10-5.3141, including, but not limited to the siting and design standard for Core Area facilities in Section 10-5.3106.2(h) if applicable; and**

**(d) If the facility is located in the Natural Resources (NR), Coastal Agricultural (AC), or Public Facility/Marina (PF/M) Districts; in an environmentally sensitive habitat; or within an environmentally sensitive habitat buffer:**

**(1) No feasible alternative exists;**

**(2) Adverse impacts to coastal resources and priority uses are avoided to the maximum extent feasible;**

**(3) Unavoidable adverse impacts are minimized and mitigated; and**

**(4) The facility is consistent with all otherwise applicable Local Coastal Program policies, standards, and regulations.**

**(e) If the facility is proposed to be located in the Coastal Dependent Industrial (MC) District, not including co-location with an existing permitted facility, the facility does not have a detrimental impact on existing coastal-dependent industrial uses or other priority uses, nor on the future long term use of MC-zoned land for coastal-dependent industrial uses.**

**Sec. 10-5.3144. Timeframe for review.**

**The City shall approve or disapprove a coastal development permit application for a wireless telecommunications facility within a reasonable period of time pursuant to 47 U.S.C. § 332(c)(7) and as set forth in the regulations implementing section 332(c)(7).**

**Sec. 10-5.3145. Length of development authorization.**

**A coastal development permit shall authorize development of wireless telecommunication facilities for at least ten years following the date of permit approval. At the end of any specified period of development authorization, the permit shall terminate unless the permittee submits, in accordance with all applicable requirements of this Chapter, an application for a new permit. Such application shall incorporate all feasible new or advanced technologies that will reduce previously unavoidable environmental impacts, including visual impacts, to the maximum extent feasible.**

**Part 5. Coastal Development Permit for a Wireless Telecommunication Facility Eligible Facilities Requests**

**Sec. 10-5.3150. Applicability.**

**(a) Eligible facilities requests require approval pursuant to Section 1455(a) of the Communications Act, enacted as part of the Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the Spectrum Act, and subsequently adopted FCC rules intended to implement Section 1455(a) of the Communications Act, specifically including 47 C.F.R. 1.40001.**

**(b) Unless exempted by Article 29, Section 10-5.29303 or excluded under Categorical Exclusion Order No. E-88-2 from the requirement of securing a coastal development permit, eligible facilities requests in the Coastal Zone are subject to the granting of a coastal development permit as prescribed in this Part 5 of Article 31. An application for an eligible facilities request that complies with the standards of this section shall be approved by the Director of Planning and shall not be subject to a public hearing.**

**(c) If the City receives an application for a coastal development permit for an eligible facilities request and finds that the proposed project does not qualify as an eligible facilities request, the application shall be processed as a regular coastal development permit application pursuant to Part 4 of this Article.**

**Sec. 10-5.3151. Application requirements.**

**Applicants shall demonstrate that the proposed modification of an existing wireless tower or base station 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.**

**Sec. 10-5.3152. Conditions of approval.**

**Conditions of approval for a coastal development permit for an eligible facilities request shall be limited to those conditions reasonably related to nondiscretionary codes such as Health and Safety, Building, and Structural codes.**

**Sec. 10-5.3153. Timeframe for review.**

(a) Except as provided in paragraph (b) of this Section, the City shall act on a CDP application for an eligible facilities request within 60 days of the date of application as specified by 47 C.F.R. 1.40001 and any other subsequent applicable federal law.

(b) If a proposed project does not qualify as an eligible facilities request, the timeframe for review specified in Section 10-5.3144 shall apply and start to run from the issuance of the City's decision that the proposed project does not qualify as an eligible facilities request.

**Sec. 10-5.3154. Notice.**

At least seven (7) calendar days prior to the decision on the eligible facilities request application by the Director of Planning, the City shall provide notice by first class mail of pending development approval. This notice shall be provided by first class mail to the applicant, owner of the property and 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 one hundred (100') of the perimeter of the parcel on which the project is proposed, and to the Coastal Commission. The notice shall contain the information required in Article 29, Sec. 10-5.29309(a)-(g).