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DATE: July 28, 2017

TO: Coastal Commissioners and Interested Parties

FROM: Alison Dettmer, Deputy Director
Bob Merrill, North Coast District Manager
Melissa Kraemer, Supervising Analyst

SUBJECT: **Humboldt County LCP Amendment LCP-1-HUM-16-0040-1 (Interim Uses on Coastal Dependent Industrial Lands).** For the Commission meeting of Thursday August 10, 2017

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission, upon completion of a public hearing, (1) deny the LCP amendment (LCPA) as submitted, but (2) certify the LCP amendment if the Land Use Plan (LUP) and Implementation Plan (IP) portions of the amendment are modified as suggested by staff.

The LUP amendment as submitted proposes to allow greater use of underutilized lands zoned for coastal-dependent industrial uses by allowing certain additional uses to be permitted on a temporary “interim” basis on such lands. An expected benefit of the proposed LCPA is the increased potential that maintenance of valuable infrastructure will not be deferred and possibly will be enhanced by allowing interim uses to temporarily use lands zoned for coastal dependent industrial uses that are not in active use. The land planned and zoned for coastal dependent industrial (CDI) uses are coded “MC” on land use and planning maps and the stated purpose of MC lands is to protect and reserve parcels on or near the sea for industrial uses dependent on, or related to, the harbor. The Commission toured some of these MC lands on a field trip conducted during its June 2017 Commission meeting

Uses that could qualify as interim uses on MC lands include uses that the existing certified LCP currently allows on general industrial (MG) lands and light-industrial (ML) lands. Qualifying uses that may be permitted on a temporary interim basis would be subject to numerous performance standards specified in the proposed amendments to the Coastal Zoning Regulations (IP). The purpose of the performance standards is to avoid impacts to: (1) CDI uses, one of the highest priority uses set forth in the Coastal Act, and (2) other priority uses including non-industrial coastal dependent uses and coastal-related uses. Coastal dependent uses are considered priority uses under the Coastal Act because they require a location on or adjacent to the water to

function. The Coastal Act requires that: (1) coastal-dependent development have priority over other developments on or near the shoreline; (2) CDI facilities locate or expand within existing sites and be given priority over visitor-serving commercial recreational facilities that enhance public opportunities for coastal recreation; and (3) coastal-related developments be accommodated within reasonable proximity to the coastal-dependent uses they support. Therefore, the proposed LUP amendment would not be consistent with the applicable Coastal Act provisions if interim uses that are neither CDI nor coastal-dependent would interfere with or displace priority CDI uses that are allowed under the current designation.

Commission staff has coordinated closely with County staff throughout the development of this LCPA, including prior to final action on the proposed LCPA by the Board of Supervisors. Therefore, the proposed amendment as submitted by the County includes numerous development standards that protect land suitable for, and facilities associated with, coastal-dependent priority uses as required by the Coastal Act, including that every qualifying interim use must (1) be compatible with, and not interfere with, the operation of existing onsite and offsite CDI uses (including aquaculture, commercial fishing facilities, etc.) or other priority uses (specified as coastal-dependent recreation, coastal-related uses, and coastal access facilities); (2) allow the site where it is located to be converted back to a CDI use when the site is needed for such use; (3) be located in the area least likely to be required by a future CDI use or other priority use on a particular site to the extent feasible; and (4) not inhibit the eventual use of MC-zoned land for CDI use or other priority use. In addition, in considering an application for an interim use permit and the appropriate length of development authorization, the IP amendment as submitted requires consideration of various factors, including the current and projected level of demand for CDI uses as well as the land and infrastructure that is available at the time to accommodate the demand. Finally, the proposed performance standards expressly prohibit an interim use from being located (1) within wetlands, coastal waters, or environmentally sensitive habitat areas, (2) on a dock, or (3) within 100 feet of any dock as measured from the center of the dock at the point where the dock joins the shore.

Only a few suggested modifications are now recommended by Commission staff to ensure that areas with the greatest utility for CDI and other coastal-dependent uses are ultimately reserved and prioritized for such uses, as required by the Coastal Act and the certified LUP. Commission staff has developed these remaining modifications in coordination with the County staff, and County staff has indicated its agreement with the Commission staff's recommendation.

First, rather than confine LCP affected land areas to the areas over which CDP authority has been delegated to the County pursuant to Coastal Act section 30519, the proposed LCP amendment includes provisions that the County intended also to apply to land in original jurisdiction areas over which the Commission retains CDP authority. The LCP cannot and should not extend application of the LCPA beyond lands that are subject to the County's CDP review authority because: (1) CDP review authority cannot be delegated to the County over the Commission's area of retained jurisdiction; (2) the standard of review for development on areas within the Commission's retained jurisdiction is the Chapter 3 policies of the Coastal Act, not an LCP; and (3) including such land essentially doubles the acreage where interim uses could occur, potentially resulting in interim uses occupying nearly 100% of the unincorporated lands throughout the entirety of the Humboldt Bay portion of the coastal zone that currently or

historically has supported CDI and which is most likely to be used for CDI in the future. Therefore, **Suggested Modification 1** has been added to the IP to ensure that acreages are calculated excluding lands over which the Commission retains CDP authority. In addition, language conveying the distinctions set forth in Coastal Act section 30519 regarding retained and delegated CDP jurisdiction have been added to the LUP General Provisions.

Suggested Modification 2 would modify section 313-3.4 (Use Type Table) to delete the allowance for interim uses not specifically enumerated in the Use Type Table and clarify that only those interim uses specifically enumerated in the Table may be permitted as interim uses on MC lands. The modification will prevent the possible allowance of uses incompatible with the LUP MC designation as well as potential disagreements over what constitutes “similar to” and “compatible with.”

To protect and prioritize CDI uses and other coastal-dependent priority uses over non-coastal-dependent interim uses, **Suggested Modification 3** would modify the language in the IP performance standards for interim uses to: (1) prioritize CDI over other coastal-dependent priority uses consistent with the priority use policies of the LUP by deleting in some subsections references to “other priority uses; (2) provide a separate standard for the allowance of interim uses on lands within County CDP jurisdiction that have not supported CDI use in the past, and (3) specify maximum acreages of MC-zoned land within County CDP jurisdiction on which longer-term (typically 7-year, up to 10-year) permits could occur.

Lastly, the suggested modifications recommended by Commission staff eliminate two proposed development standards unnecessary to assure the long-term protection of CDI use. First, while the recommended suggested modifications continue to restrict interim uses on priority CDI lands (those used in the past and therefore more likely to be used again in the future), **Suggested Modification 3**, relating to interim uses on lands that have not supported CDI use in the past, would allow for interim uses on a greater inventory of lands than would be allowed under the proposed IP amendment as submitted. Second, **Suggested Modification 3** also removes the requirement to cease permitting new interim uses when a specified threshold is reached. Staff recommends removal of this safeguard because: (1) there are an additional approximately 200 acres of lands within the Commission’s retained CDP jurisdiction that can independently be protected for CDI and other coastal-dependent uses; and (2) the continued applicability of the interim use standards will be reviewed in conjunction with any future LCPA proposing to reduce MC-zoned land.

DEADLINE FOR COMMISSION ACTION

The County submitted LCP-1-HUM-16-0040-1 to the Commission on August 2, 2016. After the submittal of additional requested information, the amendment proposal was deemed complete on December 29, 2016. At the March 9, 2017 hearing, the Commission granted a one-year time extension to act on the subject amendment pursuant to Coastal Act Section 30517. The deadline for Commission action on the proposed LCP amendment application is March 29, 2018.

ADDITIONAL INFORMATION

For further information, please contact Melissa Kraemer at the Commission’s North Coast office in Arcata at (707) 826-8950. The LCPA is available for review at the Arcata office upon request.

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I. MOTIONS, RECOMMENDATIONS, AND RESOLUTIONS

A. DENIAL OF LUP AMENDMENT NO. LCP-1-HUM-16-0040-1 AS SUBMITTED

Motion 1:

I move that the Commission certify Land Use Plan Amendment No. LCP-1-HUM-16-0040-1 as submitted by the County of Humboldt.

Staff recommends a **NO** vote. Passage of the motion will result in certification of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

Resolution 1 to Deny Certification of the LUP Amendment as submitted:

The Commission hereby denies certification of the Land Use Plan Amendment No. LCP-1-HUM-16-0040-1 as submitted by the County of Humboldt and adopts the findings set forth below on the grounds that the land use plan as amended does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use 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 Land Use Plan Amendment.

B. CERTIFICATION OF LUP AMENDMENT NO. LCP-1-HUM-16-0040-1 WITH SUGGESTED MODIFICATIONS

Motion 2:

I move that the Commission certify Land Use Plan Amendment No. LCP-1-HUM-16-0040-1 for the County of Humboldt if it is modified as suggested in this staff report.

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

Resolution 2 to Certify the LUP Amendment with suggested modifications:

The Commission hereby certifies Land Use Plan Amendment No. LCP-1-HUM-16-0040-1 for the County of Humboldt if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives

have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Land Use Plan Amendment if modified.

C. DENIAL OF IP AMENDMENT NO. LCP-1-HUM-16-0040-1 AS SUBMITTED

Motion 3:

I move that the Commission reject Implementation Program Amendment No. LCP-1-HUM-16-0040-1 for the County of Humboldt as submitted.

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

Resolution 3 to Deny the IP Amendment as submitted:

The Commission hereby denies certification of the Implementation Program submitted for the County of Humboldt and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with and is inadequate to carry out the provisions of the Land Use Plan as certified. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

D. CERTIFICATION OF IP AMENDMENT NO. LCP-1-HUM-16-0040-1 WITH SUGGESTED MODIFICATIONS

Motion 4:

I move that the Commission certify the Implementation Program Amendment No. LCP-1-HUM-16-0040-1 for the County of Humboldt 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 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 4 to Certify the IP Amendment with Suggested Modifications:

The Commission hereby certifies the Implementation Program Amendment for the County of Humboldt if modified as suggested on the grounds that the Implementation Program Amendment with the suggested modifications conforms

with and is adequate to carry out the provisions of the Land Use Plan as certified. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

Section 30512 of the Coastal Act addresses certification of the Land Use Plan (LUP) portion of a local coastal program (LCP) in part as follows:

- (a) The land use plan of a proposed local coastal program shall be submitted to the commission. The commission shall, within 90 days after the submittal, after public hearing, either certify or refuse certification, in whole or in part, the land use plan pursuant to the following procedure:...*
- (b) If the commission determines not to certify a land use plan, in whole or in part, the commission shall provide a written explanation and may suggest modifications....*
- (c) The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)...*

Section 30513 of the Coastal Act addresses certification of the Implementation Plan (IP) portion of an LCP in part as follows:

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.

The Commission may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions...

Section 30514 of the Coastal Act addresses LCP amendments in part as follows:

- (a) A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government, but no such amendment shall take effect until it has been certified by the commission.*
- (b) Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513...*

Pursuant to the above cited sections, to certify the proposed amendments to the LUP portion of the County of Humboldt LCP, which in this case is the Humboldt Bay Area Plan (HBAP), the Commission must find that the proposed LUPA is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendments to the IP portion of the County of Humboldt certified LCP (Coastal Zoning Regulations) is whether the CZR as amended would be in conformance with and adequate to carry out the provisions of the conditionally certified LUP.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The County Planning Staff conducted a public workshop on the subject of this LCP amendment on 2/23/16. The County Planning Commission held a public hearing on the amendment on 4/21/16, and the County Board of Supervisors held public hearings on 7/5/16 and 7/19/16. All hearings were noticed to the public consistent with Sections 13551 and 13552 of Title 14 of the California Code of Regulations. Notice of the Coastal Commission hearing for this LCP 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 County 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 County's Resolution of Transmittal of the LCP amendment to the Commission for certification states that it will take effect immediately. Therefore, if the Commission certifies the LCP amendment as submitted, no further County Board 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 County Board of Supervisors 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 County, and the LCP amendment is not effective.

III. SUMMARY OF SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to ensure that (1) the LUP is consistent with the Coastal Act, and (2) the IP conforms with and is adequate to carry out the LUP as conditionally certified. If Humboldt County accepts the suggested modifications within six months of Commission action (i.e., by February 10, 2018), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished.

[Appendix A](#) shows the full text of the County's proposed changes to the LUP and IP. [Appendix B](#) shows text deletions and additions suggested by the Commission and summarized below.

A. SUGGESTED MODIFICATIONS TO THE HUMBOLDT BAY AREA PLAN (LUP)

Suggested Modification No. 1

At the County's request, modify section 2.30 of the Humboldt Bay Area Plan (LUP) to delete outdated language and clarify that the provisions of the LUP do not apply to lands within the Commission's retained CDP jurisdiction. Text shown below in ~~bold double strikethrough~~ and **bold double underline** format denotes proposed text to be deleted and added (respectively) by the Commission, which the County has indicated its agreement with:

2.30 POST CERTIFICATION ADMINISTRATION OF THE HUMBOLDT BAY PLAN

- A. ~~Local administration of the plan hinges upon a substantial number of unresolved issues. This critical section of the plan will be developed~~ **may be further implemented** jointly by the Coastal Commission and Humboldt County and added to this plan at a later date. ~~Unresolved issues~~ **Further implementation measures** include, but are not limited to:
1. Where the State Coastal Commission retains primary permit authority **consistent with Coastal Section 30519 and 14 CCR 13576-13577;**
 2. What areas in which the State Commission will hear appeals **consistent with Coastal Act section 30603 and 14 CCR 13576-13577;**
 3. Procedures for local notice and approval **consistent with 14 CCR 13560-13574;** and
 4. Procedures for how coastal zone boundary determinations will be made **consistent with 14 CCR 13255-13259.**
- B. **In those areas where the California Coastal Commission retains coastal development permit authority on submerged lands, tidelands, and public trust lands (Public Resources Code Section 30519), the standard of review for proposed development is the Chapter 3 policies of the California Coastal Act. The provisions of this plan do not govern the review and approval of coastal development permits within the Commission's retained jurisdiction. The Local Coastal Plan may be used as guidance.**

B. SUGGESTED MODIFICATIONS TO THE COASTAL ZONING REGULATIONS (IP)

Suggested Modification No. 2

Modify section 313-3.4 (MC Use Type Table) to delete the allowance for interim uses not specifically enumerated in the table and to clarify that only those interim uses specifically enumerated in the table may be considered for permitting as interim uses on MC lands. Text shown below in ~~bold double-strikethrough~~ and bold double-underline format denotes text to be deleted/added by the Commission, which the County has indicated its agreement with:

<u>Agricultural Use Type</u>	<u>General Agriculture</u>
<i>Use Types Not Listed in This Table**</i>	<p><i>Any use not specifically enumerated in this Division, if it is similar to and compatible with the uses, <u>excepting Interim Conditionally Permitted Uses</u>, permitted in the MC zone. The determination of uses similar to Interim Conditionally Permitted Uses shall be made by the Planning Director in consultation with Coastal Commission staff.</i></p>

Suggested Modification No. 3

Modify the language in the IP performance standards for interim uses (section 104.1.3 of the IP) to:

- a. prioritize coastal dependent industry over other coastal-dependent priority uses consistent with the priority use policies of the LUP by deleting, in some subsections, references to “other priority uses;”
- b. prioritize coastal-dependent development over non-coastal-dependent interim uses consistent with the priority use policies of the LUP by adding, in some subsections, references to “other priority uses;”
- c. at the County’s request, replace the percentage thresholds of “total land area...” for the issuing of interim use permits identified in subsection 104.1.3.4.1 and 104.1.3.4.3 with a new standard, which specifies maximum acreages of MC-zoned land within County CDP jurisdiction on which longer-term (typically 7-year, up to 10-year) permits could occur; and
- d. remove the requirement to cease permitting any new interim uses when certain permitting thresholds are reached and instead allow shorter-term (maximum 2-year permit terms) on MC-zoned land within County CDP jurisdiction when the above thresholds are reached.

The County has indicated its agreement with all of the suggested modifications as shown below.

The below underlined text is the County’s proposed language. Text in ~~bold double-strikethrough~~ and bold double-underline denotes text to be deleted/added by the Commission:

...

104.1.3 Performance Standards.

104.1.3.1 In order to avoid detrimental impacts to coastal-dependent industrial uses, including public docks; water-borne carrier import and export operations; ship building and boat repair; commercial fishing facilities, including storage and work areas, berthing and fish receiving, and fish processing for human consumption; marine oil terminals; Outer Continental Shelf service or supply bases; ocean intake, outfall or discharge pipelines and pipelines serving offshore facilities; and aquaculture and aquaculture support facilities; and in order to avoid detrimental impacts to other priority uses, interim uses shall **do all of the following**:

104.1.3.1.1 be compatible with, and not interfere with, the operation of existing onsite and offsite coastal-dependent industrial uses or other priority uses;

104.1.3.1.2 allow the site where they are located to be converted back to a coastal-dependent industrial use ~~or other priority use~~ when the site is needed for such use;

104.1.3.1.3 use existing improvements where feasible;

104.1.3.1.4 **in addition to complying with subsection 104.1.3.3,** be located in the areas least likely to be required by a future coastal-dependent industrial use or other priority use on a particular site to the extent feasible;

104.1.3.1.5 **only** provide **those site** improvements that are nonpermanent and removable or relocatable in a feasible manner, or **such** improvements that would preserve or enhance the utility of the project site for future coastal-dependent industrial uses ~~or other priority use~~, if new improvements are required; and

104.1.3.1.6 not inhibit the eventual use of MC zoned land for coastal-dependent industrial use or other priority use.

104.1.3.2 Compliance with Section 104.1.3.1 shall be determined considering at a minimum all of the following factors:

104.1.3.2.1 the amount of area required for an interim use;

104.1.3.2.2 the type, intensity and location of the interim use;

104.1.3.2.3 maintenance of priority access to roads, bay frontage and infrastructure for existing coastal-dependent industrial uses or other priority uses;

104.1.3.2.4 the priority rating of the site **for coastal dependent industrial development** pursuant to section 3.14.B.3.a of the Humboldt Bay Area Plan;

104.1.3.2.5 the current and projected level of demand for coastal-dependent industrial uses, and the land and infrastructure available to accommodate the demand, as determined in consultation with appropriate public and private agencies or organizations, and appropriate publications;

104.1.3.2.6 the cost and amortization period of investments associated with the proposed use; and

104.1.3.2.7 the lead time necessary to return the site to coastal-dependent industrial use ~~or other priority use.~~

104.1.3.3 Interim uses do not have the priority status of coastal-dependent industrial uses or other priority uses, shall be located in upland areas, shall not be allowed to fill wetlands or coastal waters, shall be located at least 100 feet from environmentally sensitive habitat areas, and shall not be located on any dock or within 100 feet of a dock as measured from the center of the dock at the point where the dock joins the shore.

104.1.3.4 Interim uses shall require both a use permit and coastal development permit, the terms of which shall coincide, and shall be subject to the following standards:

~~104.1.3.4.1 If interim uses occupy seventy five (75) percent or more of the total land area zoned MC that either currently supports or has supported coastal dependent industrial development as determined by the Planning Director, no additional permits for interim uses shall be issued.~~

104.1.3.4.21 The Hearing Officer shall set the term for the permits, which shall normally be between one (1) and seven (7) years. The permit term shall be set in consideration of the factors listed in section 104.1.3.2 so as to provide a viable time frame for an interim use while avoiding impacts to long term coastal-dependent industrial uses and other priority uses.

~~104.1.3.4.32 If interim uses occupy fifty (50) percent or more of the total land area zoned MC, the permit term for any subsequent interim use shall be limited to no more than two (2) years. The permit term for interim uses shall be limited to two (2) years if any of the following occur: (a) if 340 acres of MC-zoned land is occupied by interim uses authorized by County-issued coastal development permits, the permit term for any subsequent interim use authorized by a County-issued coastal development permit on such lands shall be no more than two years; or (b) if 170 acres of MC-zoned land that either currently supports or has supported coastal-dependent industrial development is occupied by interim uses authorized by County-issued coastal development permits, the permit term for any subsequent interim use~~

authorized by a County-issued coastal development permit on such lands shall be no more than two years.

104.1.3.4.43 A term of between one (1) and three (3) additional years above the maximum seven (7) years (for a total term not to exceed ten (10) years) may be considered under limited circumstances, but shall not be considered for interim uses subject to the permit term established by 104.1.3.4.32. In addition to the factors provided in section 104.1.3.2 the longer term may be considered for:

104.1.3.4.43.1 interim uses that can coexist with existing or future coastal-dependent industrial uses **and other priority uses.**

104.1.3.4.43.2 interim uses that provide structural repair, maintenance or upgrades of existing infrastructure, or install new infrastructure, that supports coastal-dependent industrial uses.

104.1.3.4.54 The existence of a use permit and coastal development permit for an interim use shall not prevent the application for and approval of any required land use permits for a non-interim principally or conditionally permitted use in the MC zone district for the same parcel, even if for the same location on the parcel, subject to the condition that the permits for any non-interim use that would conflict with an interim use shall not become effective until the expiration of the interim use permit term set by the Hearing Officer, the abandonment of the interim use during the permit term of the interim use, or the rescission of the lease for the interim use and the removal or relocation of the interim use in accordance with Section 104.1.3.10.

104.1.3.5 An interim use permit and coastal development permit shall not confer any land use entitlement or property right to the holder of the permits beyond the permit expiration date set forth in the use permit and coastal development permit. Interim permits shall expire at the end of the term set by the Hearing Officer, at which time they become null and void. Interim uses shall cease operation and all permitted development not authorized to remain by permit shall be removed by the permit expiration date. **Approval Issuance** of a new use permit and coastal development permit prior to the expiration date of the existing use permit and coastal development permit authorizing the interim use shall be required in order to continue an interim use uninterrupted beyond the expiration date of the existing permit.

104.1.3.6 An interim use must commence within one (1) year after all applicable appeal periods have lapsed. Extensions of the initial permit vesting period (the period by which the interim use must begin) may be approved in accordance with Section 312-11.3 of the Zoning Ordinance ("Extension of a Permit or Variance").

104.1.3.7 Interim uses shall utilize existing improvements where feasible. If new improvements are required, they shall be nonpermanent and removable or relocatable in a feasible manner, or shall be improvements that would preserve or enhance the utility of the project site for future coastal-dependent industrial use ~~or other priority use~~. A project site shall be restored to pre-project condition, or to a condition that would preserve or enhance the project site for future coastal-dependent industrial use ~~or other priority use~~, on or before the expiration date of a use permit and coastal development permit for an interim use. An application for a use permit and coastal development permit for interim uses shall include a plan detailing how and when the project site will be restored. A bond in the amount necessary to complete the required restoration may be required at the discretion of the Hearing Officer.

104.1.3.8 Prior to any development occurring that is authorized by an interim use permit and coastal development permit, a Development Plan shall be submitted for review and approval by the Planning Director, and a Notice of Development Plan shall be recorded on all properties where the interim use permit will be located. The Development Plan shall identify the term and all other applicable development restrictions that apply to the interim use, including the plan for restoring the project site to pre-project condition, or to a condition that would preserve or enhance the project site for future coastal-dependent industrial use ~~or other priority use~~.

104.1.3.9 Coastal-dependent industrial uses and other priority uses are considered priority uses pursuant to the County's Local Coastal Program and California Coastal Act and as such, shall be given priority over interim uses in evaluating potential land use conflicts between the two uses. Operation of coastal-dependent industrial uses or other priority uses in conformance with all applicable laws and regulations shall not constitute a nuisance pursuant to the Humboldt County Code of Regulations.

104.1.3.10 Any lease for an interim use shall include a provision for rescission of the lease and mandatory relocation or removal of the interim use within six months in the event a coastal-dependent industrial use or other priority use is identified by the property owner for the space occupied by an interim use on terms acceptable to the property owner. A copy of the lease showing compliance with this provision shall be provided to the Planning Division prior to permit issuance. A property owner ~~shall prioritize coastal dependent industrial uses and other priority uses over interim uses and~~ may exercise the lease rescission provision if a coastal-dependent industrial use or other priority use attempting to occupy the site would be prohibited from doing so due to the existence of one or more interim uses.

...

Suggested Modification No. 4

Add a specified performance standard for this requirement to section 104.1.3 of the IP (text in **bold double-underline** format denotes text to be added by the Commission), which the County has indicated its agreement with:

...

104.1.3.13 An interim use must demonstrate the ability to comply with all applicable policies of the Humboldt Bay Area Plan, including, but not limited to, development policies related to adequacy of services and adequacy of facilities for the treatment and disposal of wastewater discharges for both domestic and non-domestic wastewater (Section 3.14-B-1 of the Humboldt Bay Area Plan).

...

Suggested Modification No. 5

Modify language in section 313-104.1 of the IP as shown in [Appendix B](#) to make minor modifications to clarify or correct language to ensure that the IP conforms with and is adequate to carry out the LUP as conditionally certified. The County has indicated its agreement with all of the suggested modifications as shown in Appendix B.

IV. FINDINGS FOR DENIAL OF THE LUP AMENDMENT AS SUBMITTED AND CERTIFICATION IF MODIFIED

The Commission finds and declares as follows for proposed Land Use Plan (LUP) amendment LCP-1-HUM-16-0040-1:

A. AMENDMENT DESCRIPTION

Coastal Act policies give priority to coastal dependent industrial uses over other land uses that might be proposed in the coastal zone. The existing certified LUP designates certain lands around Humboldt Bay for Coastal Dependent Industrial (CDI) uses with the stated purpose *to protect and reserve parcels on or near the sea for industrial uses dependent on, or related to, the harbor* (HBAP Chapter 4 Section 4.10-A). These lands are indicated with the designation “MC” on the certified LUP maps and corresponding zoning maps ([Exhibits](#)). Principal uses allowed on MC lands under the existing certified LUP are described as follows:

any coastal-dependent industrial use that requires access to a maintained navigable channel in order to function, including, but not limited to: public docks, water-borne carrier import and export operations, ship building and boat repair, commercial fishing facilities, including berthing and fish receiving, and fish processing when product is for human consumption (fish waste processing and fish processing of products for other than human consumption are considered coastal-related uses) marine oil terminals, OCS service or supply bases, ocean intake, outfall or discharge pipelines and

pipelines serving offshore facilities, aquaculture and aquaculture support facilities

The existing LUP also allows certain coastal-dependent and coastal-related conditional uses on MC lands:

visitor-serving recreational facilities that require channel access, including, but not limited to marinas serving other than solely commercial vessels, fishing piers, and boat launching facilities; coastal-related industrial uses, including, but not limited to fish waste processing and fish processing and treatment facilities, electrical generating facilities or other facilities which require an ocean intake, outfall, or pipeline. Such facilities shall not be sited on sites with channel access unless associated with a terminal. Alterations, improvements, and relocations of existing general industrial uses within the MC designation.

As proposed under LCP Amendment Application No. LCP-1-HUM-16-0040-1 (LCPA), the LUP [section 4.10-A] would be amended to allow for certain additional non-coastal-dependent and non-coastal-related “interim” conditional uses on MC lands on a temporary and short-term basis with the stated purpose of “...allow[ing] for greater use of underutilized MC lands while at the same time avoiding impacts to their long term coastal-dependent industrial use and other priority uses conditionally permitted on MC designated lands” including those cited above.

The specific new interim conditional uses that would be added to the LUP [in Section 3.13-B-1-c] for MC lands would include:

...certain uses allowed in the MG: Industrial/General land use designation and in the ML: Light Industrial zone district...subject to interim use performance standards to avoid impacts to coastal-dependent industrial uses and other priority uses including visitor-serving recreational facilities that require channel access and coastal-related industrial uses.

The new “interim conditional uses” referenced in the proposed LUP policy are summarized in Table 2 ([Appendix C](#)).

B. BACKGROUND

Setting

There are approximately 1,100 acres of unincorporated land and water areas designated for coastal-dependent industrial (CDI) uses around Humboldt Bay within the coastal zone. These lands are coded “MC” on certified land use planning and zoning maps.¹ Of that total, approximately 672 acres are certified MC lands within the County’s coastal development permitting jurisdiction, with the remainder locally zoned MC lands in the Commission’s retained CDP jurisdiction. Areas within the Commission’s jurisdiction include approximately 294 acres

¹ In addition, another approximately 200 acres of locally zoned area for CDI uses exists on Humboldt Bay within the city limits of Eureka.

of public trust lands (historically filled tidelands) along the bay shoreline and 190 acres of tideland areas where several of the existing industrial docks that support CDI uses are located. Lands in both jurisdictions either currently support or have in the past supported CDI uses and infrastructure, including industrial docks, ship repair yards, commercial fishing facilities, and forest product shipping export operations.

Ownership of the unincorporated certified and locally zoned MC lands within the coastal zone is roughly split between public and private entities (approximately 20 different private property owners), with approximately 586 acres (53%) owned by public entities (primarily the Humboldt Bay Harbor, Recreation, and Conservation District and the City of Eureka, which owns approximately 344 acres of unincorporated MC lands on the Samoa Peninsula).

The coastal zone around Humboldt Bay includes several thousand acres of lands within the Coastal Commission's retained CDP jurisdiction – mostly diked former tidelands (currently in agricultural use) and filled tidelands along the margins of the bay, which are subject to the public trust. As mentioned above, local County zoning extends over lands and some waters (tidelands) within the Commission's jurisdiction. Within these locally zoned areas, the Coastal Act, rather than the LCP, is the standard of review for the issuance of CDPs. Unlike several other ports in the coastal zone (i.e., San Diego, Long Beach, Los Angeles, and Hueneme), the standard of review for land use and development on the Port of Humboldt Bay outside of the Commission's retained jurisdiction is not a certified Port Master Plan, but rather the certified local coastal programs of the County and the cities of Eureka and Arcata. There are no lands planned and zoned for CDI uses within the City of Arcata's LCP jurisdiction. Both the City of Eureka and the County of Humboldt currently have vacant and underutilized lands planned and zoned for CDI uses, as discussed below.

Historic pattern of underutilization of CDI lands

Based on current and past land use data, most of the 1,100 acres of certified and locally zoned MC land is, and historically has been, vacant or underutilized for CDI uses. Currently, only approximately 60 acres (5%) are in active CDI use.² The use of Humboldt Bay for shipping activities and the development of shore-based facilities for offshore oil exploration have not occurred to the extent anticipated at the time the LUP was certified in 1983. The existing active coastal-dependent and CDI uses on Humboldt Bay's unincorporated MC lands (both within Commission and County CDP jurisdictions) include aquaculture and aquaculture support facilities, commercial fishing, boat repair, and forest products shipping export operations. Historically, only approximately 32% of the total certified MC-zoned land has supported such uses (the percentage increases to approximately 50% when considering locally zoned MC-designated lands in the Commission's CDP jurisdiction). Past CDI uses in these areas primarily have been limited to shipping operations associated with the forest products industry. Most of the areas that historically were used as shipping terminals for the forest products industry also were used for the processing and manufacturing of forest products (e.g., sawmills and pulp mills), which are not coastal-dependent industrial uses.³ Thus, the historic estimate of peak CDI activity

² In addition, the City of Eureka estimates that approximately half (94 acres) of its inventory of CDI lands (205 acres) presently are vacant or underutilized for CDI uses (BAE Urban Economics 2015).

³ Coastal Act Section 30101 defines "Coastal-dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea to be able to function at all." The processing and manufacturing of timber

is conservative, with actual CDI-related activity occurring in the past on less than half of the all the lands planned and zoned MC.

There are a number of shipping terminals within the unincorporated MC areas (excluding docks within the City of Eureka), few of which currently are active for shipping and other port-related uses due to current lack of demand for such uses, dredging challenges, or other factors. Four of the terminals are on the Samoa Peninsula: (1) Redwood Marine Terminal 1 (partially active for coastal-dependent uses [commercial fisheries]; owned by the Humboldt Bay Harbor, Recreation, and Conservation District); (2) Redwood Marine Terminal 2 (partially active [aquaculture]; owned by the Harbor District); (3) California Redwood Company chip export dock (active with shipping activity [forest product export]; privately owned); (4) Fairhaven Terminal (currently inactive; privately owned). Two terminals are in Fields Landing on the east side of Humboldt Bay: (5) Fields Landing Terminal (partially active [ship repair]; owned by the Harbor District); and (6) Humboldt Bay Forest Products dock (inactive; privately owned).

For additional background on the ongoing issue of underutilization of MC lands around Humboldt Bay for CDI uses, see [Appendix D](#).

Purpose of LCP Amendment

Given the existing vacancies and underutilization of MC lands for CDI uses, the County has stated that a primary purpose of the subject LCP amendment is to preserve and maintain the utility of existing MC lands around Humboldt Bay for future CDI uses. An expected benefit of the proposed LCP amendment is the increased potential that maintenance of valuable CDI-related infrastructure will not be deferred and possibly will be enhanced by allowing interim uses to temporarily use certified MC lands (and associated existing infrastructure) that are not in active CDI use. The County believes that allowing interim temporary uses on certified MC lands may provide a revenue source for owners of MC properties, which in turn could be used for property upkeep, such as repair, maintenance, and enhancement of existing infrastructure on the properties. Examples of CDI infrastructure include structures, access roads, and utilities that have supported CDI uses in the past, but which have been inactive or underutilized over many years, as explained above (and [Appendix D](#)). Vacant and underutilized buildings and other infrastructure around the bay typically fall into disrepair and deteriorate over time, eventually becoming unusable and less attractive for prospective tenants seeking to develop a CDI use. Maintaining a property's infrastructure as functional and usable is costly, but doing so increases the value and utility of the property for serving future CDI uses.

Coastal Act section 30701(b) states in part that "Existing ports, including the Humboldt Bay Harbor, Recreation, and Conservation District, shall be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state." While the proposed interim uses will not necessarily be port-related, it is anticipated that they will benefit CDI-related infrastructure, directly or indirectly, by assisting landowners maintain, repair, improve

products is not a use that must be sited on or adjacent to the sea to be able to function, but shipping operations associated with the import and/or export of timber products is a coastal-dependent development or use under this section and under the definition of CDI in the Humboldt County certified LCP.

and modernize existing port facilities to help ensure that MC lands on Humboldt Bay remain viable coastal dependent industry and port-related activities.

Other efforts to address underutilization of CDI land inventory

In addition to the subject LCP Amendment application, both the City and the County are pursuing other LCP amendments to address the present and chronic issue of vacant and underutilized MC lands. Some individual property owners are requesting that the City and County pursue LCP amendments to redesignate/rezone all or portions of MC properties to other land uses. In addition, under the Commission’s second LCP grant round, the Commission awarded a grant to the County in part to complete an analysis of all unincorporated MC lands around Humboldt Bay, including assessing how conditions have changed since the 1981 Industrial Siting Study (discussed in [Appendix D](#)). The grant work includes a review of present and future market conditions as well as a site suitability assessment for MC lands. These analyses potentially will lead to proposed zoning changes and updates to CDI policies in the certified LUP. This effort is scheduled to be completed in the summer of 2018.

Even if the County adopts land use and zoning amendments to redesignate/rezone some of MC lands to other land use types in the future, the County still believes that allowing interim uses to continue on remaining MC lands (those lands with the most utility for CDI purposes, such as shipping terminal properties) can be important for maintaining CDI-related infrastructure as described above. The proposed LCP amendment does however include a “Future Applicability” clause stating that “If the County undertakes a reduction of MC zoned land, the continued applicability of these standards shall be reviewed.”

C. CONSISTENCY WITH RELEVANT COASTAL ACT POLICIES

i. Priority Use Policies

The Coastal Act prioritizes protection of certain priority uses over other competing uses without priority. The Coastal Act provides that coastal-dependent developments, including CDI, coastal-related developments, and coastal recreation uses, shall have priority over other developments on or near the shoreline. Generally, these priority land uses include uses that by their nature must be located on the coast to function, such as ports and commercial fishing facilities, and uses that encourage the public’s use of the coast, such as various kinds of visitor-serving recreational facilities. Coastal-dependent industrial facilities are encouraged to locate or expand within existing sites, and CDI is given priority over visitor-serving commercial recreational facilities that enhance public opportunities for coastal recreation. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support. Coastal-related developments may include facilities that support commercial fishing and aquaculture (e.g., storage and work areas, berthing and fish receiving, areas for fish processing for human consumption, and aquaculture support facilities).

The Coastal Act provides as follows (emphasis added):

Section 30101 defines “coastal-dependent development or use” as:

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...any development or use which requires a site on, or adjacent to, the sea to be able to function at all.

Section 30101.3 defines “coastal-related development” as:

...any use that is dependent on a coastal-dependent development or use.

Section 30220 states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 states:

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

Section 30222 states:

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

Section 30222.5 states:

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

Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30234 states in applicable part:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided...

Section 30255 states:

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

Section 30260 states:

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

Section 30701(a) provides that:

The Legislature finds and declares that:

(a) The ports of the State of California, including the Humboldt Bay Harbor, Recreation, and Conservation District, constitute one of the state's primary economic and coastal resources and are an essential element of the national maritime industry.

Findings for Denial as Submitted and Approval if Modified as Suggested

The proposed LUP amendment is consistent with the above-cited Coastal Act policies in several ways. However, as explained below, the proposed LUP amendment as submitted in other ways fails to prioritize CDI and coastal-dependent development over other types of development as required by the Coastal Act.

As cited above, the Coastal Act recognizes the Port of Humboldt Bay as one of the state's primary economic and coastal resources and an essential element of the national maritime industry. As previously discussed, there are approximately 1,100 acres of unincorporated lands and water areas designated for CDI uses around Humboldt Bay, including approximately 294 acres of locally zoned public trust lands within the Commission's retained CDP jurisdiction and an additional approximately 190 acres of locally zoned tidelands developed with existing docks and other CDI infrastructure. Most of this MC-zoned area currently is, and has been for many decades, vacant and underutilized. Currently, only about 60 acres, or 5% of certified and locally zoned-MC lands are in active CDI use. Even in years of peak industrial activity in the region, only half of all of the bay's unincorporated MC-zoned area has been used for CDI purposes (about a third of those lands within County CDP jurisdiction).

Principal uses allowed on certified MC lands in the LUP include a range of coastal-dependent uses:

any coastal-dependent industrial use that requires access to a maintained navigable channel in order to function, including, but not limited to: public docks, water-borne carrier import and export operations, ship building and boat repair, commercial fishing facilities, including berthing and fish receiving, and fish processing when product is for human consumption (fish waste processing and fish processing of products for other than human consumption are considered coastal-related uses) marine oil terminals, OCS service or supply bases, ocean intake, outfall or discharge pipelines and pipelines serving offshore facilities, aquaculture and aquaculture support facilities.

The proposed LUP amendment as submitted proposes (see [Appendix A](#)) to allow greater use of underutilized MC lands within the County's CDP jurisdiction by allowing certain additional uses to be permitted on a temporary "interim" basis on the lands, subject to numerous performance standards specified in proposed amendments to the Coastal Zoning Regulations (Implementation Plan). Non-coastal-dependent interim uses (summarized in [Appendix C](#)) that the existing certified LCP currently allows on general industrial (MG) lands and light-industrial (ML) lands and which under the proposed LUP amendment as submitted could be permitted (subject to approval of both a CDP and conditional use permit) on certified MC land. The purpose of the performance standards, as specified in the proposed LUP amendment language, is "to avoid impacts to coastal-dependent industrial uses and other priority uses including visitor-serving recreational facilities that require channel access and coastal-related industrial uses." Although specified as part of the proposed IP amendment, examples of such performance standards that help assure that impacts to CDI uses and other priority uses are avoided include (a) limits on the length of authorization of interim uses so that they don't become permanent and do not inhibit planning for future CDI uses on the land, (b) limits on the degree to which permanent improvements are allowed for interim uses that might have to be removed to accommodate future CDI uses, (c) avoidance of use of those portions of the CDI lands that are most important for CDI use, such as shoreline areas around docks, and (d) requirements that interim uses be compatible with, and not interfere with, the operation of existing onsite and offsite CDI uses. (The IP Amendment as discussed below includes such performance standards that prioritize CDI uses and other priority uses over interim uses).

The proposed LUP amendment as submitted protects and prioritizes priority coastal-dependent uses over non-coastal-dependent interim uses consistent with the above-cited Coastal Act policies in several ways. First, by only allowing interim uses that avoid all impacts to CDI, coastal-dependent recreation, coastal-related uses, and coastal access facilities, the proposed LUP amendment as submitted prioritizes and protects coastal-dependent developments consistent with sections 30222, 30234, 30255 and 30260. Second, as discussed above, the proposed LUP amendment as submitted requires that interim uses be subject to performance standards to avoid impacts to CDI uses and other priority uses. Thus, the proposed LUP amendment as submitted protects land suitable for, and facilities associated with, the various

coastal-dependent priority uses specified in sections 30222, 30222.5, 30234, 30255 and 30260 of the Coastal Act.

Third, existing policies in the certified LUP require protection of wetlands, ESHA, water quality, public access, visual resources, and archaeological resources. For example, the LUP includes as policies Coastal Act sections 30230 (protection of marine resources), 30231 (protection of water quality), 30233 (protection of wetlands), 30240 (protection of ESHA), 30244 (protection of archaeological resources, and 30251 (protection of visual resources), among other coastal resource protection policies. Any development proposed as an interim use must be sited and designed to protect coastal resources consistent with all applicable LUP policies.

However, although the proposed LUP amendment is in many ways consistent with the priority use policies of the Coastal Act cited above, the proposed LUP amendment as submitted is not consistent with the Coastal Act in one respect, and must be denied. The LUP amendment includes provisions that the County intended to apply to all MC-designated property, even original jurisdiction areas over which the Commission retains coastal development permitting authority. Specifically, rather than confine LCP-affected land areas to the areas over which CDP authority had been delegated to the County pursuant to Coastal Act section 30519, the County's findings for approval adopting the proposed LCP amendment⁴ miscalculate affected MC-designated areas by including areas over which the Commission retains CDP authority. The proposed LCP amendment, however, will not govern development in original jurisdiction areas, such as filled tidelands and public trust lands, and the Commission will not issue CDPs in its retained jurisdiction based on the proposed LCP amendment. While the LCP will be the standard of review for development within areas over which CDP authority had been delegated to the County, and the Commission can use the LCP as guidance, Chapter 3 is the standard of review for development over which the Commission retains CDP authority. Therefore, a suggested modification has been added to section 104.1.3.4 of the Implementation Plan (discussed further in Finding V-B-i below) to ensure that acreages are calculated excluding lands over which the Commission retains CDP authority. In addition, since the LCP serves as the standard of review for all development (not just interim uses on MC lands) over which the County has been delegated CDP jurisdiction, the County has requested that language conveying the distinctions set forth in Coastal Act section 30519 regarding CDP jurisdiction be added to the LUP General Provisions rather than be added to the IP CDI interim use ordinance specifically. Thus, a suggested modification (**Suggested Modification 1**) conveying the distinctions set forth in Coastal Act section 30519 has been added to LUP section 2.30 of the LUP as shown in [Appendix B](#). In addition, the suggested modifications update other portions of that LUP Section regarding CDP authority, appeal jurisdiction, noticing procedures, and coastal zone boundary determinations, and for clarity, adds references to the sections of the Coastal Act and the Commission's regulations that govern these topics.

If modified to delete outdated language and clarify that the provisions of the LUP do not apply to lands within the Commission's retained CDP jurisdiction, the LUP amendment ensures that CDI uses and other types of coastal-dependent priority uses are prioritized over non-coastal-dependent uses consistent with the priority use policies of the Coastal Act.

⁴ E.g., see page 298 of the supplemental staff report for the July 5, 2016 Board of Supervisors meeting.

ii. Adequacy of Services

Section 30250 of the Coastal Act states in applicable part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

Section 30231 of the Coastal Act states (emphasis added):

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

The intent of section 30250(a) is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized. Section 30231 requires the protection of water quality through, among other means, minimizing adverse effects of wastewater discharges.

Findings for Approval as Submitted

Most of the lands that are the subject of this LCP amendment are in “rural” areas, outside of urban limits as designated by the LUP, and within the County’s CDP jurisdiction. While most of these certified MC lands receive water services from the Humboldt Bay Municipal Water District (which sources water from the Mad River north of Arcata and serves most of the urban and rural lands in the Humboldt Bay region) or other Community Services District, the majority of the subject lands lack centralized services for wastewater treatment and disposal. Many of the individual on-site sewage treatment systems in the region are old, not built to current standards, malfunctioning, and threatening bacterial contamination of groundwater, wetlands, and the ocean and bay waters in the surrounding area.

Samoa Peninsula

The only centralized wastewater treatment facility on the Samoa Peninsula is within the urban boundary of the town of Samoa. However, even though Samoa maintains a centralized system to serve around 100 existing single-family homes within its urban boundary, the facility is severely substandard according to the North Coast Regional Water Quality Control Board and in need of upgrade or replacement. The County recently approved a CDP for the upgrade of the Samoa wastewater treatment facility to serve the existing town and a new affordable housing development planned for the area. The LCP limits the service area of the Samoa system to only

those lands within the town. There are approximately 35 acres of MC lands within Samoa that are affected by the subject LCP amendment.

The County, with the support of the Regional Water Board, is investigating the potential for developing a new centralized wastewater treatment system on the Samoa Peninsula that would use the existing ocean outfall located on the old pulp mill property (now owned by the Humboldt Bay Harbor, Recreation, and Conservation District) for the ocean disposal of treated wastewater. This option, which is the best option for protecting water quality in the region according to the Regional Water Board, would require amendments to the Humboldt Bay Area Plan and would take several years to plan, acquire funding for, and implement.

King Salmon and Fields Landing

The Humboldt Community Services District collects sanitary sewage from the communities of King Salmon and Fields Landing, which is routed to the City of Eureka's wastewater treatment facility. However, the HCSD does not provide wastewater services for the treatment of non-sanitary (e.g., industrial, high-strength) wastewater for these areas.

Therefore, as proposed, the LCP amendment allows for the development of interim uses on certified MC lands within the County's CDP jurisdiction, many of which already are developed with structures and other infrastructure constructed several decades ago (prior to LCP certification), including paved access roads, onsite sewage treatment systems, stormwater management infrastructure, existing water hookups, and electrical and other utility lines. Interim uses that are proposed on lands that are not served by existing services districts and do not have adequate on-site sewage treatment systems will need to develop new on-site sewage treatment systems. The Humboldt County Environmental Health Department must review and approve any proposed waste disposal system for domestic wastewater, such as wastewater from bathrooms and kitchens, even when such wastewater comes from industrial or commercial uses and not residences. The state's Onsite Wastewater System Policy and the North Coast Regional Water Quality Control Board's Basin Plan for the area do not authorize a local agency to regulate discharges of non-domestic wastewater (industrial or other high-strength waste) to septic systems. The Regional Water Board must review industrial waste discharges to septic systems. Existing policies in the certified LCP require that any permit issued for development that includes interim uses must be consistent with the certified LUP, which expressly incorporates sections 30250(a) and 30231 as LCP policies, among various other policies requiring that new development protect water quality and be sited and designed to avoid significant adverse effects, either individually or cumulatively, on coastal resources. Thus, regardless of whether interim uses will occur on developed or undeveloped MC lands within urban or rural areas, the LUP amendment as submitted requires that interim uses and other development must be located where it can be accommodated with adequate services, including water and wastewater services, and ensure the protection of wetlands, water quality, and other coastal resources, as discussed above.

Therefore, the Commission finds that the proposed LUP amendment as submitted is consistent with the applicable requirements of sections 30250 and 30231 of the Coastal Act.

iii. Protection of Water Quality, Wetlands, and ESHA

The Coastal Act protects marine resources, water quality and wetlands. In addition to section 30231 cited above, the Coastal Act protects wetlands and coastal waters by only allowing certain uses to be developed in wetlands and waters. Coastal-dependent industrial facilities and commercial fishing facilities are among the allowable uses for diking, dredging, and filling in coastal waters and wetlands.

Section 30230 states:

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

Section 30233 states in applicable part:

- (a) *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
 - (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
 - (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
 - (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
 - (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
 - (6) *Restoration purposes.*
 - (7) *Nature study, aquaculture, or similar resource dependent activities.*

...

Section 30240 states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Findings for Approval as Submitted

The lands that would be affected by the proposed LUP amendment (certified MC-designated lands within the County’s CDP jurisdiction) include hundreds of acres of lands around Humboldt Bay, including areas with known wetlands, dunes, and other sensitive habitat areas.

The proposed LUP amendment as submitted will allow interim uses on certified MC lands within the County’s CDP jurisdiction. The existing LUP includes the various Coastal Act policies cited above as LUP policies, plus additional policies related to the protection of wetlands and ESHA. For example, section 3.30 of the LUP includes several policies related to the protection of wetlands and dune habitats, minimum setbacks required from wetlands and creeks, and policies related to shoreline protection. Any permit for an interim use must be found consistent with all applicable policies of the certified LUP. In addition, as discussed below, the amendment as submitted expressly prohibits, in the proposed IP performance standards, impacts to coastal wetlands or waters from interim uses. Therefore, the Commission finds that the proposed LUP amendment as submitted is consistent with the pertinent requirements of sections 30230, 30231, and 30240 of the Coastal Act.

iv. Protection of Archaeological Resources

Section 30244 of the Coastal Act states:

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

Findings for Approval as Submitted

The lands affected by the LCP amendment are entirely within the ancestral lands of the Wiyot Tribe (Wiki). Settlements existed all around Humboldt Bay, and several tribal settlement areas are known to exist within the subject lands.

When the proposed LCP amendment was in process at the local level, the County consulted with the Wiyot Tribe pursuant to Senate Bill 18, which requires cities and counties to contact and consult with California Native American tribes prior to amending or adopting any general plan or specific plan and prior to designating any land as open space. The County consulted with the

Tribal Historic Preservation Officers (THPOs) for the three Wiyot area tribes (Bear River Band of Rohnerville Rancheria, Blue Lake Rancheria, and Wiyot Tribe). The THPOs recommended certain language be included in the proposed permitting provisions for interim uses to notify landowners and developers applying for interim use permits that an assessment of potential impacts to tribal cultural resources may be required.

The existing LCP includes other protections for archaeological resources, and any permit for an interim use must be found consistent with all the relevant policies of the certified LUP. For example, the certified LUP includes section 30244 of the Coastal Act as a policy of the plan. Any proposed application for an interim use permit will be required to provide reasonable mitigation measures to assure the best feasible protection to cultural sites. In addition, as discussed in Finding V-C-v below, provisions are added to the IP to require review of ground-disturbing activities by Native American tribes. Therefore, the Commission finds that the proposed LUP amendment as submitted is consistent with the requirements of section 30244 of the Coastal Act.

v. Protection of Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects, except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or where adequate access exists nearby. Section 30211 of the Coastal Act requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area.

Findings for Approval as Submitted

The certified LUP Access Inventory identifies several access points in the vicinity of the MC lands that are the subject of this LCP amendment (see [Exhibits](#)). On the Samoa Peninsula, most of the public access points are on the ocean-side of the peninsula and in the vicinity of the residential portion of Fairhaven. There are no public access points on any of the active MC lands in this area. In Fields Landing, there is a County boat ramp and bay access point located between two MC-designated properties that are in the Commission's retained CDP jurisdiction (public trust lands). In King Salmon, there is a coastal view access point (overlook) on the north side of the MC-designated property owned by PG&E (also within the Commission's retained CDP jurisdiction), which is developed with the Humboldt Bay power plant.

The existing LCP includes the Coastal Act protections for public access in the policies cited above, among other policies protection of public access, through, among other means, a requirement that new development on parcels containing public accessway irrevocably offer to dedicate a public access easement over the accessway. Thus, the LUP amendment as submitted requires that any permit for an interim use must protect public access consistent with all the relevant policies of the LUP, including all applicable public access policies. Therefore, the LUP amendment as submitted is consistent with the public access policies of the Coastal Act.

Conclusion

For all the reasons discussed above, the Commission finds that the proposed LUP amendment as submitted is consistent with all applicable Chapter 3 policies of the Coastal Act.

V. AMENDMENTS TO THE IMPLEMENTATION PROGRAM AND FINDINGS FOR DENIAL OF IP AMENDMENT NO. LCP-1-HUM-16-0040-1 AS SUBMITTED AND CERTIFICATION IF MODIFIED

The Commission finds and declares as follows for proposed Implementation Program (IP) amendment number LCP-1-HUM-16-0040-1:

A. IP AMENDMENT DESCRIPTION

The existing certified IP (Coastal Zoning Regulations) specifies certain coastal dependent and coastal related uses as principal and conditional uses allowed on MC lands within the County's CDP jurisdiction. The proposed IP amendment as submitted amends the MC Use Type table in section 313-3.4 of the certified IP as shown in [Appendix A](#) to add interim conditional uses to be permitted in the MC zone. Interim uses would be permitted subject to proposed new performance standards intended to avoid detrimental impacts to CDI uses (summarized below). The proposed new interim uses include the various types of conditionally permitted uses that currently are allowed (with conditional use permit approvals) in the MG (General Industrial) and ML (Light Industrial) zone districts, including a range of new civic, commercial, industrial and agricultural use types, summarized in Table 2 ([Appendix C](#)).

Proposed new section 313-104.1 of the IP specifies various performance standards for interim uses including, for example, standards for (1) siting of an interim use on a property (e.g., not be allowed on or within 100 feet of docks, within wetlands, or within 100 feet of ESHA); (2) terms of interim use permits (typically between one and seven years; up to 10 years in limited cases); and (3) protection of tribal cultural resources.

[Appendix A](#) shows the full text of the County's proposed changes to the LUP and IP. [Appendix B](#) shows text deletions and additions suggested by the Commission as explained in the Findings below.

B. IMPLEMENTATION PLAN CONFORMITY

To certify proposed changes to an IP, the changes must conform with the certified LUP (as conditionally certified) and adequately carry out all applicable LUP policies. In this case, the proposed IP changes do not conform with and adequately carry out the certified LUP as conditionally certified for the reasons discussed below. Therefore, the IP amendment as submitted must be denied pursuant to section 30513 of the Coastal Act. However, the Commission suggests four Suggested Modifications (shown in [Appendix B](#)) to conform the proposed new IP standards consistent with the LUP policies as conditionally certified.

i. Protection and Prioritization of Coastal-Dependent Industry

The proposed IP amendments must conform with and be adequate to carry out the LUP policies as amended that prioritize coastal-dependent industry over other uses. Sections 30222 and 30260 of the Coastal Act, cited in Finding IV-C-i above, are included as policies of the LUP (in sections 3.15 and 3.14-B-3 of the LUP, respectively). In addition, section 3.13-B-4 of the LUP states:

Where coastal-dependent uses conflict among themselves, priority shall be given to industrial over recreational or commercial uses, and to recreational over commercial uses; except that industrial, recreational, and visitor serving use of private lands shall not displace existing agricultural use where the Area Plan or zoning protect the use.

Section 4.10 of the LUP, as conditionally certified, includes the standards for land use plan designations. For MC-designated lands, the designation is described as follows (includes language to be added, shown in non-italicized underlined text):

MC: ***INDUSTRIAL/COASTAL-DEPENDENT***

PURPOSE: to protect and reserve parcels on or near the sea for industrial uses dependent on, or related to, the harbor.

PRINCIPAL USE: any coastal-dependent industrial use that requires access to a maintained navigable channel in order to function, including, but not limited to: public docks, water-borne carrier import and export operations, ship building and boat repair, commercial fishing facilities, including berthing and fish receiving, and fish processing when product is for human consumption (fish waste processing and fish processing of products for other than human consumption are considered coastal-related uses) marine oil terminals, OCS service or supply bases, ocean intake, outfall or discharge pipelines and pipelines serving offshore facilities, aquaculture and aquaculture support facilities.

CONDITIONAL USES: visitor-serving recreational facilities that require channel access, including, but not limited to marinas serving other than solely commercial vessels, fishing piers, and boat launching facilities; coastal-related industrial uses, including, but not limited to fish waste processing and fish processing and treatment facilities, electrical generating facilities or other facilities which require an ocean intake, outfall, or pipeline. Such facilities shall not be sited on sites with channel access unless associated with a terminal. Alterations, improvements, and relocations of existing general industrial uses within the MC designation. Interim uses that will allow for greater use of underutilized MC lands while at the same time avoiding impacts to their long term coastal-dependent industrial use and other priority uses conditionally permitted on MC designated lands, including for visitor-serving recreational facilities that require channel access and coastal-related industrial uses.

Findings for Denial as Submitted

The proposed IP amendment is consistent with the above-cited LUP policies in several ways. However, as explained below, the proposed IP amendment in some ways fails to prioritize CDI over other uses as required by the LUP and is inadequate to carry out the LUP's CDI policies as conditionally certified.

As previously discussed, the IP amendment as submitted includes numerous standards to prioritize CDI uses, coastal-dependent recreation, coastal-related uses, and coastal access facilities over non-coastal-dependent interim uses when considering a CDP application for a proposed new interim use on vacant or underutilized MC land. The amendment as submitted requires that interim uses meet several mandatory standards, including that the interim use must (1) be compatible with, and not interfere with, the operation of existing onsite and offsite CDI uses (including aquaculture, commercial fishing facilities, etc.) or other priority uses (specified as coastal-dependent recreation, coastal-related uses, and coastal access facilities); (2) allow the site where it is located to be converted back to a CDI use when the site is needed for such use; (3) be located in the area least likely to be required by a future CDI use or other priority use on a particular site to the extent feasible; and (4) not inhibit the eventual use of MC zoned land for CDI use or other coastal-dependent priority use. In addition, in considering an application for an interim use permit and the appropriate permit term, the IP amendment as submitted requires consideration of various factors, including the current and projected level of demand for CDI uses and the land and infrastructure available at the time to accommodate the demand.

Furthermore, as proposed, interim uses may only occur in portions of MC properties least likely to be required by a future CDI use (including aquaculture, commercial fishing facilities, etc.) or other priority use (specified as coastal-dependent recreation, coastal-related uses, and coastal access facilities). The proposed performance standards also expressly prohibit an interim use from being located (1) within wetlands, coastal waters, or environmentally sensitive habitat areas, (2) on a dock, or (3) within 100 feet of any dock as measured from the center of the dock at the point where the dock joins the shore. These restrictions ensure that areas with the greatest utility for CDI and other coastal-dependent uses are reserved and prioritized for such uses, as required by the certified LUP as conditionally certified.

Moreover, as proposed, an active interim use permit operating on an MC property will not prevent an applicant seeking to develop a CDI use or other priority use on the same property from applying for the CDI permit while the interim use permit is active. This allowance for "layering" of permits encourages landowners of MC lands to seek a CDI use during the term of the interim use permit to allow for use of the property during the time frame needed to plan and permit a CDI or other coastal-dependent priority use on the site, which likely would take at least 6 months to several years.

Finally, as proposed, an interim use must cease operation at the end of the permit term, must remove all permitted development not authorized to remain, and must restore the site to pre-project conditions. The only permitted development that may be permitted to remain on site at the end of the interim use permit term is that development determined to benefit the utility of the MC land for future CDI use. Thus, remnants of an authorized interim use will not constrain the siting and design of a new CDI use or transfer the costs of restoring the site to pre-project conditions to the future CDI user of the site. In this way, the MC-zoned land is protected for CDI

use consistent with the LUP as conditionally certified and which requires that an interim use avoids impacts to long-term CDI uses and other priority uses permitted on MC designated lands, including for visitor-serving recreational facilities that require channel access and coastal-related industrial uses.

Although the proposed IP standards are in many ways consistent with sections 30222, 30255 and 30260 of the Coastal Act, which are expressly incorporated into the LUP as policies, the proposed IP amendment in other ways does not prioritize CDI over other uses as required by the LUP and is inadequate to carry out the LUP's CDI policies. For example, as submitted the IP amendment does not limit the types of non-coastal dependent, non-priority uses that may be allowed as interim uses on MC lands to a specifically enumerated set of uses identified in the zoning code. Instead, as proposed, the IP amendment allows the Planning Director, "in consultation with Coastal Commission staff," to permit other similar uses not specifically enumerated in the code. Unspecified "similar" uses that are "compatible with" the enumerated uses also could cover a wide range of uses. Such allowance for other non-enumerated uses could lead to the allowance of uses incompatible with the LUP MC designation summarized above, the purpose of which is *to protect and reserve parcels on or near the sea for industrial uses dependent on, or related to, the harbor.*

In addition, the proposed performance standards (proposed Section 104.1.3) in some places do not prioritize CDI uses over other coastal-dependent uses, as required by sections 30222 and 30255 of the Coastal Act (which are incorporated as policies of the certified LUP) and section 3.13-B-4 of the LUP. For example, section 104.1.3.1.5 as proposed states that interim uses shall *provide improvements that are nonpermanent and removable or relocatable in a feasible manner, or improvements that would preserve or enhance the utility of the project site for future coastal-dependent industrial use or other priority use, if new improvements are required (emphasis added).* However, if interim uses are permitted to develop permanent site improvements that benefit "other priority uses" but which may not benefit and may ultimately interfere with development of the site for a CDI use, then the proposed IP amendment as submitted would not protect the parcel for CDI use as required by the LUP (sections 3.13-B-4 and 4.10) and sections 30222, 30255 and 30260 of the Coastal Act.

There, while the IP amendment as submitted proposes to allow interim uses only on a subset of the total acreage of MC lands (75% of lands that currently or historically have supported CDI uses, subsection 104.1.3.4.1), and allow only shorter-term permits (of up to 2 years rather than up to 10 years) when a certain acreage threshold for interim uses is reached (50% of lands that currently or historically have supported CDI uses (subsection 104.1.3.4.3), the proposed standards as submitted do not confine the LCP affected land areas to the areas over which CDP authority had been delegated to the County pursuant to Coastal Act section 30519. Similarly, as discussed above in Finding IV-C, the proposed IP amendment includes provisions that the County intended to apply to all MC-designated property in the coastal zone, even original jurisdiction areas over which the Commission retains coastal development permitting authority. Around Humboldt Bay, there are an estimated 294 acres of public trust lands (historically filled tidelands) within the Commission's retained CDP jurisdiction, over 200 acres of which currently or historically have supported CDI activities.⁵ Thus, rather than confine LCP

⁵ Based on land use data submitted by the County with the LCP amendment application.

affected land areas to the areas over which CDP authority had been delegated to the County pursuant to Coastal Act section 30519, the County miscalculated the affected MC-zoned areas by including this additional 200+ acres of current/historic CDI lands over which the Commission retains CDP authority. Including this land, on which the Coastal Act rather than the LCP will be the standard of review for interim use CDP applications, in the calculations required in the above-cited IP provisions could result in interim uses occupying the majority of MC lands that currently or historically have supported CDI and which therefore are most likely to be used for CDI purposes in the future.

Based on current land use acreage estimates, the “total land area zoned MC within the Humboldt Bay Area Plan planning area that either currently supports or has supported coastal-dependent industrial development as determined by the Planning Director” (as proposed under the IP amendment as submitted) equates to approximately 425 acres, considering lands both in the County’s and Commission’s jurisdictions. Excluding public trust lands within the Commission’s retained CDP jurisdiction, where the proposed performance standards do not apply, reduces the total acreage to approximately 219 acres. As proposed, interim uses of up to 7 (in some cases 10) years would be allowed on 213 acres (50% of 425 acres) or nearly 100% of current/historic CDI lands within the County’s CDP jurisdiction, with additional interim uses allowed with 2-year permit terms on another 106 acres.

In addition, the LCP cannot and should not extend application of the LCPA beyond lands that are subject to the County’s CDP review authority because: (1) CDP review authority was never delegated to the County over the Commission’s area of retained jurisdiction; and (2) the standard of review for development on areas within the Commission’s retained jurisdiction is the Chapter 3 policies of the Coastal Act, not an LCP.

The IP must conform with the priority use policies of the LUP, including sections 30222, 30255 and 30260 of the Coastal Act, which have been expressly incorporated into the certified LUP. As submitted, the IP amendment proposes a standard that fails to protect and reserve those lands with the most utility for CDI uses for such uses consistent with the certified LUP. For these reasons, the Commission finds that the IP Amendment, as submitted, is inconsistent with the certified LUP as conditionally certified and must be denied.

Findings for Approval if Modified as Suggested

The following two suggested modifications are needed to ensure that the IP amendment is consistent with the CDI priority use policies of the LUP, including sections 30222 and 30255 of the Coastal Act, which are incorporated by reference into the LUP, and with sections 3.13-B-4 and 4.10 of the LUP.

To limit the types of non-coastal dependent, non-priority uses that may be allowed as interim uses on MC lands to a specifically enumerated set of uses identified in the zoning code, **Suggested Modification 2** would modify section 313-3.4 (MC Use Type Table) to delete the allowance for interim uses not specifically enumerated in the Use Type Table and to clarify that only those interim uses specifically enumerated in the table may be permitted as interim uses on MC lands (see [Appendix B](#) for all suggested modifications). The modification will prevent the possible allowance of uses incompatible with the LUP MC designation summarized above, the

purpose of which is to protect and reserve parcels on or near the sea for industrial uses dependent on, or related to, the harbor.

To protect and prioritize CDI uses and other coastal-dependent priority uses over non-coastal-dependent interim uses, **Suggested Modification 3** would modify the language in the IP performance standards for interim uses (section 104.1.3 of the IP) in part to prioritize CDI over other coastal-dependent priority uses consistent with the priority use policies of the LUP by deleting, in some subsections, references to “other priority uses. This modification will ensure that a sufficient inventory of MC land is reserved for future CDI uses and other coastal-dependent priority uses consistent with the priority use policies of the LUP as conditionally certified.

Suggested Modification No. 3 also eliminates two proposed development standards unnecessary to assure the long-term protection of CDI use. First, while the suggested modifications continue to restrict interim uses on priority CDI lands (those used in the past and therefore more likely to be used again in the future), Suggested Modification 3, relating to interim uses on lands that have not supported CDI use in the past, would allow for interim uses on a greater inventory of lands than would be allowed under the proposed IP amendment as submitted. The Suggested Modification modifies subsection 104.1.3.4.1 and 104.1.3.4.3 with new standards, which specifies maximum acreages of MC-zoned land within County CDP jurisdiction on which longer-term (typically 7-year, up to 10-year) permits could occur, as explained below. Although permitting interim uses on lands within County CDP jurisdiction that have not supported CDI use in the past will allow for a broader range of uses on a greater inventory of lands than would be allowed under the proposed IP amendment as submitted, as proposed to be modified, priority CDI lands (those used in the past and therefore more likely to be used again in the future) will be more tightly restricted from interim uses and therefore better reserved for CDI uses.

Second, **Suggested Modification 3** removes the requirement to cease permitting any new interim uses when a specified threshold is reached. This safeguard can be removed because: (1) there are an additional approximately 200 acres of lands within the Commission’s retained CDP jurisdiction that can independently be protected for CDI and other coastal-dependent uses; and (2) the continued applicability of the interim use standards will be reviewed in conjunction with any future LCPA proposing to reduce MC zoned land.

Table 1 below presents a comparison of the proposed IP standards as submitted with the standards as suggested to be modified. The standards as suggested to be modified would allow for longer term (up to 7-year or in some cases 10-year) permits for interim uses on approximately half of all MC lands within County CDP jurisdiction (340 acres), with the additional possibility of permitting shorter-term (up to 2-year) interim uses on the remaining MC lands within County CDP jurisdiction. However, the standard as suggested to be modified would continue to restrict interim uses on certified MC land that historically has been used for CDI. On such lands, longer-term interim uses permits could only be approved on 170 acres, which equates to approximately 75% of those locally zoned MC lands that historically have been used for CDI in the past.

Table 1. Comparison of possible scenarios, based on current land use approximations, for permitting interim uses on MC lands around Humboldt Bay as proposed under the IP amendment as submitted and as suggested to be modified by the Commission.⁶

Acreage	As proposed by the County under the LCP amendment as submitted	As suggested to be modified by the Commission
Total land area zoned MC in both County and CDP jurisdictions that either currently supports or has supported CDI use	425 But includes lands within CCC jurisdiction	Excludes lands within the Commission's jurisdiction (subtract 206 acres)
Total land area zoned MC excluding Commission CDP jurisdiction that either currently supports or has supported CDI use	Does not distinguish between jurisdictions and thus includes 206 extra acres in IP standard (425-206=219)	219
Current or historic MC lands on which longer-term permits (up to 7 years) could be issued	213 (50% of 425; see subsection 104.1.3.4.3 as proposed)	170 (~77% of 219; see subsection 104.1.3.4.2 as modified)
Additional current/historic MC lands on which shorter-term permits (up to 2 years) could be issued once the specified threshold of longer-term permits is reached on historic lands	106 (75% of 425 = 213 + 106; see subsection 104.1.3.4.1)	49 219 - 170 = 49; see subsection 104.1.3.4.1 as modified)
Additional MC lands in County jurisdiction on which longer-term (up to 7-year) permits could be issued (lands not used for CDI in the past)	0	121 (340-219=121, as specified in subsection 104.1.3.4.2 as modified)
Additional MC lands in County jurisdiction on which shorter-term (up to 2 years) permits could be issued	0	332 (332 + 340 = 672)
Total land area zoned MC in County CDP jurisdiction on which interim uses could occur	319	672

The additional approximately 200 acres of lands within the Commission's retained CDP jurisdiction on which CDI uses have occurred in the past comprise much of the waterfront areas along the bay that provide the most utility for CDI uses and which are most likely to be reserved for CDI and other coastal-dependent uses (these lands also abut an estimated 190 acres of tideland areas within the Commission's retained CDP jurisdiction with existing docks and other CDI infrastructure). In considering CDP applications for development on lands within the Commission's retained permit jurisdiction, the Commission will rely on the Coastal Act as the standard of review, and the LCP may be used as guidance.

For all of the above reasons, the suggested modifications ensure that CDI is prioritized over other types of coastal-dependent uses consistent with the LUP as conditionally certified. Therefore, the

⁶ The acreages presented in this table are based on calculations provided by the County with the LCP amendment application. All acreages are approximate and have not been verified for accuracy.

Commission finds that the proposed IP amendment, only as modified, is consistent with and adequate to carry out the CDI priority use policies of the certified LUP as conditionally certified.

ii. Protection and Prioritization of Coastal-Dependent Uses Other Than Coastal Dependent Industry

Sections 30220, 30221, 30223, 30224, 30222, and 30255 of the Coastal Act, cited in Finding IV-C-i above, all are included as policies of the certified LUP. As previously discussed, these policies establish priority uses that must be protected in favor of allowing other competing uses without priority. Generally, these priority land uses include uses that by their nature must be located on the coast to function, such as ports and commercial fishing facilities, and uses that encourage the public's use of the coast, such as various kinds of visitor-serving recreational facilities. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support. Coastal-related developments may include facilities that support commercial fishing and aquaculture (e.g., storage and work areas, berthing and fish receiving, areas for fish processing for human consumption, and aquaculture support facilities).

In addition to the above-cited policies, the LUP prioritizes a range of coastal-dependent uses on MC land as principally permitted uses, in addition to CDI uses:

any coastal-dependent industrial use that requires access to a maintained navigable channel in order to function, including, but not limited to: public docks, water-borne carrier import and export operations, ship building and boat repair, commercial fishing facilities, including berthing and fish receiving, and fish processing when product is for human consumption (fish waste processing and fish processing of products for other than human consumption are considered coastal-related uses) marine oil terminals, OCS service or supply bases, ocean intake, outfall or discharge pipelines and pipelines serving offshore facilities, aquaculture and aquaculture support facilities.

Findings for Denial as Submitted

Despite the diversity of coastal-dependent and related uses permitted on MC lands under the certified LUP, by definition, coastal-dependent uses cannot exist in a location other than adjacent to the water, and coastal-related uses can 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 interim uses in a manner that preserves access to the waterfront decreases the possibility that the interim use will impact or interfere with a coastal-dependent use.

The performance standards (proposed section 104.1.3) as submitted in some places fail to prioritize CDI and coastal-dependent uses over non-coastal-dependent interim uses as required by section 30222, 30234 and 30255 of the Coastal Act (which are incorporated as policies into the LUP). For example, section 104.1.3.4.4, related to permit terms for interim uses of longer than seven years, states that a longer term may be considered for *interim uses that can coexist*

with existing or future coastal-dependent industrial uses. However, as proposed, the standard does not consider other coastal-dependent priority uses that the LUP as conditionally certified prioritizes on MC lands, including visitor-serving recreational facilities that require channel access and coastal-related industrial uses (LUP sections 3.13-B-1-b and 4.10). Without prioritizing these other types of priority uses when considering longer-term permits for interim uses, the IP amendment as submitted does not adequately protect facilities serving the commercial fishing and other coastal-related developments as required by the LUP as conditionally certified.

In addition, as discussed in the above Finding, while the IP amendment proposes to allow interim uses only on a subset of the total acreage of MC lands, and though the County would only issue shorter-term permits when a certain acreage threshold of interim uses is reached on lands that currently or historically have supported CDI uses, the proposed standards as submitted apply to all MC-designated property in the coastal zone, even original jurisdiction areas over which the Commission retains coastal development permitting authority. Basing the calculations on a land inventory that extends beyond the actual lands that are subject to the IP development standards artificially inflates the acreage where interim uses could occur. Thus, the IP amendment as submitted fails to protect coastal dependent and coastal related uses other than CDI uses consistent with the priority use policies of the LUP as conditionally certified and must be denied.

Findings for Approval if Modified as Suggested

To protect and prioritize CDI uses and other coastal-dependent priority uses over non-coastal-dependent interim uses, **Suggested Modification 3** would modify the language in the IP performance standards for interim uses (section 104.1.3 of the IP) in part to (1) prioritize coastal-dependent development over non-coastal-dependent interim uses consistent with the priority use policies of the LUP by adding or deleting, in some subsections, references to “other priority uses”; (2) provide a separate standard for the allowance of interim uses on lands within County CDP jurisdiction that have not supported CDI use in the past; and (3) replace the percentage thresholds of “total land area...” for the issuing of interim use permits identified in subsection 104.1.3.4.1 and 104.1.3.4.3 with a new standard, which specifies maximum acreages of MC-zoned land within County CDP jurisdiction on which longer-term (typically 7-year, up to 10-year) permits could occur. As discussed above, the suggested modification provides for greater protection of those MC lands in County jurisdiction that have the most utility for CDI while more broadly allowing for interim uses on MC lands with lesser utility for CDI and other coastal-dependent uses. This ensures that coastal-dependent priority uses are prioritized over non-coastal-dependent uses, consistent with the LUP as conditionally certified.

In addition, as previously discussed, **Suggested Modification 2** would modify section 313-3.4 (MC Use Type Table) to delete the allowance for interim uses not specifically enumerated in the Use Type Table and to clarify that only those interim uses specifically enumerated in the table may be permitted as interim uses on MC lands. The modification will prevent the possible allowance of uses incompatible with the LUP MC designation summarized above, the purpose of which is to *protect and reserve parcels on or near the sea for industrial uses dependent on, or related to, the harbor.*

Therefore, the Commission finds that the proposed amendment, only as modified, is consistent with and adequate to carry out the priority use policies of the certified LUP as conditionally certified.

iii. Adequacy of Services

As discussed in the corresponding LUP Finding above, most of the lands that are the subject of this LCP amendment are in “rural” areas outside of designated urban limits, and most lack centralized services for wastewater treatment and disposal. Many individual on-site sewage treatment systems in the region are old, not built to current standards, malfunctioning, and threatening bacterial contamination of groundwater, wetlands, and the ocean and bay waters in the surrounding area.

As proposed, the IP amendment allows for the development of interim uses on MC lands within the County’s CDP jurisdiction, many of which already are developed with structures and other infrastructure constructed several decades ago (prior to LCP certification), including paved access roads, onsite sewage treatment systems, stormwater management infrastructure, existing water hookups, and electrical and other utility lines. Existing policies in the certified IP require that any permit issued for an interim use must be found consistent with the LUP, which includes as policies the applicable provisions of sections 30250(a) and 30231 cited above, among various other policies requiring that new development protect water quality and be sited and designed to avoid significant adverse effects, either individually or cumulatively, on coastal resources.

In addition, section 3.14-B of the certified LUP states in part:

B. DEVELOPMENT POLICIES

1. General

**** (modified 30250(a)): New industrial development, except as may be otherwise provided in this plan, shall be located within, contiguous with, or in close proximity to, existing developed industrial areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

****** 13142.5 Coastal Marine Environment***

In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:

a. Waste water discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

- (1) *Wetlands, estuaries, and other biologically sensitive sites.*
- (2) *Areas important for water contact sports.*
- (3) *Areas that produce shellfish for human consumption.*
- (4) *Ocean areas subject to massive waste discharge.*

Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of area-wide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges. Toxic and hard-to-treat substances should be pretreated at the source if such substances would be incompatible with effective and economical treatment in municipal treatment plants.

b. For each new or expanded coastal power plant or other industrial installation using seawater for cooling, heating, or industrial processing, the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.

c. Where otherwise permitted, new warmed or cooled water discharges into coastal wetlands or into areas of special biological importance, including marine reserves and kelp beds, shall not significantly alter the overall ecological balance of the receiving area.

d. Independent baseline studies of the existing marine system should be conducted in the area that could be affected by a new or expanded industrial facility using seawater in advance of the carrying out of the development.

e. Adequately treated reclaimed water should, where feasible, be made available to supplement existing surface and underground supplies and to assist in meeting future water requirements of the coastal zone, and that consideration, in statewide programs of financial assistance for water pollution or water quality control, shall be given to providing optimum water reclamation and use of reclaimed water.

The above-cited LUP policy, which is also codified in the California Water Code, requires in part that wastewater discharges be treated to protect water quality, and “toxic and hard-to-treat substances should be pretreated at the source.” Section 30231 of the Coastal Act, also an LUP policy, also requires protection of water quality through, among other means, “minimizing adverse effects of wastewater discharges and entrainment...”

Findings for Denial as Submitted

Under the proposed IP amendment as submitted, interim uses that may be permitted on MC lands include a wide range of different use types (see Table 2, [Appendix C](#)). These include, but are not limited to, uses such as (1) “sites for storage, repair and processing of materials and equipment and vehicles operated by governmental entities;” (2) “gas and oil storage facilities for power plants operated by a government entity or public utility;” (3) low-impact manufacturing; (4) the commercial processing of raw wood or wood products; (5) “general agriculture” including cultivation and potentially other agricultural uses; and several other uses. Depending on the type of use, different modes of treatment are required for the discharge of non-domestic (e.g., “high strength” industrial) wastewater, which is regulated by the North Coast Regional Water Quality Control Board, prior to its discharge to on-site disposal fields or sewer collection lines handled by a Community Services District. In addition, the discharge of domestic waste (e.g., waste from employee bathrooms and kitchens) requires different treatment facilities than non-domestic treatment systems and is under local rather than state regulatory jurisdiction (County Department of Environmental Health).

The proposed IP amendment as submitted fails to ensure that interim uses permitted on MC lands, the majority of which are in non-service areas with existing substandard systems, will have adequate services and facilities for the treatment of wastewater discharges for both domestic and non-domestic waste consistent with the LUP industrial development policies and consistent with sections 30250(a) and 30231 of the Coastal Act. Since (1) different types of treatment facilities are needed to treat different types of waste, (2) interim uses may produce “toxic and hard-to-treat substances” requiring pre-treatment at the source prior to disposal, (3) it would be easy to erroneously assume that because interim uses will only be temporary, the requirement regarding wastewater collection and treatment do not apply to interim uses; and (4) applicants for interim uses might assume, without confirmation, that existing on-site systems and facilities are adequate to serve interim uses, especially given that such uses are by definition “temporary” (though up to 7-10 years in some cases), it’s important that the IP include a standard expressly requiring that interim uses identify appropriate facilities for the treatment of all wastewater discharges expected from the proposed use. Thus, the IP amendment as submitted fails to protect water quality and coastal resources as required by the certified LUP as conditionally certified and must be denied.

Findings for Approval if Modified as Suggested. To ensure that interim uses have adequate services and facilities for the treatment of wastewater discharges for both domestic and non-domestic waste consistent with the LUP industrial development policies and sections 30250(a) and section 30231 of the Coastal Act, which are incorporated as policies in the LUP, **Suggested Modification 4** would add a specified performance standard for this requirement to section 104.1.3 of the IP. Together with the requirement that any permit for an interim use must be found consistent with all applicable policies of the LUP, including policies that protect wetlands, ESHA, visual resources, etc., the IP amendment as modified ensures that permitted interim uses will be will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Thus, the Commission finds that the proposed amendment, only as modified, is consistent with and adequate to carry out the policies of the conditionally certified LUP that address wastewater services for the protection of water quality and coastal resources.

Conclusion

The Commission finds that the proposed IP amendment as submitted by the County is inconsistent with and inadequate to implement the policies of the LUP as conditionally certified and therefore must be denied. The Commission further finds that only as modified as suggested will the IP component conform with and provide adequate standards to implement the LUP as conditionally certified.

iv. Protection of Water Quality, Wetlands, and ESHA

Sections 30230, 30231, 30233, and 30240 of the Coastal Act, cited in Finding IV-C-iii above, all are included as policies of the Humboldt Bay Area Plan. In addition, the LUP includes additional policies related to protection of wetlands and ESHA (Section 3.30-B):

1. Identification of Environmentally Sensitive Habitats

a. Environmentally sensitive habitats within the Humboldt Bay Planning Area include:

- (1) Wetlands and estuaries, including Humboldt Bay and the mouth of the Mad River.*
- (2) Vegetated dunes along the North Spit to the Mad River and along the South Spit.*
- (3) Rivers, creeks, gulches, sloughs and associated riparian habitats, including Mad River Slough, Ryan Slough, Eureka Slough, Freshwater Slough, Liscom Slough, Fay Slough, Elk River, Salmon Creek, and other streams.*
- (4) Critical habitats for rare and endangered species listed on state or federal lists.*

b. Proposed development occurring within areas containing these sensitive habitats shall be subject to conditions and requirements of this chapter. Should an area proposed for development appear, upon examination of the maps to be within or contain the indicated habitat, but upon field inspection is found not to contain the indicated habitat, then the development is exempt from requirements of the section. As an interim measure for habitat areas not currently identified on the maps, information obtained during the CEQA review process will be used by the County in reviewing applications for coastal development permits. The review of these sensitive habitat areas and the identification of appropriate land uses and/or mitigation measures shall be in cooperation with the Department of Fish and Game. The County shall review requests to amend the Environmentally Sensitive Habitat Maps in terms of the entire plan proposal and supporting policies. Accommodation of new resource information on the Environmentally

Sensitive Habitat Maps may also require amendments to the certified land use plan and zoning.

- (1) Wetland areas shall be identified according to the Coastal Act's definitions of wetlands (see Chapter 5 definitions). Transitional agricultural lands shall be identified as diked former tidal marshes and clearly defined tidal sloughs now farmed.*

...

6. Wetland Buffer

- a. No land use or development shall be permitted in areas adjacent to coastal wetlands, called Wetland Buffer Areas, which degrade the wetland or detract from the natural resource value. Wetland Buffer Areas shall be defined as:
 - (1) The area between a wetland and the nearest paved road or the 40 foot contour line (as determined from the 7.5' USGS contour maps), whichever is the shortest distance, or*
 - (2) 250 feet from the wetland, where the nearest paved road or 40 foot contour exceed this distance.*
 - (3) Transitional Agricultural lands designated Agriculture Exclusive shall be excluded from the wetland buffer.**
- b. New development, except for
 - (1) development permitted in 3.30 B2, 3, and 4;*
 - (2) wells in rural areas; and*
 - (3) new fencing, so long as it would not impede the natural drainage, shall be sited to retain a setback from the boundary of the wetland sufficient to prevent adverse effects to the wetland's habitat values.**
- c. Within an Urban Limit Line, the setback shall be either 100 feet or less than the average setback of existing development immediately adjacent as determined by the "string line method". That method shall be used which provides development setbacks similar to those occurring on adjacent parcels and adequately protects the wetland.*
- d. Outside an Urban Limit Line, the setback shall be between 100 and 200 feet, depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wetland habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland.*
- e. In both urban and rural areas, setbacks of less than the distance specified above may be permitted only when the prescribed buffer would prohibit development of the site for principal use for which it is designated. Any such reduction in setback shall still retain the maximum setback feasible, and may*

require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland's habitat values.

- f. All new development within the wetland buffer shall include the following mitigation measures:
 - (1) Not more than 25% of the lot surface shall be effectively impervious.*
 - (2) The release rate of storm runoff to adjacent wetland shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.*
 - (3) Storm water outfalls, culverts, gutters, and the like shall be dissipated.*
 - (4) Septic systems or alternative waste disposal systems must meet standards of the Humboldt-Del Norte Health Department and the Regional Water Quality Control Board.*
 - (5) Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area.*
 - (6) Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).**

- g. The County shall request the Department of Fish and Game to review plans for development within 200 feet of the boundary of the wetland.*

Lands within the town of Samoa include area-specific policies for development within the town plan area. STMP (Wetlands/ESHA Policy 4) states:

All wetlands and non-wetland ESHAs identified outside of the areas designated Natural Resources identified in the certified STMP-LUP map except for environmentally sensitive raptor nesting habitat areas) shall require a 100-foot setback/buffer, unless it can be demonstrated that a reduced buffer is sufficient to prevent disruption of the habitat. Development adjacent to environmentally sensitive raptor nesting habitat areas shall be consistent with Section 30240(b) of the Coastal Act. Wetland and non-wetland ESHA buffers shall not be reduced to less than fifty (50) feet...

In addition, section 312-39 of the certified IP requires certain supplemental findings be made in approving any CDP on a property near wetland areas:

39.15 COASTAL WETLAND BUFFERS.

39.15.1 Development will be sited and designed to prevent impacts which would significantly degrade wetland habitat areas, and shall be compatible with the continuance of such habitat areas; and

39.15.2 The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms shall be maintained, and where feasible, restored.

Findings for Approval as Submitted

The lands that would be affected by the proposed IP amendment (MC-zoned lands within the County's CDP jurisdiction) include hundreds of acres of lands around Humboldt Bay, including areas with known wetlands, dunes, and other sensitive habitat areas.

The proposed IP amendment as submitted includes a performance standard requiring a minimum setback distance of 100 feet between interim uses and ESHA, as required by the LUP. As cited above, types of ESHA listed in the LUP include wetlands, dunes, and critical habitats for rare and endangered species. The LUP does not specify a minimum setback requirement for development adjacent to ESHA, but it does include section 30240(b) of the Coastal Act as a policy, which requires that development in areas adjacent to ESHA must be sited and designed to prevent impacts which would significantly degrade those areas. LUP section 3.30 requires minimum setbacks from wetlands and creeks, which vary depending on whether the site is located within or outside of the urban limit. Within urban areas, the setback distance may be less than 100 feet but in any case the setback must be sufficient to adequately protect the wetland. Within the town of Samoa, which is an urban area, there is a specific requirement that development maintain a 100-foot setback from wetlands and ESHA, with the possibility of reducing the setback to 50 feet unless it can be demonstrated that a reduced buffer is sufficient to prevent disruption of the habitat. In rural areas, *“the setback shall be between 100 and 200 feet, depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wetland habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland.”*

Any permit for an interim use must be found consistent with all applicable policies of the LUP, including those cited above. In addition, the amendment as submitted expressly prohibits, in the proposed IP performance standards, impacts to coastal wetlands or waters from interim uses. Thus, certification of the proposed IP amendment as submitted is adequate to carry out and conforms with the LUP as conditionally certified.

v. Protection of Archaeological Resources

Section 30244 of the Coastal Act, cited in Finding IV-C-iv above, is included as a policy of the certified LUP. In addition, many of the subject lands are designated with an “A” combining zone designation, which provides an additional layer of protection for archaeological resources:

313-16.1 A: ARCHAEOLOGICAL RESOURCE AREA OUTSIDE SHELTER COVE

16.1.1 Purpose. The purpose of these regulations is to provide for reasonable mitigation measures where development would have an adverse impact upon archaeological and paleontological resources.

16.1.2 Applicability. These regulations shall apply to lands designated “A” on the Zoning Maps, except for the Shelter Cove area, which includes areas with great archaeological and paleontological value as identified by the State Historic Preservation Officer...

16.1.3 Modifications Imposed by the Archaeological Resource Area Regulations. Wherever the provisions of these regulations conflict with or are inconsistent in application with any other regulations, the regulation most protective of archaeological resources shall apply.

16.1.4 Required Mitigation. Measures to mitigate adverse environmental effects of development within Archaeological Resource Areas shall include, but are not limited to, the following:

16.1.4.1 Relocate planned structures and roads to avoid or mitigate impacts on archaeological sites;

16.1.4.2 Provide protective cover for sites that cannot be avoided;

16.1.4.3 Where appropriate, and providing all parties concerned approve, the removal or transfer of culturally significant material by a professional archaeologist shall be permitted.

16.1.5 Additional Requirements for the Protection of Native American Graves, Burial Grounds, Cemeteries and Ceremonial Sites. Notwithstanding the other provisions of this Chapter, whenever a development will involve activities which may adversely affect Native American graves, cemeteries, burial grounds, or ceremonial sites, the County will follow or impose the following requirements:

16.1.5.1 Consultation With Indian Associations: Prior to final approval or authorization of such development, the County shall consult with representatives of the Northwest Information Center of the California Archaeological Inventory (NICCAI), Department of Anthropology, Sonoma State University, and the Native American Heritage Commission (NAHC) and any known interested Native Americans. Such consultation will be directed to the questions of whether the project or operation will adversely affect Indian graves, cemeteries, burial grounds, or ceremonial sites, and whether there are reasonable alternative means of accomplishing the project or operation which would not adversely affect such graves, cemeteries, burial grounds or ceremonial sites.

16.1.5.2 Required Mitigation Action: Based upon the information and recommendations received during the review (see, subsection 16.1.5.1), the project application shall be acted on in a manner that provides the best feasible protection to cultural sites.

Findings for Approval as Submitted

As discussed in the corresponding LUP Finding, when the proposed LCP amendment was in process at the local level, the County consulted with the Wiyot Tribe pursuant to Senate Bill 18, which requires cities and counties to contact and consult with California Native American tribes prior to amending or adopting any general plan or specific plan and prior to designating any land as open space. The County consulted with the Tribal Historic Preservation Officers (THPOs) for the three Wiyot area tribes (Bear River Band of Rohnerville Rancheria, Blue Lake Rancheria, and Wiyot Tribe). The THPOs recommended certain language be included in the proposed permitting provisions for interim uses to notify landowners and developers applying for interim use permits that an assessment of potential impacts to tribal cultural resources may be required. The specific language included in the IP amendment as submitted states:

Ground disturbing activities will require review by local Native American tribes and may require a record search, a site visit, and/or an archaeological survey for Tribal cultural resources during the permitting process. If a likelihood of significant resources is identified, project redesign, mitigation, and/or monitoring during ground disturbing activities may be required for areas considered sensitive.

Thus, the proposed IP amendment as submitted includes appropriate language to ensure that reasonable mitigation measures will be required for interim uses that may adversely affect archaeological resources, consistent with the LUP as conditionally certified.

In addition, the existing LCP includes other protections for archaeological resources, and any permit for an interim use must be found consistent with all the relevant policies of the Humboldt Bay Area Plan. For example, in addition to the certified LUP, which expressly includes Section 30244 of the Coastal Act as a policy of the plan, the “A” combining zone designation cited above requires the County to consult with appropriate tribal entities and resources during the permit process, prior to final approval or authorization of development that will involve activities that may adversely affect Native American graves, cemeteries, burial grounds, or ceremonial sites. The required consultation requires consideration of project alternatives that would avoid adverse impacts to archaeological resources. Any proposed application for an interim use permit will be required to provide the best feasible protection to cultural sites based upon the information and recommendations received during the project consultation.

Thus, certification of the proposed IP amendment as submitted is adequate to carry out and conforms with the LUP as conditionally certified.

vi. Protection of Public Access

The public access policies of the Coastal Act, cited in Finding IV-C-v above, all are included as policies of the LUP. In addition, the LUP includes additional policies related to protection of public access (section 3.50-B in part):

2. Prescriptive Rights

a. An initial survey of accessways is included in this Area Plan. This plan does not determine whether implied dedication or prescriptive rights exist. The Plan is made without prejudice to the existence or absence of such rights.

b. Where potential public prescriptive rights of access to be the shoreline are affected by new developments, the applicant shall either:

(1) Site and design the project to maintain the accessway, or

(2) Provide an equivalent accessway to the same designation including dedication of an access easement as described in Section 3.50B3 or

(3) Demonstrate that either the State of California has quitclaimed any interest it may have in the accessway or a court of competent jurisdiction has determined that prescriptive rights do not exist along the accessway.

3. Dedication

New development on parcels containing the accessways identified in Section 3.50 (access/inventory) shall include an irrevocable offer to dedicate an easement, as described in Section 3.50B4 for public use as provided in 3.50C. Such offers shall run for a period of 21 years and shall be to grant and convey to the people of the State of California an easement for access over and across the offerer's property.

...

6. Unavoidable Loss of Public Access

New industrial development which impedes or interferes with public access to or along the bayshore between Park Street in Fairhaven and the County's Samoa boat ramp, as described in Section 3.50C 24 and 26, shall provide off-site improvements to open other equivalent bayshore areas where no public access exists, such as the Elk River Spit, or enhance comparable, existing bay access. Such improvements shall include, as necessary, dedication of access easements, fee title along the new accessway, access improvements, including parking areas and trails, and provisions for maintenance and operation of the new accessway.

If an applicant cannot provide these improvements or these improvements amount to only a portion of an overall preferred off-site access proposal, an in-lieu fee payment shall be made to an appropriate public agency for the purpose of providing the above comparable bay access or enhancement of existing comparable bay access. (Enhancement of existing, comparable bay access could include in-lieu fees for shoreline protection at the County Boat Ramp and adjacent beach, development of a public fishing pier at the Boat Ramp, or provision of access facilities at Buhne Point.)

In addition, section 312-39 of the certified IP requires certain supplemental findings be made in approving any CDP on a property with existing public access:

39.2 PUBLIC ACCESS

39.2.1 For Dedication of Public Access Required by the Coastal Land Use Plan:

39.2.1.1 The access way conforms with or is adequate to carry out the public access designations and development guidelines of the County's Coastal Land Use Plan.

39.2.2 For Protection of Coastal Access ways with Substantial Evidence of Historic Public

Use (except where the applicant has established that the State has disposed of any interest in the access way or that there has been a final court determination that there has been no implied dedication or prescriptive use):

39.2.2.1 There is substantial evidence of Historic Public Use; and

39.2.2.2 The development has been sited or designed so as not to interfere with the use of such access way; or

39.2.2.3 If it is determined:

39.2.2.3.1 that use of the access way would have adverse impacts on fragile coastal resources, including but not limited to, rocky intertidal areas, seal haul-out and pupping areas, and bird rookeries; or

39.2.2.3.2 that use of the access way will significantly aggravate existing coastal bluff erosion in a manner which cannot be mitigated; or

39.2.2.3.3. that use of the access way is inconsistent with protection of public safety due to extraordinary hazards; and

39.2.2.3.4 that an equivalent access way which mitigates such adverse impacts will be provided.

Findings for Approval as Submitted

As discussed in the corresponding LUP Finding, the certified LUP Access Inventory identifies several access points in the vicinity of the MC lands that are the subject of this LCP amendment (see [Exhibits](#)). Many of these accessways are on lands within the Commission's retained CDP jurisdiction where the proposed LCP amendment will not apply. As proposed, interim uses may not occur within 100 feet of a dock to protect CDI uses. This standard will have a secondary benefit of protecting access to coastal waters for public recreational use. In addition, with the existing LCP requirements cited above, which include the various public access policies of the Coastal Act, the permitting of interim uses on locally zoned MC lands will not result in the

possibility of interference with public access. Thus, certification of the proposed IP amendment as submitted is adequate to carry out and conforms with the LUP as conditionally certified.

VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As set forth in section 21080.9 of the California Public Resources Code, CEQA exempts local governments 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 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 County's LCP Amendment consists of both Land Use Plan (LUP) and Implementation Plan (IP) amendments. The Commission incorporates its findings on Coastal Act and Land Use Plan (LUP) conformity into this CEQA finding as it is set forth in full. As discussed herein, the LUP amendment as originally submitted cannot be found to be consistent with the Coastal Act. 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 and adequacy of services. The Commission, therefore, has suggested modifications to bring the Land Use Plan into full conformance with the Coastal Act and the Implementation Plan amendment into full conformance with the certified Land Use Plan. 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 LCP 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 County, and in the case of areas of original jurisdiction, by the 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.