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Filed:	7/16/18
49 th Day:	Waived
Staff:	D. Preston-A
Staff Report:	10/26/18
Hearing Date:	11/9/18

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE & DE NOVO

Appeal No.: A-1-FTB-18-0048

Applicant: City of Fort Bragg

Appellants: Jacob Patterson

Local Government: City of Fort Bragg

Local Decision: Approval with Conditions.

Location: Within the former Georgia Pacific Mill Site at 321 and 331 Jere Melo St., in the City of Fort Bragg, Mendocino County (APN(s): 008-020-14, 018-430-15).

Project Description
Place approximately 12,000 cubic yards of clean soils associated with previously approved construction of improvement to the City's Wastewater Treatment Facility around the project site.

Staff Recommendation: Substantial Issue on Appeal and Approval with Conditions De Novo.

SUMMARY OF STAFF RECOMMENDATION

On July 16, 2018, Jacob Patterson filed an appeal of the City of Fort Bragg's approval of Coastal Development Permit No. 5-18 for the placement of approximately 12,000 cubic yards of clean soils associated with construction of the Wastewater Treatment Facility around the project site. The placement of soils is proposed to take place within two parcels (APN (s): 008-020-14, 018-430-15). The project activities will be conducted adjacent to the Fort Bragg section of the California Coastal Trail. The placement of soils requires truck crossings over the Trail itself.

Commission staff recommends that the Commission find that the appeal raises a substantial issue regarding consistency of the approved project with the public access policies of the certified LCP and Chapter 3 of the Coastal Act because the City-approved project does not provide adequate mitigation measures to protect public access on the Coastal Trail and adjacent recreation areas.

For the purposes of *de novo* review by the Commission, the applicant submitted supplemental information that provides more detailed analyses of project activities. The addenda consists of a revised project description, which includes a grading plan, a Public Access and Recreation Area Protection Plan, and highlighted best management practices (BMPs) referenced in the Stormwater Pollution Prevention Plan (**Exhibits 6, 7, and 8**). Commission staff believes the revised project description adequately protects public access and recreational use consistent with the policies of the certified local coastal program (LCP) and Chapter 3 of the Coastal Act by adding specific safety measures to avoid conflicts between trucks crossing the Coastal Trail and pedestrian and bicycle users of the Trail and to ensure dust control measures are fully implemented. To ensure that public access is maintained and protected as proposed, staff recommends **Special Condition Nos. 1-3**. These conditions require the Permittee to follow the standards provided in the Public Access and Recreation Area Protection Plan and the revised project description, which includes landscaping with native hydro-seeds and the employment of best management practices consistent with the policies of the certified LCP and Chapter 3 of the Coastal Act. **Special Condition No. 3** specifically addresses the need for dust control, which was raised by the appellant, and it ensures the protection of water quality and environmentally sensitive habitat areas. **Special Condition No.1** ensures the implementation of safety standards and mitigation measures that protect public access.

The motion to adopt the staff recommendation of substantial issue is found on page 4, and the motion to adopt the staff recommendation of approval with conditions is found on page 11.

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APPENDICES

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EXHIBITS

[Exhibit 1 – Regional Location Map](#)

[Exhibit 2 – Vicinity Map](#)

[Exhibit 3 – Land Use Designation Map](#)

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[Exhibit 5 – City-Approved Project Plans](#)

[Exhibit 6 – Project Description for De Novo](#)

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[Exhibit 8 – Stormwater Pollution Prevention Plan Excerpts](#)

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[Exhibit 10 – Appeal from Jacob Patterson](#)

I. MOTION AND RESOLUTION ON SUBSTANTIAL ISSUE

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-FTB-18-0048 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **NO** vote on the foregoing motion. Following the staff recommendation by voting no will result in the Commission conducting a *de novo* review of the application, and adoption of the following findings. Passage of this motion via a yes vote, thereby rejecting the staff recommendation, will result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners.

Resolution:

The Commission hereby finds that Appeal No. A-1-FTB-18-0048 presents a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. APPEAL JURISDICTION AND PROCEDURES

IMPORTANT NOTE:

The Commission will not take public testimony during the substantial issue phase of the appeal hearing unless at least three (3) commissioners request it. Unless the Commission finds that the appeal raises no substantial issue, the *de novo* phase of the hearing will immediately follow at this meeting, during which the Commission will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

Appeal Jurisdiction and Grounds for Appeal

The Coastal Commission effectively certified the City of Fort Bragg's local coastal program (LCP) in 1983. After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Pursuant to Coastal Act Section 30603, the City of Fort Bragg's approval of the subject

project is appealable to the Commission because the development is located (a) between the sea and the first public road, and (b) within 300 feet of the top of the seaward face of a coastal bluff.

The Commission's Appeal Jurisdiction is further discussed in **Appendix A** which is hereby incorporated by reference. The grounds for appeal of a local government action approving a CDP for development in an appealable area are limited to allegations that the approved development does not conform to the standards set forth in the certified LCP and the public access policies of the Coastal Act.

Appeal Procedures

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue¹ exists with regard to the grounds on which the appeal has been filed. In this case, because the Commission staff is recommending that the appeal raises a substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review at the same or subsequent meeting without taking public testimony during this phase of the appeal hearing.

If three Commissioners object, the Commission will hear arguments and vote on the substantial issue question. Generally, and at the discretion of the Chair, qualified persons will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, appellants, persons who made their views known to the local government (or their representatives) and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

B. LOCAL GOVERNMENT ACTION

The City of Fort Bragg Planning Commission approved Coastal Development Permit No.5-18 with special conditions at its hearing held on June 13, 2018. The approved project authorizes the City of Fort Bragg to place approximately 12,000 cubic yards of clean soils excavated as part of the previously approved adjacent construction of improvements to the City's Wastewater Treatment Facility at various stockpile location on lands surrounding the Wastewater Treatment Facility. In some cases the stockpiles were approved to be shaped into berms that will help visually screen the adjacent Wastewater Treatment Facility. Excavated material was also placed on previously disturbed and partially graveled and paved lands near the site for use in recontouring the site and creating a more natural appearing landscape.

¹ The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: (a) the degree of factual and legal support for the local government's decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

The City granted its approval of the Coastal Development Permit subject to 7 special conditions (**Exhibit 9**, pgs. 2, 3) requiring the following:

1. Implementation of the best management practices contained in the Stormwater Pollution Prevention Plan (SWPPP) associated with the Wastewater Treatment Facility (WWTF) renovation;
2. Immediate notification of spills, dust or sediment release, or release of potentially hazardous materials;
3. Conducting construction reports and site inspections conducted in accordance with the provisions of the SWPPP;
4. Stabilization of all stockpiled soil prior to submittal of a Notice of Termination with the Regional Water Quality Control Board;
5. Halting development and notifying the Fort Bragg planning staff and retain a professional archaeologist to determine appropriate actions if an archaeological site is discovered during construction;
6. Grading and contouring soils placed to the North and East of the WWTF are to be graded and contoured immediately upon placement and subsequently hydro-seeded with a native seed mix by October 30, 2018; and
7. Grading and contouring soils placed within 200-feet of the multi-use trail shall be similarly graded, contoured, and subsequently hydro seeding with a native seed mix by October 30, 2018 in the manner described in Special Condition No. 6.

C. SITE DESCRIPTION

The development site is within a 433-acre area that was historically used for lumber mill activities, previously managed by Georgia Pacific, who ceased all mill operations in 2002. The project extends over two parcels that are now owned by the City of Fort Bragg (**Exhibit 1**). The first parcel is 3.14 acres (APN: 008-020-014) and the second parcel is 11.64 acres (APN: 018-430-15); both parcels surround the Fort Bragg Wastewater Treatment Plant which is situated along the coastal bluff. The subject parcels are located off of Jere Melo Street, south of West Oak Street and parallel to Main Street, in the City of Fort Bragg (**Exhibit 2**). The property is located directly west of the Mendocino Coast Chamber of Commerce offices and can be accessed from an unpaved driveway leading toward the Wastewater Treatment Plant, approximately 100-feet from coastal waters. The Georgia Pacific Mill Site operations and the associated industrial development have heavily impacted the area, leaving it mostly devoid of natural vegetation.

The California Coastal Trail winds through the subject property adjacent to the Treatment Plant (**Exhibit 2**). The trail is ADA-compliant and it provides spectacular views while supporting bike and pedestrian uses. The trail can be accessed from Elm Street, Cypress Street, and the west end of North Harbor Drive.

A biological survey completed for the Wastewater Treatment Plant Upgrade project in August 2016 identified the following environmentally sensitive habitat areas (ESHA) in the vicinity of the project area: wetlands (estuarine and marine); freshwater marsh; gum plant patches (associated with northern coastal bluff scrub); and Mendocino Coast Paintbrush (**Exhibit 4**, pgs. 2, 3). WRA Environmental Consultants prepared a map of the adjacent biological resources in

2014, indicating the presence of coastal terrace prairie/northern coastal bluff approximately 60-80-feet from project area (**Exhibit 4**, pg. 1).

The subject parcels are zoned Timber Industrial (TI), but the Wastewater Treatment Facility (WWTF) adjacent to the subject property is zoned for Public Facilities and Services (PF) (**Exhibit 3**). The City's Coastal Land Use and Development Code (CLUDC §17.24.020) defines the intent of the Timber Industrial Zone, which consists of uses related to forest products processing, log yards, planing mills, manufacturing wood products, storage of forest by-products, commercial seedling nurseries, and other similar support activities. Section 17.24.030 describes other allowable land uses, which includes the following activities: crop production, horticulture, orchard, vineyard, open space, public parks, recreation, office accessory, and public safety facility as permitted uses, as well as aquaculture, outdoor storage and transit station or terminal under use permit (see **Appendix C** for a summary of relevant policies).

D. DESCRIPTION OF APPROVED PROJECT

On June 13, 2018, the City of Fort Bragg Planning Commission approved Coastal Development Permit (CDP) No. 5-18 with special conditions (**Exhibit 9**). The approved CDP authorizes the placement of approximately 12,000 cubic yards of clean soils excavated as part of the previously approved adjacent construction of improvements to the City's Wastewater Treatment Facility (WWTF), originally constructed in 1970, approved under a separate coastal development permit, City of Fort Bragg CDP No. 2-16. The stockpiling of excavated soils under the current coastal development permit under appeal was approved to be placed at six separate areas on lands surrounding the Wastewater Treatment Facility (**Exhibit 5**). Approximately 4,000 cubic yards of the stockpiled material would eventually be transported back to WWTF site to fill in around the perimeter of some of the structures added or improved under the WWTF upgrade project. Much of the stockpile material would be used for other purposes. In some cases the stockpiles were approved to be shaped into berms that would help visually screen the adjacent Wastewater Treatment Facility. Excavated material would also be placed on previously disturbed and partially graveled and paved lands inland of the WWTF and Coastal Trail for use in recontouring the site and creating a more natural appearing landscape.

The temporary stockpiles of material were approved not to exceed a maximum height of 25-feet, and the material not returned to the WWTF site would be shaped and spread within eighteen months. After final grading, all disturbed soil would be hydro-seeded. The City of Fort Bragg's contractors began work on the project before the Coastal Commission's appeal period had finished. Without the benefit of a permit, trucks transported soil from the Wastewater Treatment Facility to the subject parcels and the berms to screen the WWTF were preliminarily shaped. In addition, the berms and other stockpile areas were hydro-seeded. Approved development that has not been completed includes the transfer of the 4,000 cubic yards to be returned to the WWTF site, final contouring of portions of the berms created for screening the WWTF, the recontouring and landscaping of the graveled and paved lands inland of the WWTF and Coastal Trail, and final hydro-seeding of the graded areas. The soil storage areas are displayed in the various photographs contained in (**Exhibit 5**, pgs. 2, 3).

E. FILING OF APPEAL

The North Coast District Office received a Notice of Final Action from the City on June 29, 2018 (**Exhibit 9**). The Commission's 10-working-day appeal period began on July 2, 2018 and ended on July 16, 2018. Jacob Patterson filed a timely appeal of the City's decision to grant the permit on July 16, 2018 (**Exhibit 10**). The appeal raises contentions related to: (1) protection of public access use; (2) allowable use under the certified land use and zoning designations; and (3) consistency with the California Environmental Quality Act (CEQA). In summary, the appellant contends the following:

1. The project approved by the City is inconsistent with the Open Space Policies of the certified LCP and Section 30210 of the Coastal Act, which provides for maximum coastal access and recreational opportunities because impacts of the approved project on use of the Coastal Trail such as dust from the transfer and stockpiling of soil and conflicts between trucks transporting excavated material and pedestrians and bicyclists using the trail.
2. The project approved by the City is inconsistent with the Timber Resources Industrial (IT) land use designation and Timber Industrial (TI) zoning district, since the placement and permanent grading of soil for the Wastewater Treatment Plant is not an activity associated with timber resources and forest products manufacturing, which was the intent for the IT designation and TI zoning.
3. The City failed to perform adequate environmental analyses and should have viewed this project as a component of the CEQA studies covering the Wastewater Treatment Facility renovation and the construction of the Coastal Trail. The City determined the approved project was environmentally exempt under CEQA. The appellant argues that the project is inconsistent with the CEQA requirements of Chapter 17.72 of the Coastal Land Use and Development Code.

F. ANALYSIS OF APPELLANT'S CONTENTIONS

Section 30603 of the Coastal Act states that after certification of a LCP, an appeal of a local government-issued CDP for a development located between the first public road and the sea is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. The Commission finds that all but the last of the above contentions present valid grounds for appeal. The Commission finds that the appellant's first and second contention raises a substantial issue of conformance of the approved development with the policies of the certified LCP and Chapter 3 of the Coastal Act (§30210). The three contentions are discussed in further detail below. The relevant LCP and Coastal Act policies are shown in full in **Appendix C**.

Contention 1

The appellant contends that the approved development interferes with public access to and recreation on the Coastal Trail. The appellant contends that the approved soil placement

activities have created a conflict with the public's use and enjoyment of the trail. The appellant cites disturbances from traffic crossings, including trail blockages and interferes with pedestrian and bicyclist traffic, and the spread of dust over the trail from soil movement operations. The appellant asserts that this location is one of the main attractions for visitors to Fort Bragg and provides one of the main means of ADA-compliant coastal access. The appellant contends that the approved project is inconsistent with the public access policies of the Coastal Act and other similar policies contained in the City of Fort Bragg Certified Local Coastal Program, including policies OS-15.2, 16.1 and CD-1.1; 1.4, 2.5 and Section 17.50.070 of Coastal Land Use and Development Code (CLUDC).

The coastal development permit approved by the City includes conditions designed to control the potential for dust impacts from the movement, stockpiling, and grading of excavated material. For example, Special Condition 1 requires implementation of best management practices (BMPs) contained within the Stormwater Pollution Prevention Plan (SWPPP) that was approved by the Regional Water Quality Control Board for the related WWTF renovation project approved under a separate CDP by the City. The SWPPP includes BMPs such as watering of graded areas and covering stockpiled material. In addition, Special Conditions 6 and 7 of the City-approved CDP require contouring and hydro-seeding of stockpiled areas by the end of the dry season (October 31st). Although, the appellant contends that these measures have not always been followed with the work that began on the project prior to securing a coastal development permit, the measures are enforceable conditions of the City-approved CDP.

However, the approved coastal development permit does not contain any special conditions requiring measures to reduce the safety hazards associated with truck crossings of the Coastal Trail. The approved project involves the hauling of hundreds of truckloads of excavated soil originating from the WWTF across the Coastal Trail over a number of months, both for stockpiling and recontouring of areas outside of the WWTF boundaries and for the return of some of the material back to WWTF site after improvements to the WWTF being performed under a separate City-approved CDP are completed. The truck crossings interrupt use of the Trail by pedestrians and bicyclists, and create a safety hazard for public access users. The potential for bicycle-truck conflicts is of particular concern given that bicyclists heading northbound on the trail come from around a corner of the fenced WWTF grounds and descend a slope toward the truck crossing site and can be traveling at a relatively high rate of speed.

The City staff report for the approved development concludes that the project is consistent with the certified local coastal program and the public access policies of the Coastal Act. The report simply states that the Coastal Trail would not be impacted by the stockpiling and eventual grading of soils. However, the report does not provide an analysis to support that determination. After the appeal was filed, Commission staff was notified that a Traffic Control Plan had been prepared for the project, which included safety signage, but the Plan contains no other provisions to protect public access and minimize trail impacts from truck crossings and the Traffic Control Plan is not discussed in the City's findings for the coastal development permit and is not required to be implemented by conditions of the CDP.

Open Space Policy 16.1 of the certified LUP mirrors the requirements of Section 30210 and 30214 of the Coastal Act, which state that maximum access and recreational opportunities must

be provided consistent with public safety needs. Open Space Policy 16.7 requires mitigation measures to protect public access be implemented prior to or concurrent with construction. The importance of maintaining public access and recreational opportunities within the Coastal Trail for the safe enjoyment of the public is a matter of statewide concern. Therefore, the Commission finds that the contention related to the protection of public access and recreation facilities raises a substantial issue of conformance of the project as approved with the certified local coastal program and the public access policies of the Coastal Act.

Contention 2

The appellant claims that the approved project is inconsistent with the permitted uses of the Timber Resources Industrial (IT) designation and Timber Industrial (TI) zone. The appellant contends that the zoning district does not permit outdoor storage of excavated soil and the City's findings dismiss the issue by stating that the placement of soils is not considered a land use (see **Exhibit 10**, pg. 8).

Page 2-7 of the LUP Land Use Element describes the allowed industrial uses in the zone, which primarily consist of activities associated with forest products and related support activities (see **Appendix C** for a complete view of relevant policies). The City's findings determined that the approved project was only temporary and would not impact the future land uses consistent with the zone. However, a portion of the project involves the permanent placement of material contoured into berms to screen views of the WWTF and the recontouring of previously graded and paved lands inland of the WWTF to create a more natural-looking topography and landscape that will improve their appearance as viewed from public vantage points such as the Coastal Trail. The City's findings do not acknowledge this permanent use of the land and do not explain how the development is consistent with the land uses allowed under the Land Use Plan designation and zoning district applied to the property in the certified LCP. Therefore, the City did not provide factual support for its determination that the approved development is consistent with permitted uses of the Timber Resources Industrial Designation and the Timber Industrial Zone. Therefore, the Commission finds that the contention that the development is not consistent with the land use and zoning designation applied to the site raises a substantial issue of conformance of the project as approved with the certified local coastal program.

Contention 3

The appellant states that the City did not perform sufficient environmental review for the project activities and that the development does not comply with the California Environmental Quality Act (CEQA). The City determined that the project met the requirements for a CEQA exemption. However, the appellant argues that the project approved by the City is inconsistent with the CEQA requirements of Chapter 17.72 of the City's Coastal Land Use and Development Code (CLUDC). The CLUDC includes the certified Implementation Plan for the City's LCP. However, the document contains a number of chapters and standards that address subject matters not directly governed by the Coastal Act which were not certified by the Commission as part of the City's Implementation Plan. The CLUDC stated in Chapter 17.10 and at the beginning of Chapter 17.72 that "Chapter 17.72 is not part of the certified City of Fort Bragg Local Coastal Program and shall not govern the review and approval of Coastal Development Permits." Therefore, the Commission finds that the contention does not raise a substantial issue of

conformity of the approved project with the certified LCP and Chapter 3 policies of the Coastal Act.

G. CONCLUSION

The Commission finds that the appeal raises a substantial issue with respect to conformance of the City-approved development with LCP policies regarding (1) the protection of public access and recreation, and (2) analysis of allowable uses under the IT designation and TI zone. The appeal raises a substantial issue of conformity of the approved project with these LCP policies because: (1) the City staff report and record do not contain factual support to demonstrate public access will not be impeded by the project activities and did adequately analyze the placement of soils as a land use; and (2) maintaining public access and recreational opportunities within the Coastal Trail is a matter of statewide concern. Section 30210 and 30214 of the Coastal Act requires maximum access to the coast and recreation opportunities while protecting public rights, the rights of private property owners and natural resource areas from overuse. Therefore, for the reasons stated above, the Commission finds that Appeal No. A-1-FTB-18-0048 raises a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified local coastal program and the public access policies of the Coastal Act.

III. MOTION AND RESOLUTION ON DE NOVO

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-FTB-18-0048, subject to conditions, pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves coastal development permit A-1-FTB-18-0048 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified City of Fort Bragg LCP. Approval of the permit 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 development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

IV. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

V. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Protection of Public Access and Recreation.** The Applicant shall undertake development consistent with the revised project description included in **Exhibit No. 6** of the Commission staff recommendation and the standards and safety measures provided in the Public Access and Recreation Area Protection Plan included in **Exhibit No. 7** of the Commission staff recommendation while undertaking project activities, including, but not limited to, the measures requiring the following:
 - A. Watering for dust control must occur at a minimum of once daily when rainfall for the preceding 24 hour is less than 0.5 inches;
 - B. Final grading of soils to remain outside the Facility site shall be completed and hydro-seeded prior to October 31, 2019;
 - C. Truck crossings shall occur only during non-peak trail use hours (weekdays, 7am-5pm);
 - D. Installation of signage conforming to Caltrans specifications stating “Road Work Ahead,” “Truck Crossing,” and “Stop;”
 - E. Truck speeds must not exceed 5 m.p.h. and trucks shall not proceed until the Coastal Trail is clear of approaching bicyclists and pedestrians;

- F. Trucks drivers must comply with all trail crossing protocols as specified on page 10 of **Exhibit 7** of the staff recommendation; and
 - G. Project contractors and truck drivers shall be educated regarding the truck crossing safety requirements of this condition.
2. **Landscaping Restrictions.** The Permittee shall comply with the following landscaping-related restrictions:
- A. Only native and/or non-invasive plant species shall be used in the hydro-seed mix applied to graded areas to be planted as part of the project landscaping; and
 - B. All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials.
3. **Construction Responsibilities and Standards.** The Applicant shall follow the Stormwater Pollution Prevention Plan (SWPPP) to ensure that best management practices to protect water quality and environmental sensitive habitat areas are implemented. The Applicant will specifically employ the highlighted policies of the SWPPP provided in **Exhibit 8** of the Commission staff recommendation, which include, but are not limited to the following measures:
- A. Temporary erosion control BMPs consisting of scheduling; preservation of existing vegetation; hydro-seeding; straw mulch; earth dike and drainage swales; and wind erosion control (**Exhibit 8**, pg. 1);
 - B. Temporary sediment control BMPs including fiber rolls; street sweeping; and storm drain inlet protection (**Exhibit 8**, pg. 2);
 - C. Temporary non-stormwater BMPs including utilizing potable water/irrigation (**Exhibit 8**, pg. 3); and
 - D. Temporary materials management BMPs including stockpile management and material delivery and storage (**Exhibit 8**, pg. 4).
4. **Conditions Imposed by Local Government.** This action has no effect on conditions imposed by the City of Fort Bragg pursuant to an authority other than the Coastal Act, including, but not limited to all such conditions imposed on the development by City of Fort Bragg Coastal Development Permit No. 5-18 pursuant to state general plan and zoning laws.
5. **Permit Expiration and Condition Compliance.** Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

VI. FINDINGS AND DECLARATIONS

A. DE NOVO PROCEDURES

If the Commission finds that a locally approved CDP raises a substantial issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the project *de novo*. Since the proposed project is in part within an area for which the Commission has certified a LCP and between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with City of Fort Bragg's certified LCP and Chapter 3 public access policies of the Coastal Act. The Commission may approve, approve with conditions (including conditions different than those imposed by the City), or deny the project. Testimony may be taken from all interested persons at the *de novo* hearing.

B. SITE AND PROJECT DESCRIPTION

A description of the site is hereby incorporated by reference from **Section II-C** of the Substantial Issue portion of this staff report beginning on page 6.

C. ADDITIONAL INFORMATION PROVIDED FOR DE NOVO REVIEW

For the purposes of *de novo* review by the Commission, the applicant has provided supplemental information that was not a part of the record when the City originally acted to approve the CDP, including a revised project description, a Public Access And Recreation Area Protection Plan, and a delineation of BMPs from the Regional Water Quality Control Board Approved SWPPP that apply specifically to the proposed development. The supplemental information is contained in **Exhibits 6, 7 and 8**.

D. Amended Project Description for De Novo Review

The applicant submitted an amended project description dated September 24, 2018, that was further supplemented in a letter dated October 18, 2018 (see **Exhibit 6**). The amended project description clarifies that the applicant is seeking after-the-fact authorization for the placement of approximately 12,000 cubic yards of clean soils associated with the construction of the WWTF site to backfill the construction project, and approximately 8,000 cubic yards of material would remain outside the project parcel, activities that were previously commenced without the benefit of a CDP. According to the description, the remaining soil will soften the undesirable industrial hardscape portion of the surrounding property, where each pile will be sculpted to look natural and to be a visual improvement to the area. In addition, the project will require truck trips to cross the Coastal Trail at a perpendicular angle, and be subject to a Public Access and Recreation Area Protection Plan (**Exhibit 7**). In accordance with this Plan, truck traffic will not exceed a maximum speed of 5 m.p.h. when crossing the trail and truck drivers are required to follow a set of crossing protocols to ensure safety for all trail users (see **Exhibit 6 and 7**). Safety was addressed through a visual analysis, which found that cyclists had more than 240-feet of unobstructed site distance traveling northbound and over 480-feet of site distance traveling southbound, which exceed the minimum 230-feet needed for a bicyclist to come to a complete stop when traveling 30 m.p.h. Three signs have been added to the Trail to control traffic and warn cyclists to reduce their speeds.

The amended project description also proposes following the erosion runoff control measures provided in the Stormwater Pollution Prevention Plan (SWPPP), utilizing best management practices (BMPs) that includes the use of water for dust control and hydro-seeding for the 8,000 cubic yards of material that will remain beyond the WWTF and be subject to final grading, not to exceed an as-built height of 4-6-feet west of the trail and 4-feet east of the trail. Watering for dust control will occur at a minimum of at least once daily during soil-moving activities when rainfall over the previous 24 hours is less than 0.5 inches. Water will be used in a conservative manner, not to exceed one water truck (3,000 gallons) per day for dust control, although considerably less water usage is anticipated. The City noted that they have 3.3 million gallons of “finished” water on hand which may be utilized for the project, thus demonstrating adequate water supply. The amended project description also provides an updated schedule of activities, stating that the soils will be hydro-seeded before October 31, 2018 while the City awaits the final status of the Commission’s appeal. Final grading of soils and subsequent hydro-seeding, assuming the amended project under *de novo* is approved, would take place prior to October 31, 2019.

E. LAND USE

Section II-C (pg. 7) and **II-F** (pg. 10) of the Substantial Issue portion of the staff report describes the allowable uses in the Timber Industrial (TI) Zone (Section 17.24.020 of the CLUDC). In addition, Section 2-G (pg. 2-6) of the Coastal General Plan describes the permitted uses within the Timber Resources Industrial (IT) land use designation, which includes log yard activities; storage and inventory of forest by-products; manufacturing and remanufacturing of forest products; product shipping operations; commercial seedling nursery operations; and related support facilities. The designation and zoning classification for industrial timber uses is consistent with the historic lumber mill operations previously undertaken at the Georgia Pacific Mill Site. Since the subject property is located in close proximity to the coast, the TI Zone also provides for non-industrial uses, including public parks, recreation, and open space (pg. 2-6 of LUP).

The proposed stockpiles west of the Trail will be formed into berms that will help screen the WWTF from view from public vantage points, while the stockpiles east of the Trail will be used to enhance the flattened developed area by recontouring the area and hydro-seeding it with native plants, thereby improving the visual character of the landscapes adjacent to the Trail. The Commission finds that the amended project under *de novo* is consistent with the purpose and intent of the IT designation and TI zone because it provides an enhanced open space environment that allows for recreation, which is consistent with the public park and recreation facility, open space, and conservation uses allowed as principally permitted uses in the TI zoning district.

F. PUBLIC ACCESS

As previously discussed, the California Coastal Trail is located adjacent to the subject property (**Exhibit 6**, pg. 1). The Trail provides ADA-access and accommodates both bicycle and pedestrian uses. Access to the Fort Bragg portion of the Trail is a matter of statewide importance

due to its statewide connectivity, the opportunities it provides for recreation, and associated tourism on the coast.

Open Space Policy 16.1 of the certified LCP mirrors the language of Section 30210 and 30214 of the Coastal Act, which states that coastal access and recreational opportunities along the coast must be maximized in balance with public safety needs and measures to prevent overuse. Open Space Policy 16.7 requires the implementation of mitigation measures to protect public access prior to or concurrent with construction.

The City submitted a revised project description and a Public Access and Recreation Area Protection Plan for purposes of *de novo* review on September 24, 2018 which was revised and resubmitted on October 18, 2018 (**Exhibit 7**). The Public Access and Recreation Area Protection Plan (PARAPP) states that the project will require approximately 400 truckloads to transport soil back to the Wastewater Treatment Facility. Truck crossings are expected to last approximately two seconds each way and access along the trail will be affected for a total of approximately 26 minutes for the entire length of the project.

The PARAPP improves safety for trail users and includes a “Sight Distance Analysis” (see **Exhibit 7**, pgs. 4-10). The analysis examines visibility from the WWTF truck exit driveway to four different points on the Coastal Trail. Using a conservative approach, the analysis assumes bicyclists will be traveling at a speed of 30 m.p.h. In all cases, when traveling at 30 m.p.h., the distance for a bicyclist to reach a complete stop would be 230-feet. Point A is the closest point to the truck exit on the south side, measured at 242-feet away. The sight visibility exceeds the minimum distance required to adequately bring a bicycle to a full controlled stop by 12-feet. Point B is the furthest point to the truck exit on the south side, measured at 266-feet away. The sight visibility exceeds the minimum distance required to adequately bring a bicycle to a full controlled stop by 36-feet. Point C is closest point to the truck exit on the north side, measured at 373-feet away. The sight visibility exceeds the minimum distance required to adequately bring a bicycle to a full controlled stop by 143-feet. Point D is the furthest point to the truck exit on the north side, measured at 259-feet away. The sight visibility exceeds the minimum distance required to adequately bring a bicycle to a full controlled stop by 259-feet.

The City has proposed numerous proposed trail crossing standards to further enhance safety for all Coastal Trail users (**Exhibit 7**, pg. 10). Signage according to Caltrans specifications stating “Road Work Ahead,” “Truck Crossing,” and “Stop” has also been implemented. Trucks are required to stop and wait for the trail to be clear of moving pedestrians and cyclists before proceeding. Specifically, the PARAPP requires trucks to comply with the following standards:

1. Truck operators shall be made aware of trail crossing standards prior to their first trail crossing.
2. Trucks shall come to a full stop in front of the stop signs placed on the east and west side of the trail.
3. Truck operators shall look both ways to observe trail conditions.
4. Trucks shall not proceed (cross the trail) if the operator observes any of the following conditions:

- a. One or more cyclists are visible on the trail approaching the intersection from the south.
 - b. One or more cyclists are visible on the trail approaching the intersection from the north and are within 230 trail-feet of the intersection. This distance shall be made apparent by a road cone or similar device.
 - c. One or more pedestrians approaching the intersection and within 50 trail-feet of the intersection to either the north or south. The distance shall be made apparent by a line painted/chalked on the trail and/or a road cone or similar device.
5. Trucks may cross the trail once the conditions listed above are no longer present.

To control dust from soil movement and grading activities, the Public Access and Recreation Area Protection Plan submitted by the City includes the use of three primary BMPs, consisting of street sweeping (SE-7) and watering (WE-1) for dust control, and after final grading the use of hydro-seeding (EC-4). These best management practices are consistent with numerous LCP policies, including: (1) OS-14.4, which requires prompt soil stabilization; (2) dust control policies pursuant to §17.62.020 and §17.30.080-D of the CLUDC; and (3) post-construction BMP policies OS-10.2 and §17.64.070 (see **Appendix C** for summary of relevant policies).

The Commission finds that with the safety and dust control measures of the revised project description and PARAPP discussed above, the development will protect public access and recreation use of the Coastal Trail. **Special Condition No. 1** requires development to be undertaken consistent with the revised project description. As conditioned, the Commission finds the development is consistent with the policies of the LCP and Chapter 3 of the Coastal Act.

G. ENVIRONMENTAL SENSITIVE HABITAT AREA S

LUP Policy OS-1.1, defines ESHA as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments” (see **Appendix C** for summary of relevant policies). The proposed development is not located within a designated environmentally sensitive habitat area (ESHA). However, ESHA is located on adjacent parcels surrounding the subject property.

Biological studies of the project area and its surroundings were completed by William Maslach and WRA Environmental Consultants. The Biological Resources Report completed by William Maslach was intended for the separate Wastewater Treatment Plant Upgrade (CDP 2-18) project but this information provides context for the biological communities surrounding the subject property. Maslach identified numerous ESHAs in the project area. The study area contains wetlands consisting of a freshwater marsh and several freshwater seeps on the coastal bluff (**Exhibit 4**, pgs. 2, 3). The dominant plants growing within the seeps include yellow monkey flower (*Mimulus guttatus*), which is listed as the hydrological feature that defines the seep as a wetland under Coastal Act guidance. Gum plant patches (*Grindelia stricta*) were also observed and this vegetation community is considered to be an ESHA. Mendocino coast paintbrush was detected on the bluff edge and it is a rare plant that meets the definition of an ESHA (**Exhibit 4**, pg. 3).

A small colony of approximately fifteen pelagic cormorant birds was observed from the coastal bluff face in the study area (**Exhibit 4**, pg. 3). SHN Engineers and Geologists performed an additional survey in June 19, 2018 to assess adverse impacts to wildlife. The survey results indicate that the WWTF renovation activities are outside the birds' line of sight and that the birds are approximately 250-feet from the closest point of construction activities. As a result, SHN concluded that the WWTF renovation activities would cause no adverse impacts on the pelagic cormorant or the Ten Mile Shoulderband snail.

In addition to the biological studies completed by William Maslach, WRA Environmental Consultants prepared ESHA maps that were provided as supplemental materials to the City's Notice of Final Action (NOFA). The most relevant map is labeled "Figure 2 – Biological Communities" and it demonstrates the presence of Coastal Act wetlands, native grasslands (*Leymus xvancoverensis*) and coastal terrace prairie/northern coastal bluff within the study area south of the WWTF (**Exhibit 4**, pg. 1).

Open Space Policy 1.7 of the certified LUP states that development in areas adjacent to ESHAS must be sited and designed to prevent degradation and must be compatible with the continuance of habitat areas. The revised project description ensures all development takes place at least 100-feet from ESHA by reducing the extent of the berm created in Area 6 along the south side of the treatment plant to stay 100-feet back from the coastal bluff ESHA. In addition, the proposed berms and the areas to be recontoured will be planted and the proposed enhancement of the area with the planting of native hydro-seeds will help to support the longevity of the local habitat, which is consistent with Open Space Policies OS-1.8, OS-5.1 and OS-5.2 of the certified LCP (see **Appendix C** for summary of relevant policies).

LUP policy OS-1.13 requires native plants be utilized in areas within or adjacent to environmentally sensitive habitat areas. If local plants are not available, a genetic stock from an adjacent region of the floristic province may be used. The City of Fort Bragg submitted a copy of its seed mix submittal for the purpose of *de novo* review, pursuant to landscaping plan requirements provided in §17.34.040 and §17.34.060 of the CLUDC. The native seeds to be used consist of the following species: (1) Crescent City Tufted Hairgrass (*Deschampsia caespitosa*); (2) Humboldt Blue Wildrye (*Elymus glaucus*); (3) Sonoma Meadow Barley (*Hordeum brachyantherum*); (4) Alkali Barley (*Hordeum depressum*); (5) Contra Costa Creeping Red Fescue (*Festuca rubra molate*); and (6) Northern California Small Fescue (*Festuca microstachys*).

Open Space Policy OS-5.4 of the certified LCP states that develop requiring discretionary approval may be conditioned to prohibit the planting of invasive species. Section 17.34.060-E-2 of the CLUDC requires development adjacent to ESHA to include conditions that require invasive plant monitoring and removal and prohibits the planting of any plant species that is listed as problematic or invasive. Section 17.34.070 of the CLUDC calls for all site landscaping to be maintained to stay in a healthful and thriving condition (see **Appendix C** for summary of relevant policies). To further support the implementation of these policies, the Commission attaches **Special Condition No. 2** to ensure the planting and continued maintenance of native plants and the removal of invasive species on the subject property. As conditioned, the Commission finds the project will be sited and designed to prevent degradation of adjacent

ESHA and will be compatible with the continuance of the habitat area and is consistent with the ESHA protection policies of the certified LCP.

H. VISUAL RESOURCES

LUP policy CD-1.1 states that development must be designed and sited in a way that protects views to and along the ocean, be visually compatible with the character of surrounding areas, and restore and enhance scenic views in visually degraded areas. Community Development Policy 1.4 requires new development to be sited and designed in a way that minimizes adverse impacts on scenic areas visible from a public viewing area, such as the Coastal Trail. Section 17.50.070 of the CLUDC requires a visual analysis for areas designated as “Potential Scenic Views Toward the Ocean or the Noyo River” on Map CD-1, which is included in the Coastal General Plan (LUP).

The project will improve the visual appearance of areas seen from the Coastal Trail. The landscaped berms to be constructed along the eastern and southern perimeter of the WWTF facility adjacent to the Coastal Trail will help screen the industrial-looking WWTF from view while not blocking views of the ocean which are already blocked by the WWTF. In addition, the recontouring and landscaping of the stockpile area east of the trail will restore the previously flattened and paved area to a more natural looking appearance. The project is in conformance with LUP policies CD-1.1, 1.4, and 1.5, while providing consistency with the public parks, open space, and recreation allowable uses in the Timber Industrial Zone, as described §17.24.020 of the CLUDC. For the reasons stated above, the Commission finds the project to be compatible with the visual resource policies of the certified LCP.

I. WATER QUALITY

The Fort Bragg local coastal program includes a number of policies related to water quality. Open Space Policy 9.1 calls for minimizing the introduction of pollutants into coastal waters, which includes wetlands, while Open Space Policy 9.2 calls for the minimization of post-project increases in stormwater runoff volume and the peak runoff rate to avoid adverse impacts to coastal waters. The guiding principle for these policies is summarized in Open Space Policy 9.5, which states that the biological productivity and quality of coastal waters shall be maintained and restored, where feasible, by minimizing the adverse effects of wastewater discharge, controlling runoff, preventing depletion of groundwater supplies, and maintaining natural vegetation buffer areas that protect riparian habitats (see **Appendix C** for summary of relevant policies).

Many LCP policies govern the selection and design of appropriate best management practices (BMPs), which includes construction-phases and post-construction phases of development. Coastal General Plan (or LUP) Policy OS-10.1 requires a construction-phase stormwater runoff plan, consistent with OS-14.1, which calls for the minimization of runoff and pollution from construction activities, and §17.64.040 of the CLUDC, which lists the requirements of a stormwater runoff mitigation plan. Section 17.64.030 of the CLUDC requires industrial facilities to submit a Stormwater Pollution Prevention Plan (SWPPP) in compliance with State and

Federal regulations. The City of Fort Bragg completed their SWPPP on June 8, 2018 and it was later amended to cover both the Wastewater Treatment Facility renovation approved under a separate CDP (local CDP No. 2-18) and the placement and grading of soils covered under the subject permit application.

As the larger SWPPP covers both projects, it is unclear what BMPs would be used for the subject project. The City submitted a supplemental document for the Commission's review, which highlighted the specific BMPs to be used on-site and were drawn as excerpts from the larger SWPPP. Many BMPs were highlighted to allow the applicant flexibility to utilize a variety of management practices based on suitability and feasibility. Highlighted temporary erosion control BMPs include: scheduling; preservation of existing vegetation; hydro-seeding; straw mulch; earth dike and drainage swales; and wind erosion control (**Exhibit 8**, pg. 1). Temporary sediment control BMPs include: fiber rolls; street sweeping; and storm drain inlet protection (**Exhibit 8**, pg. 2). Potable water/irrigation was highlighted as an appropriate temporary non-stormwater BMP (**Exhibit 8**, pg. 3). Stockpile management and material delivery and storage are highlighted as temporary materials management BMPs (**Exhibit 8**, pg. 4).

The Public Access and Recreation Area Protection Plan submitted by the City includes the use of three primary BMPs, consisting of street sweeping (SE-7) and watering (WE-1) for dust control, and after final grading the use of hydro-seeding (EC-4). These best management practices are consistent with numerous LCP policies, including: (1) OS-14.4, which requires prompt soil stabilization; (2) dust control policies pursuant to §17.62.020 and §17.30.080-D of the CLUDC; and (3) post-construction BMP policies OS-10.2 and §17.64.070 (see **Appendix C** for summary of relevant policies).

Landscaping with native plants is required pursuant to LUP policy OS-11.8 and §17.64.070 B-6. As previously mentioned in the ESHA findings section, the City has submitted a seed-mix of native plants to be used for hydro-seeding, which is consistent with all LCP landscaping policies. The operation and maintenance of best management practices is required pursuant to LUP policy OS-11.10 and §17.64.070-C of the CLUDC. Since native hydro-seeding is proposed as a BMP, the Commission attaches **Special Condition No. 3** to ensure the continued maintenance and monitoring of the piles which will be hydro-seeded, to ensure that native plants are maintained and if they are threatened by invasive species, that the invasive plants would be removed, consistent with LCP policies OS-5.1, OS-11.8, §17.34.060-E. As conditioned, the Commission finds the project to be compatible with the water quality policies of the certified LCP.

J. ALLEGED VIOLATION

Violation of the Coastal Act and the City of Fort Bragg certified local coastal program (LCP) exists on the subject property, including, but not limited to moving clean soil from the Wastewater Treatment Facility to the subject property prior to securing a coastal development. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will ensure proper Coastal Act authorization going forward for the heretofore unpermitted development described in this staff report. Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the certified City of Fort Bragg LCP.

Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violation(s), nor does it constitute an implied statement of the Commission's position regarding the legality of development undertaken on the subject site without a coastal permit, except as the development is conditioned and approved under this permit. In fact, approval of this permit is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit are satisfied.

In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the subject permit will issue upon Commission approval, as required by **Special Condition No. 5**. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with the Coastal Act and the City of Fort Bragg certified local coastal program.

K. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City of Fort Bragg is the lead agency for the purposes of California Environmental Quality Act (CEQA) review. The City determined that the project was exempt from further environmental review pursuant to CEQA Guidelines Section 15304(a) minor alterations to land.

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirement of the CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified City of Fort Bragg LCP, the proposed project has been conditioned to be found consistent with the certified City of Fort Bragg LCP and Chapter 3 policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

Commission's Appeal Jurisdiction Over the Project

On June 13, 2018, The City of Fort Bragg Planning Commission approved Coastal Use Permit No. 5-18 with conditions for the placement of approximately 12,000 cubic yards of clean soil associated with construction of the improvement to the City's Wastewater Treatment Facility. The subject property is located within the former Georgia Pacific Mill Site off of Jere Melo Street, between the first public road and the sea, approximately 100-feet from the bluff edge.

After certification of Local Coastal Programs (LCPs), Section 30603 of the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Section 30603 states that an action taken by a local government on a CDP application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified LCP and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is both (1) located between the first public road and sea, and (2) within 300-feet of the top of the seaward face of any coastal bluff.

On June 29, 2018, the Commission's North Coast District office received a Notice of Final Action (NOFA) from the City stating that the City Planning Commission had approved Coastal Development Permit No. 5-18 with conditions on June 13, 2018 (**Exhibit 9**). The Commission's appeal period began on June 29, 2018 and ran for 10 working days, ending on July 16, 2018. On July 16, 2018, the Commission received an appeal of the City's decision from Jacob Patterson (**Exhibit 10**).

APPENDIX B
Substantive File Documents

Appeal File No. A-1-FTB-18-0048

Application File No. 1-FTB-18-0502

Application File No. 1-FTB-0801

City of Fort Bragg Certified Local Coastal Program

Chapter 3 Policies of the Coastal Act

APPENDIX C
Excerpts from the City of Fort Bragg’s Certified LCP
(Emphasis added)

I. RELEVANT LAND USE PLAN (LUP) POLICIES AND STANDARDS

LUP “Land Use Element” Chapter, Section G (Commercial and Industrial Land Use Designation) in part states as follows:

... ..

Timber Resources Industrial: This designation is intended primarily for timber resource and forest products related manufacturing. It allows a variety of industrial uses relating to forest products processing such as log yards, manufacturing wood products, planing mills, storage of forest by-products, commercial seedling nurseries, and related support activities including railroad lines, truck shipping facilities, boiler and powerhouse operations, and related uses. In addition, it allows aquaculture with issuance of a conditional use permit. Open space, public parks, and recreation use types and public facilities are also permitted in this district.

... ..

LUP “Conservation, Open Space, Energy, and Parks” Chapter, Section B (Goals, Policies, and Programs), including the following policies:

... ..

Policy OS-1.1: Definition of ESHA. “Environmentally sensitive habitat area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Policy OS-1.7 Development in areas adjacent to Environmentally Sensitive Habitat Areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Policy OS-1.8: Development adjacent to ESHA shall provide buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. The purpose of this buffer area is to provide for a sufficient area to protect environmentally sensitive habitats from significant degradation resulting from future development. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, other relevant resource agencies, and the City, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent

upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and in no event shall be less than 30 feet in width.

Policy OS-1.13: Landscaping Adjacent to ESHA. All development located within or adjacent to environmentally sensitive habitat areas shall be conditioned to: a) Require all proposed plantings be obtained from local genetic stocks within Mendocino County. If documentation is provided to the review authority that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used; and if local genetic stocks within the floristic province are unavailable, the Director may authorize use of a commercial native mix, provided it is clear of invasive seed. Director may also authorize use of a seed mix that is selected for rapid senescence and replacement with native stock; and b) Require an invasive plant monitoring and removal program; and c) Prohibit the planting of any plant species on the property that is (a) listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, and/or by the State of California, or (b) listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government.

Policy OS-5.1 Native Species: Preserve native plant and animal species and their habitat.

Policy OS-5.2: To the maximum extent feasible and balanced with permitted use, require that site planning, construction, and maintenance of development preserve existing healthy trees and native vegetation on the site.

Policy OS-5.4: Condition development projects, requiring discretionary approval to prohibit the planting of any species of broom, pampas grass, gorse, or other species of invasive non-native plants deemed undesirable by the City.

LUP “Conservation, Open Space, Energy, and Parks” Chapter, Section C (Water Quality), including the following policies:

... ..

Policy OS-9.1: Minimize Introduction of Pollutants. Development shall be designed and managed to minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers, streams, and lakes) to the extent feasible.

Policy OS-9.2: Minimize Increases in Stormwater Runoff. Development shall be designed and managed to minimize post-project increases in stormwater runoff

volume and peak runoff rate, to the extent feasible, to avoid adverse impacts to coastal waters.

Policy OS-9.5. Maintain and Restore Biological Productivity and Water Quality. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Policy OS-10.1: Construction-phase Stormwater Runoff Plan. *All development that requires a grading permit shall submit a construction-phase erosion, sedimentation, and polluted runoff control plan. This plan shall evaluate potential construction-phase impacts to water quality and coastal waters, and shall specify temporary Best Management Practices (BMPs) that will be implemented to minimize erosion and sedimentation during construction, and prevent contamination of runoff by construction chemicals and materials.*

Policy OS-10.2: Post-Construction Stormwater Runoff Plan. *All development that has the potential to adversely affect water quality shall submit a post-construction polluted runoff control plan (“Runoff Mitigation Plan”). This plan shall specify long-term Site Design, Source Control, and, if necessary, Treatment Control BMPs that will be implemented to minimize stormwater pollution and erosive runoff after construction, and shall include the monitoring and maintenance plans for these BMPs.*

Policy OS-10.5: Guidance on BMP Selection and Design. *Where BMPs, are required, BMPs shall be selected that have been shown to be effective in reducing the pollutants typically generated by the proposed land use. The strategy for selection of appropriate BMPs to protect water quality and coastal waters shall be guided by Chapter 18.64.070, Tables 1-3, of the Land Use & Development Code, or equivalent tables which list pollutants of concern for each type of development or land use.*

Policy OS-11.8: Landscape with Native Plant Species. *The City shall encourage development to use drought-resistant native plant species for landscaping, to reduce the need for irrigation and landscaping chemicals (e.g., pesticides and fertilizers).*

Policy OS-11.10: Continue Operation and Maintenance of Post-Construction BMPs. *Permittees shall be required to continue the operation, inspection, and maintenance of all post-construction BMPs as necessary to ensure their effective operation for the life of the development.*

Policy OS-14.1: Minimize Polluted Runoff and Pollution from Construction. All development shall minimize erosion, sedimentation, and the discharge of other polluted runoff (e.g., chemicals, vehicle fluids, concrete truck wash-out, and litter) from construction activities, to the extent feasible.

Policy OS-14.4: Stabilize Soil Promptly. Development shall implement soil stabilization BMPs (including, but not limited to, re-vegetation) on graded or disturbed areas as soon as feasible.

Policy OS-14.5: Grading During Rainy Season. Grading is prohibited during the rainy season (from November 1 to March 30), except in response to emergencies, unless the review authority determines that soil conditions at the project site are suitable, and adequate erosion and sedimentation control measures will be in place during all grading operations.

LUP “Conservation, Open Space, Energy, and Parks” Chapter, Section E (Public Access and Recreation), including the following policies:

... ..

Policy OS-16.1 Coastal Access: Maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Provide public open space and shoreline access in the Coastal Zone...

Policy OS-16.7: Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development. Mitigation shall not substitute for implementation of a feasible project alternative that would avoid impacts to public access.

Policy OS-16.17 Coastal Trails: Develop a continuous trail system throughout the City which connects to the California Coastal Trail system.

LUP “Community Design” Chapter, Section F (Goals, Policies, and Programs), including the following policies:

Policy CD-1.1: Visual Resources: Permitted development shall be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance scenic views in visually degraded areas.

Policy CD-1.4: New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent.

... ..

II. RELEVANT IMPLEMENTATION PLAN (IP) POLICIES AND STANDARDS

Chapter 17.20 – Development and Land Use Approval Requirements

... ..

§17.20.030 – Allowable Land Uses and Permit Requirements.

A. Allowable land uses. *The uses of land allowed by this Development Code in each zoning district are listed in: Chapters 17.21, Table 2-1; 17.22, Table 2-6; 17.24, Table 2-10; and 17.26, Table 2-14; together with the type of planning permit required for each use. Each land use listed in the tables is defined in Article 10 (Glossary & Index). In addition to the required planning permit listed in Chapters 17.21, Table 2-1; 17.22, Table 2-6; 17.24, Table 2-10; and 17.26, Table 2-14, a coastal development permit may also be required for any change in the density or intensity of use or other development of land.*

1. Establishment of an allowable use.

a. *Any one or more land uses identified by Tables 2-1, 2-6, 2-10, and 2-14 as being allowable within a specific zoning district may be established on any parcel within that zoning district, subject to the planning permit requirements of Subsection B, and compliance with all applicable requirements of the Local Coastal Program, and this Development Code.*

... ..

2. Use not listed.

a. *A land use that is not listed in Tables 2-1, 2-6, 2-10, or 2-14, and is determined by the Director to not be included in Article 10 (Glossary & Index) under the definition of a listed land use, is not allowed within the City, except as otherwise provided in Subsection A.3 or Section 17.71.030.*

b. *A land use that is not listed in the tables within a particular zoning district is not allowed within that zoning district, except as otherwise provided in Subsection A.3 or Section 17.71.030.*

3. Similar and compatible use may be allowed. The Director may determine that a proposed use not listed in this Article is allowable as follows:

a. *Required findings. The Director may determine that a proposed use is similar to and compatible with a listed use and may be allowed, only after first making all of the following findings with the determination:*

i) The characteristics of, and activities associated with the use are similar to one or more of the listed uses, and will not involve a greater intensity than the uses listed in the district;

ii) The use will be consistent with the purposes of the applicable zoning district;

iii) The use will be consistent with the Coastal General Plan, Local Coastal Program, and any applicable specific plan;

iv) The use will be compatible with the other uses allowed in the district; and

v) The use is not listed as allowable in another zoning district.

vi) The use will not have an adverse effect on coastal resources.

vii) The use will ensure adequate services will be provided to serve the proposed development.

viii) The use will not displace Coastal Act priority uses.

... ..

Chapter 17.24 – Purposes of Industrial Zoning Districts in part as follows:

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§17.24.020-C – IT (Timber Resources Industrial) zoning district.

The IT zoning district is applied to areas appropriate for timber resource and forest products related manufacturing, including a variety of related industrial uses, as well as related support activities including railroad lines, truck shipping facilities, power generation, and related uses; and aquaculture...The IT zoning district implements and is consistent with the IT land use designation of the Coastal General Plan.

... ..

Chapter 17.30 – Standards for All Development and Land Uses in part as follows:

... ..

§17.30.080: Performance Standards.

A. Purpose. This Section provides performance standards that are designed to minimize various potential operational impacts of land uses and development within the City, and promote compatibility with adjoining areas and land uses.

B. Applicability. The provisions of this Section apply to all new and existing land uses, including permanent and temporary uses in all zoning districts, unless an exemption is

specifically provided. Uses existing on the effective date of this Section shall not be altered or modified thereafter to conflict with these standards.

... ..

D. Dust. Activities that may generate dust emissions (e.g., construction, grading, commercial gardening, and similar operations) shall be conducted to limit the emissions beyond the site boundary to the maximum extent feasible. Appropriate methods of dust management shall include the following, subject to approval by the City Engineer.

- 1. Scheduling. Grading shall be designed and grading activities shall be scheduled to ensure that repeat grading will not be required, and that completion of the dust-generating activity (e.g., construction, paving or planting) will occur as soon as possible.*
- 2. Operations during high winds. Clearing, earth-moving, excavation operations or grading activities shall cease when the wind speed exceeds 25 miles per hour averaged over one hour.*
- 3. Limiting the area of disturbance. The area disturbed by clearing, demolition, earth-moving, excavation operations or grading shall be minimized at all times.*
- 4. Dust control. Dust emissions shall be controlled by watering a minimum of two times each day, paving or other treatment of permanent on-site roads and construction roads, the covering of trucks carrying loads with dust content, and/or other dust-preventive measures (e.g., hydroseeding, etc.).*
- 5. Revegetation. Graded areas shall be revegetated as soon as possible, but within no longer than 30 days, to minimize dust and erosion. Disturbed areas of the construction site that are to remain inactive longer than three months shall be seeded and watered until grass cover is grown and maintained; and*
- 6. Containment. Appropriate facilities shall be constructed to contain dust within the site as required by the City Engineer.*

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Chapter 17.34 – Landscaping Standards in part as follows:

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§17.34.020 – Applicability.

A. New projects. Each new nonresidential and multi-family residential project shall provide landscaping in compliance with this Chapter...

... ..

§17.34.040 – Landscape and Irrigation Plans.

A. Preliminary Landscape Plan. A Preliminary Landscape Plan shall be submitted as part of each application for new development, or the significant expansion (e.g., 25

percent or more of floor area), or redevelopment of an existing use, as determined by the Director.

B. Final Landscape Plan. After planning permit approval, a Final Landscape Plan shall be submitted as part of the application for a Building Permit. A Final Landscape Plan shall be approved by the review authority before the start of grading or other construction, and before the issuance of a Building Permit.

C. Content and preparation.

1. Required information. Preliminary Landscape Plans and Final Landscape Plans shall contain the information required for landscape plans by the Department. However, at a minimum, the plans shall include the following information:

a. Preliminary Landscape Plans. Location of proposed materials, including the identification of ground covers, shrubs, and trees.

b. Final Landscape Plans. Detailed drawings and specifications clearly identifying the name, size, and precise location of all materials, as well as the precise location and technical description of the irrigation system and its individual components.

2. Preparation by qualified professional. Each landscape plan for five or more dwelling units, or a non-residential project submitted in compliance with this Chapter shall be prepared by a California licensed landscape architect, licensed landscape contractor, certified nurseryman, or other professional determined by the Director to be qualified.

D. Review and approval. After initial application, the Director shall review each Preliminary Landscape Plan and Final Landscape Plan to verify its compliance with the provisions of this Chapter. The Director may approve the submittal in compliance with this Chapter, or may disapprove or require changes to a submittal if it is not in compliance.

... ..

F. Changes to approved landscape plans. The Director may authorize minor changes from the requirements of this Chapter.

1. For purposes of this Section, minor changes shall be defined as changes to the Final Landscape Plans that are not visible and do not affect the theme or character established for the subject development project.

2. If the Director determines that a requested change does not comply with the definition of minor in Subsection F.1, above, the requested change may only be approved by the review authority that originally approved the plans.

... ..

§17.34.040 – Landscape Standards.

A. Landscape design. The required landscape plan shall be designed to integrate all elements of the project (e.g., buildings, parking lots, and streets) to achieve their aesthetic objectives, desirable microclimates, stormwater runoff infiltration objectives, and minimization of water and energy demand.

1. Plant selection and grouping. Plant materials shall be selected for: water demand and drought tolerance; adaptability and relationship to the Fort Bragg environment, and the geological and topographical conditions of the site; color, form, and pattern; ability to provide shade; and soil retention capability.

a. Plants having similar water use shall be grouped together in distinct hydrozones.

b. The protection and preservation of native species and natural areas is encouraged, and may be required by conditions of approval as a result of project review in compliance with the California Environmental Quality Act (CEQA).

... ..

3. Height limits. Landscape materials shall be selected, placed on a site, and maintained to not:

a. Exceed a maximum height of 42 inches within a traffic safety visibility area required by Section 17.30.060.E, except for one or more trees with the lowest portion of their canopy maintained at a minimum height of six feet above grade...

... ..

5. Safety requirements. Landscape materials shall be located so that at maturity they do not:

a. Interfere with safe sight distances for vehicular, bicycle, or pedestrian traffic;

b. Conflict with overhead utility lines, overhead lights, or walkway lights; or

c. Block pedestrian or bicycle ways.

... ..

E. Environmentally Sensitive Habitat Areas. All development located within or adjacent to environmentally sensitive habitat areas shall be conditioned to:

1. Require all proposed plantings be obtained from local genetic stocks within Mendocino County. If documentation is provided to the review authority that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used. If local genetic stocks within the floristic province are unavailable, the Director may authorize use of a commercial native mix, provided it is clear of problematic and/or invasive seed. Director may also authorize use of a seed mix that is selected for rapid senescence to be subsequently complimented or replaced with native stock; and
2. Require an invasive plant monitoring and removal program; and
3. Prohibit the planting of any plant species on the property that is (a) listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, and/or by the State of California, or (b) listed as a “noxious weed” by the State of California or the U.S. Federal Government.

§17.34.070 – Maintenance of Landscape Areas.

- A. Maintenance required. All site landscaping shall be maintained in a healthful and thriving condition at all times... Regular maintenance shall include checking, adjusting, and repairing irrigation equipment; resetting automatic controllers; aerating and dethatching turf areas; adding/replenishing mulch, fertilizer, and soil amendments; pruning; and weeding all landscaped areas.
- B. Maintenance agreement. Prior to final building inspection or the issuance of a certificate of occupancy, and prior to the recordation of a final subdivision map where applicable, the applicant shall enter into a landscape maintenance agreement with the City to guarantee proper maintenance in compliance with Subsection A. The form and content of the agreement shall be approved by the City Attorney and the Director.
- C. Water waste prohibited. Water waste in existing developments resulting from inefficient landscape irrigation leading to excessive runoff, low head drainage, overspray, and other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways, or structures is prohibited.
- D. Enforcement. Failure to maintain landscape areas in compliance with this Section shall be deemed a nuisance, and shall be subject to abatement in compliance with the Municipal Code, and/or the applicable planning permit may be revoked.

... ..

Chapter 17.50 – Land and Marine Resource Protection in part as follows:

§17.50.070-C – Visual Resources.

- A. Purpose. The provisions of this Section are intended to consider and protect the scenic and visual qualities of coastal areas, maintain existing scenic views of the

coastline from Highway 1, and ensure that proposed development is consistent with the character of its surroundings.

B. Applicability. The requirements of this Section apply to the review and approval of planning permits, including but not limited to, coastal development permits for proposed development located on any parcel of land that is located along, provides views to, or is visible from any scenic area, scenic road, or public viewing area including:

... ..

4. Areas designated “Potential Scenic Views Toward the Ocean or the Noyo River” on Map CD-1.

C. Visual Analysis. A Visual Analysis shall be required for all new development located in areas designated “Potential Scenic Views Toward the Ocean or the Noyo River” on Map CD-1, except development listed in 1.a-1.e below.

2. Information required for Visual Analysis: Applications for development requiring a Visual Analysis shall include the following:

... ..

b. Photographic simulations wherein proposed structures are superimposed on these photographs by means of lines, blocked out areas of shading, or other means in a manner that accurately identifies the location, height, and bulk of the structures;

... ..

d. A site map and elevations of proposed structures with an explanation of how the scenic views would be affected by the proposed development, and what mitigations are proposed.

D. General findings for project approval. Coastal Development Permit approval for development in the areas identified by Subsection B. shall require that the review authority first find that the proposed project:

- 1. Minimize the alteration of natural landforms;*
- 2. Is visually compatible with the character of the surrounding area;*
- 3. Is sited and designed to protect views to and along the ocean and scenic coastal areas; and*
- 4. Restores and enhances visual quality in visually degraded areas, where feasible.*

E. Development Standards.

1. Development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent.
2. Fences, walls, and landscaping shall minimize blockage of views of scenic areas from roads, parks, beaches, and other public viewing areas.
3. Development shall minimize removal of natural vegetation. Existing native trees and plants shall be preserved on the site to the maximum extent feasible.

... ..

Chapter 17.62 – Grading, Erosion, and Sediment Control Standards in part as follows:

§17.62.020 – Dust Prevention and Control.

B. Dust prevention and control plan. A Dust Prevention and Control Plan shall be submitted in conjunction with a grading plan or other plan involving the movement of dirt...

1. Plan content. The plan shall demonstrate that the discharge of dust from the construction site will not occur, or can be controlled to an acceptable level depending on the particular site conditions and circumstances.
 - a. The plan shall address site conditions during construction operations, after normal working hours, and during various phases of construction.
 - b. The plan shall include the name and the 24 hour phone number of a responsible party in case of emergency.
 - c. If the importing or exporting of dirt is necessary as demonstrated by the cut and fill quantities on the grading plan, the plan shall also include the procedures necessary to keep the public streets and private properties along the haul route free of dirt, dust, and other debris.
 - d. When an entire project is to be graded and the subsequent construction on the site is to be completed in phases, the portion of the site not under construction shall be treated with dust preventive substance or plant materials and an irrigation system.
 - e. All phased projects shall submit a plan demonstrating that dust will not be generated from future phase areas.

... ..

Chapter 17.64 –Stormwater Runoff Pollution Control in part as follows:

§17.64.030 – Site Development and Maintenance Standards.

A. Applicability of Provisions....

1. An applicant proposing a project with land disturbance of one acre or more, or any industrial facility shall be required to submit a Stormwater Pollution Prevention Plan (SWPPP) in compliance with the requirements of the Federal

Clean Water Act, U.S. Environmental Protection Agency (EPA), and the California State Water Resources Control Board...

... ..

§17.64.040 – Stormwater Runoff Mitigation Plan Requirements.

The following runoff reduction requirements shall apply to all persons submitting applications for development within the City, whether fulfilled by the Federal SWPPP format, by a Runoff Mitigation Plan (RMP), or as an additional measure.

- A. *Submittal of Runoff Mitigation Plan. At the time of submittal of an application for the first planning approval for proposed development, the applicant shall submit to the City Engineer either a Runoff Mitigation Plan, or a copy of a Notice of Intent (NOI) to comply with the NPDES Storm Water Construction or Industrial Permit filed with the Regional Water Quality Control Board.*
- B. *Goal for runoff reduction in a Runoff Mitigation Plan. In developing a Runoff Mitigation Plan, an applicant shall demonstrate that the development will be designed and managed to minimize increases in stormwater runoff volume and peak runoff rate, to the extent feasible, and that an effort is made to reduce projected runoff for the project...*

... ..

§17.64.070 – Post-Construction Best Management Practices.

- A. *Post-Construction BMP Requirements.*
 - 1. *Emphasize Site Design and Source Control BMPs. Long-term post-construction Best Management Practices (BMPs) that protect water quality and control runoff flow shall be incorporated in the project design of development that has the potential to adversely affect water quality in the following order of emphasis:*
 - a. *Site Design BMPs: Any project design feature that reduces the creation or severity of potential pollutant sources, or reduces the alteration of the project site’s natural flow regime. Examples include minimizing impervious surfaces, and minimizing grading.*
 - b. *Source Control BMPs: Any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices, or operational practices that aim to prevent stormwater pollution by reducing the potential for contamination at the source of pollution. Examples include covering outdoor storage areas, use of efficient irrigation, and minimizing the use of landscaping chemicals.*
 - c. *Treatment Control BMPs: Any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or any other physical,*

biological, or chemical process. Examples include vegetated swales, and storm drain inserts.

- 2. *Incorporate Site Design and Source Control.* *Site Design BMPs may reduce a development’s need for Source and/or Treatment Control BMPs, and Source Control BMPs may reduce the need for Treatment Control BMPs. Therefore, all development that has the potential to adversely affect water quality shall incorporate effective post-construction Site Design and Source Control BMPs, where applicable and feasible, to minimize adverse impacts to water quality and coastal waters resulting from the development. Site Design and Source Control BMPs may include, but are not limited to, those outlined in the City’s Storm Water Management program.*
- 3. *Incorporate Treatment Control BMPs if Necessary.* *If the combination of Site Design and Source Control BMPs is not sufficient to protect water quality and coastal waters consistent with Policy OS-9.3, as determined by the review authority, development that has the potential to adversely affect water quality shall also incorporate post-construction Treatment Control BMPs....*

Treatment Control BMPs may include, but are not limited to, those outlined in the City’s Storm Water Management program, including biofilters (e.g., vegetated swales or grass filter strips), bioretention, infiltration trenches or basins, retention ponds or constructed wetlands, detention basins, filtration systems, storm drain inserts, wet vaults, or hydrodynamic separator systems.

B. Site Design and Source Control BMP Requirements. *Development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating BMPs designed to ensure the following:*

1. Use Integrated Management Practices in Site Design. *The city shall require, where appropriate and feasible, the use of small-scale integrated management practices (e.g., Low Impact Development designs) designed to maintain the site’s natural hydrology by minimizing impervious surfaces and infiltrating stormwater close to its source (e.g., vegetated swales, permeable pavements, and infiltration of rooftop runoff).*

2. Preserve Functions of Natural Drainage Systems. *Development shall be sited and designed to preserve the infiltration, purification, detention, and retention functions of natural drainage systems that exist on the site, where appropriate and feasible. Drainage shall be conveyed from the developed area of the site in a non-erosive manner.*

... ..

4. Infiltrate Stormwater Runoff. *Development shall maximize on-site infiltration of stormwater runoff, where appropriate and feasible, to preserve natural hydrologic conditions, recharge groundwater, attenuate runoff flow, and minimize transport of pollutants.*

Alternative management practices shall be substituted where the review authority has determined that infiltration BMPs may result in adverse impacts, including but not limited to where saturated soils may lead to geologic instability, where infiltration may contribute to flooding, or where regulations to protect groundwater may be violated.

- a. *Divert Stormwater Runoff into Permeable Areas. Development that creates new impervious surfaces shall divert stormwater runoff flowing from these surfaces into permeable areas, where appropriate and feasible, to enhance on-site stormwater infiltration capacity.*

6. Landscape with Native Plant Species. The City shall encourage development to use drought-resistant native plant species for landscaping, to reduce the need for irrigation and landscaping chemicals (e.g., pesticides and fertilizers).

- C. *Site Operation and Management BMPs. The owner, occupant, or other person in charge of day-to-day operation of all premises within the City shall implement the Best Management Practices, as applicable, as follows.*

1. Permittees shall be required to continue the operation, inspection, and maintenance of all post-construction BMPs as necessary to ensure their effective operation for the life of the development.

3. For premises where machinery or other equipment which is repaired or maintained at facilities or activities associated with industrial or commercial activities, (according to the United States Office of Management and Budget Standard Industrial Classification Manual), the owner, occupant, or other person in charge of day-to-day operations shall use BMPs or other steps to prevent discharge of maintenance or repair related pollutants to the City's storm drain system.

4. For other premises exposed to stormwater, the owner, occupant, or other person in charge of day-to-day operations shall use BMPs, if they exist, or other methods to reduce the discharge of pollutants to the maximum extent feasible. *Such measures may include the removal and lawful disposal of any solid waste or any other substance that, if it were to be discharged to the storm drain system, would be a pollutant, including fuels, waste fuels, chemicals, chemical wastes, and animal wastes, from any part of the premises exposed to stormwater.*

5. For premises which fall under the requirements for the Industrial SWPPP per Federal Law, the site annual reports and monitoring reports shall also be submitted to the City Engineer.

Excerpts from Chapter 3 Policies of the Coastal Act
(Emphasis added)

Section 30210 Access; recreational opportunities; posting.

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