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# F8b

**Prepared January 26, 2023 for the February 10, 2023 Hearing**

**TO:** Coastal Commissioners and Interested Persons

**FROM:** Shana Gray, Deputy Director  
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**SUBJECT: City of Eureka LCP Amendment No. LCP-1-EUR-22-0049-1 (Cannabis Regulations Update)**

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## **SUMMARY OF STAFF RECOMMENDATION**

Commission staff recommends that the Commission **approve** proposed City of Eureka LCP Amendment No. LCP-1-EUR-22-0049-1 as submitted. No modifications are necessary because the proposed amendment to the Implementation Plan (IP), as submitted, conforms with and is adequate to carry out the provisions of the certified Land Use Plan (LUP).

LCP Amendment Application No. LCP-1-EUR-22-0049-1 proposes to amend the City's certified IP provisions of Articles 7, 8, 9, 10, and 29 related to commercial cannabis licensing, enforcement, events, and uses; and to repeal and replace Article 30, Cannabis. Under the existing certified cannabis regulations, certified by the Commission in 2017, there currently are 13 types of commercial cannabis uses allowed in various zoning districts and a relatively complicated licensing process. Updates to the cannabis regulations will 1.) simplify cannabis licensing procedures by reducing the types of cannabis licenses from thirteen to three; 2.) allow greater flexibility in enforcement actions available to the City when working to bring cannabis facilities into compliance; 3.) allow the permitting of temporary cannabis events, not exceeding four consecutive days per event and no more frequently than six times at a given location each year; and 4.) make various changes to permitted commercial cannabis uses in CN (Neighborhood Commercial), CW (Waterfront Commercial), CS (Service Commercial), MG (General Industrial), ML (Limited Industrial), and OR (Office/Multi-family Residential) zone districts. All cannabis uses in CW districts, other than retail, will remain limited to the upper floors of commercial structures.

The major Coastal Act and LUP issues raised by the proposed amendment are protection of priority land uses, coastal access, visual resources, water quality, and environmentally sensitive habitat areas (ESHA). The amendment maintains consistency with and carries out the priority uses provisions of the certified LUP by restricting cannabis uses in the visitor-serving Waterfront Commercial District to allow only visitor-serving retail on the ground floor level of structures in CW-designated districts (intended under the LUP for businesses catering to visitors); and by ensuring that cannabis facilities avoid lands reserved for natural resources, agriculture (which in the City are farmed wetlands), coastal-dependent industry, commercial fishing, and recreational boating. Thus, the proposed cannabis uses in the various proposed zoning districts are of a type, character, and intensity similar to existing allowable uses in applicable zoning districts. Moreover, the IP amendment as submitted includes protective standards to address cannabis-specific concerns to ensure the protection of coastal resources. Among other provisions, lighting fixtures must meet the International Dark Sky Association's (IDA) requirements for reducing waste of ambient light ("dark sky compliant"), and businesses with commercial cannabis use licenses must also operate pursuant to a permit from the North Coast Regional Water Quality Control Board (RWQCB). Because the existing protections for coastal resources in the LCP will remain unchanged as proposed, coastal development permit review will include the evaluation of specific impacts to ESHA and water resources resulting from individual cannabis projects and ensure that projects comply with the coastal resource protection policies of the certified LCP. Finally, the proposed IP amendment as submitted includes parking requirements that will ensure that new commercial cannabis facilities are served by an adequate supply of parking and prevent overflow into public access parking facilities. Therefore, staff recommends that the Commission approve LCP Amendment No. LCP-1-EUR-22-0049-1 as submitted. The motion to adopt this recommendation is found on Page 5 of this staff report.

**Staff Note: LCP Amendment Action Deadline.** This proposed LCP amendment was filed as complete on December 5, 2022. The proposed amendment affects the LCP's IP, and the 60-working-day action deadline is March 3, 2023. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until March 3, 2023 to take a final action on this LCP amendment. Therefore, if the Commission fails to take a final action in this case (e.g., if the Commission instead chooses to postpone/continue LCP amendment consideration), then staff recommends that, as part of such non-final action, the Commission extend the deadline for final Commission action on the proposed amendment by one year. To do so, staff recommends a YES vote on the motion below. Passage of the motion will result in a new deadline for final Commission action on the proposed LCP amendment. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission extend the time limit to act on City of Eureka LCP Amendment No. LCP-1-EUR-22-0049-1 (Cannabis) to March 3, 2024, and I recommend a yes vote.

**ADDITIONAL INFORMATION**

For further information, please contact Tatiana Garcia at the Commission’s North Coast District Office in Arcata at [Tatiana.Garcia@coastal.ca.gov](mailto:Tatiana.Garcia@coastal.ca.gov). If you wish to provide written comments, please do so via regular mail (directed to the North Coast District Office) or email (by emailing [NorthCoast@coastal.ca.gov](mailto:NorthCoast@coastal.ca.gov)). Commission staff will distribute to the Commissioners any copies of written materials received from interested parties by 5:00 pm on the Friday before the scheduled Commission meeting.

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[Exhibit 3 – Proposed Amendments to IP, clean \(Ordinance 934 -CS\)](#)

## I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, approve the IP amendment as submitted.

To approve the IP amendment as submitted, staff recommends a **NO** vote on the foregoing motion. Failure of this motion will result in certification of the Implementation Plan Amendment No. LCP-1-EUR-22-0049-1 as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

### **Motion:**

*I move that the Commission reject Implementation Plan Amendment No. LCP-1-EUR-22-0049-1 as submitted by the City of Eureka.*

### **Resolution to certify the implementation plan amendment as submitted:**

The Commission hereby certifies the City of Eureka Implementation Plan Amendment LCP-1-EUR-22-0049-1 as submitted and adopts the findings set forth below on grounds that the Implementation Plan amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

## II. PROCEDURAL ISSUES

### **A. Standard of Review**

The standard of review for the proposed amendment to the Implementation Plan (Zoning Ordinance) of the City of Eureka certified Local Coastal Program (LCP), pursuant to section 30513 and 30514 (regarding LCP amendments) of the Coastal Act, is whether the Implementation Plan as amended would be in conformance with, and adequate to carry out, the provisions of the certified Land Use Plan.

### **B. Public Participation**

Section 30503 of the Coastal Act requires public input in preparation, approval, certification, and amendment of any LCP. The City of Eureka's Planning Commission held public hearings on the proposed amendment on March 14, 2022 and May 9, 2022. The Eureka City Council held public hearings on the amendment on July 5, 2022.

and July 19, 2022. The hearings were noticed to the public consistent with sections 13551 and 13552 of Title 14 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

### **C. Procedural Requirements**

The City of Eureka transmitted Local Coastal Program (LCP) Amendment Application No. LCP-1-EUR-22-0049-1 to the Commission on October 6, 2022. The LCP amendment submittal was filed as complete by the North Coast District Office on December 5, 2022. The proposed amendment affects the LCP's IP, and the 60-working-day action deadline is March 3, 2023.

Pursuant to section 13544(b)(2) of Title 14 of the California Code of Regulations, if the Commission certifies the LCP amendment as submitted, no further City action will be necessary for the LCP amendment to take effect. Should the Commission certify the LCP amendment subject to modifications, final approval by the City and a determination by the Executive Director that the City's action is legally adequate to carry out the requirements of the Commission's certification will be required for the amendment to take effect. Should the Commission deny the LCP amendment as submitted without suggested modifications, no further action is required by either the Commission or the City, and the proposed LCP amendment will not become effective.

## **III. FINDINGS FOR APPROVAL OF THE IP AMENDMENT AS SUBMITTED**

The following findings support the Commission's approval of the proposed Implementation Plan Amendment as submitted. The Commission hereby finds and declares as follows:

### **A. Amendment Description and Background**

#### Background on Existing Certified Cannabis Regulations

In 2017, the Commission approved LCP Amendment No. LCP-1-EUR-17-0063-2 to amend the City's certified IP to 1.) establish regulations for commercial cannabis facilities in certain zoning districts, 2.) add a new Article 30 to the City's IP entitled "Cannabis" that includes regulations and licensing requirements for commercial cannabis facilities, and 3.) amend Article 29 (Coastal Development Permit Procedures) of the City's certified IP to add twelve commercial cannabis use types as either permitted or conditional uses in various commercial and industrial zoning districts.

The twelve types of commercial cannabis facilities allowed under the existing certified regulations include: retail facilities; testing facilities; distribution facilities with cannabis on site; distribution facilities with no cannabis on site (transportation only); two indoor cultivation facility types (not more than 10,000 square feet of cultivation area, and not more than 5,000 square feet); four manufacturing facility types (non-volatile, more than

5,000 square feet of floor area; non-volatile, 5,000 square feet or less; volatile, large; and volatile, small); and “microbusiness” and “research and development” use types, which allow for combinations of other facility types.

Article 30 outlined a request for proposal (RFP) process and conditional use permit process for cannabis retail facilities, which included the limitation of two use permits per facility within a six-month period. LCP Amendment No. LCP-1-EUR-18-0057-1 subsequently modified the process by removing the limit on the number of use permits which could be issued to cannabis retail facilities. LCP Amendment No. LCP-1-EUR-19-0004-1 then, amongst other things, permitted a new more limited cannabis retail facility use type (on-site retail facilities selling cannabis topicals and edibles only, non-smoking) as a conditional use in the Commercial Waterfront (CW) District, bringing the total cannabis use types to thirteen.

### Proposed LCP Amendment

LCP Amendment Application No. LCP-1-EUR-22-0049-1 now proposes to amend the City’s certified IP provisions of Articles 7, 8, 9, 10, and 29 related to commercial cannabis licensing, enforcement, events, and uses; and to repeal and replace Article 30, Cannabis. Updates will 1.) simplify cannabis licensing procedures by reducing the types of cannabis licenses from thirteen to three and by removing the RFP process for retail facilities; 2.) allow greater flexibility in enforcement actions available to the City when working to bring cannabis facilities into compliance; 3.) allow the permitting of temporary cannabis events, not exceeding four consecutive days per event and no more frequently than six times at a given location each year; and 4.) make various changes to permitted cannabis uses in CN (Neighborhood Commercial), CW (Waterfront Commercial), CS (Service Commercial), MG (General Industrial), ML (Limited Industrial), and OR (Office/Multi-family Residential) zone districts.

### **Changes to Articles 7, 8, 9, 10, and 29**

Changes to Articles 7, 8, 9, 10, and 29 reflect the reduction of cannabis uses and subsequent license types from thirteen (13) types to three (3) types and the reconfiguration of cannabis uses by zoning designation. As described in the new proposed Article 30, the three license types are for 1.) Cannabis General Use, which includes distribution, manufacturing mechanical extraction (and other manufacturing activities that do not involve chemical extraction), research and development, testing laboratories, and indoor cultivation, 2.) Cannabis Retail, and 3.) Chemical Cannabis Extraction. Cannabis retail is defined as, “The sale and/or delivery of cannabis or cannabis products to customers. Includes retail sales for both on-site and off-site consumption of cannabis and cannabis products.” Chemical Cannabis Extraction is defined as, “Cannabis extraction [of cannabinoids and terpenes] utilizing a chemical solvent such as butane, propane, ethanol, or supercritical carbon dioxide.” Table 1 below summarizes the proposed cannabis uses by zone district and permit type.

TABLE 1. Proposed Commercial Cannabis Uses permitted by zoning district and the types of permits required for uses (M = minor conditional use permit; C = conditional use permit; P = principally permitted use).

Cannabis Use	Coastal Zoning District					
	CN	OR	CW	CS	MG	ML
General Cannabis Use	M	C	C	P	P	P
Cannabis Retail	C		C	C	C	C
Chemical Cannabis Extraction					C	C

### Commercial Cannabis Uses and Licensing Requirements

Proposed Article 30 adds restrictions on noise and lighting for all commercial cannabis uses, such as, facilities must not exceed the noise threshold of 65 decibels as measured from ESHA or ESHA buffers, create odors that are detectable outside of the cannabis use facility, and all artificial lighting must be shielded and directed away from ESHA and required ESHA buffers, must not be visible from the public right-of-way, must meet the International Dark Sky Association’s (IDA) requirements for reducing waste of ambient light (“dark sky compliant”), and must comply with the California Green Building Standards Code.

Commercial cannabis uses will no longer be listed in Article 30 and instead, are permitted in zoning districts where cannabis general uses, cannabis retail, or chemical cannabis extraction are listed as a permitted or conditional use in Article 29. Proposed commercial cannabis uses in the coastal zone, per Article 29, are outlined in Table 1, referenced above.

Currently, retail commercial cannabis facilities are licensed through a competitive RFP/RFQ bidding process. The update to Article 30 will remove this process and allow for operators of retail cannabis facilities to apply for licenses freely, similar to the licensing process for any other commercial cannabis license type.

### Personal Use Cannabis

Personal use cannabis is defined as, “The cultivation, harvesting, drying, or processing of cannabis plants with the intent to possess, smoke, or ingest cannabis or cannabis products for one’s own individual use or by a primary caregiver for their qualified patient(s) in accordance with state law.” Regulations for cannabis cultivation for personal use will remain much the same; exterior evidence of cannabis cultivation, such as lighting, odors, and equipment, is prohibited, and cultivation shall not displace required parking unless replacement parking is provided elsewhere on the property.

### Temporary Cannabis Events

The proposed update to Article 30 expands the definition of temporary cannabis events from private invitation-only gatherings held within a licensed commercial cannabis structure, to: events attended by five (5) or more persons and involving the on-site sale



or consumption of cannabis products that are held on the premises of a licensed commercial cannabis use, on private property without a licensed commercial cannabis use in any non-residential zoning district, or within a City facility or other public property in any zoning district. Chapter 158 of the Eureka Municipal Code requires temporary events to comply with State Law, 16 CCR 5601 (Temporary Cannabis Event License), be limited to persons 21 years of age and older and have a maximum duration of four consecutive days with no more than six temporary cannabis event permits issued for the same location per calendar year. Temporary cannabis events must supply adequate parking to accommodate vehicular traffic generated by the temporary cannabis event.

## **Enforcement**

Proposed Article 30 does not include enforcement-specific language. Instead, enforcement will be carried out under Chapter 158 of the Eureka Municipal Code, which applies to both inland Eureka and the coastal zone. These policies differ from the certified Article 30 only in that there are a greater number of enforcement actions available for the City to take. New enforcement actions include administrative citations, withholding of permits, stop-work notices, and termination of utility services. Retained enforcement actions are notices of violation, criminal citations, or conditional, suspended, or revoked licenses. The City may take any and all actions in any order or combination.

## **B. Setting**

Eureka's coastal zone encompasses portions of the City's northern, northeastern, and western ends and extends inland generally about three street blocks from the bay shoreline, except along the northeastern end of the City, where the coastal zone extends several additional blocks inland. The proposed amendments to the City's certified IP pertaining to commercial cannabis will affect lands with the zoning designations of CN (Neighborhood Commercial), CW (Waterfront Commercial), CS (Service Commercial), MG (General Industrial), ML (Limited Industrial), and OR (Office/Multi-family Residential), consisting of approximately half of the land in the City's coastal zone. No cannabis activities, including indoor or outdoor cultivation, are permitted on Public (P), Public Facility/Marina (PF-M), Planned Shopping Center (CP), Coastal Dependent Industrial (MC), Natural Resource (NR), or Agricultural (AC) lands in the coastal zone.

## **C. Consistency Analysis**

### **1. Compatibility with Land Use Designations & Protection of Priority Uses**

#### The Commercial Waterfront District

The City of Eureka's LUP, consistent with the Coastal Act, prioritizes coastal-dependent, coastal-related, visitor-serving, and commercial recreational uses over private residential, general industrial, and general commercial development in the coastal zone. These protections for priority uses are evident in the City's more

restrictive zoning classifications, Waterfront Commercial (CW), Coastal Dependent Industrial (CDI), and Public Facility/Marina districts (PF-M). As noted above, no commercial cannabis uses or activities are proposed on priority MC or PF-M lands, though multiple changes to commercial cannabis uses are proposed in the CW district where currently, cannabis testing facilities, distribution facilities (transportation only with no-cannabis on-site), research and development facilities (where no plants or manufacturing processes occur), and cannabis retail facilities (cannabis topicals and/or edibles only) are conditional uses in the CW District. Only cannabis retail may be located on the ground floor of structures in the CW District.

The CW District corresponds to the Core – Commercial Waterfront (C-WFC) and Waterfront Commercial (WFC) land use designations. The purpose of the WFC and C-WFC designations is to protect and provide for nearshore development of recreational, visitor-serving, and commercial fishing industry uses that relate to the presence of coastal resources. As such, the ground floor of buildings in the CW District are intended for coastal-related businesses catering to visitors, while office, residential, and other uses that are not visitor serving are permitted above the ground floor. This mixed-use configuration ensures a vibrant, pedestrian-oriented commercial center by providing storefronts with visual interest and destinations at the street level and allowing homes and businesses above the ground floor of buildings whose residents and employees can support the ground floor commercial uses and generate foot traffic around the clock.

The subject amendment proposes to retain cannabis retail facilities as a conditional use on the ground floor of commercial structures in CW zones and allow other forms of cannabis retail (rather than only edibles and topicals). In addition, cannabis testing facilities will be deleted as a conditional use in upper floors in CW zones (currently testing is permitted only if it involves no cultivation, processing, manufacturing, retail, or distribution of cannabis as part of the testing facility), and cannabis general use will be added as a conditional use. Cannabis general use includes the currently allowed uses, distribution, testing, and research and development facilities in CW areas, and also includes manufacturing,<sup>1</sup> mechanical extraction,<sup>2</sup> and indoor cultivation.<sup>3</sup> No chemical solvent-based extraction is proposed in CW areas. All cannabis uses in CW districts, other than retail, will remain limited to the upper floors of commercial structures per Sec. 10.5.3004. Allowing retail cannabis on the ground floor as proposed is similar to and compatible with other uses allowed in the C-WFC land use designation under the certified LUP, which include commercial retail uses, such as hotels, motels, and visitor-

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<sup>1</sup> Cannabis Manufacturing. The production, preparation, processing, propagation, or compounding of cannabis or cannabis products either directly or indirectly, or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

<sup>2</sup> Mechanical Extraction. Cannabis extraction utilizing only pressure and/or physical action without the use of chemical solvents.

<sup>3</sup> Cannabis Cultivation, Indoor. The cultivation of cannabis within a fully enclosed structure using exclusively artificial lighting.

serving developments, such as antique shops, art galleries, restaurants, taverns, commercial recreation facilities, and commercial fishing industry facilities. Allowing general cannabis use types in the CW zoning district above the ground floor is consistent with the mixed-use intent of the upper floor locations of CW designated areas, because the allowed uses on the upper floors of commercial structures are similar to other types of professional offices as are currently allowed under the certified LUP.

The proposed new commercial cannabis uses in CW areas share many of the same qualities as currently permitted uses. Although cannabis manufacturing, mechanical extraction, and indoor cultivation are new uses, as previously mentioned, all commercial cannabis uses must not create safety hazards, exceed the noise threshold of 65 decibels as measured from ESHA or ESHA buffers, create odors that are detectable outside of the cannabis use facility, and all artificial lighting must be shielded and directed away from ESHA and required ESHA buffers, not be visible from the public right-of-way, and must be IDA compliant. Thus, approval of the amendment to the IP will not result in substantial changes to cannabis uses already permitted in CW districts. Furthermore, conditionally permitting all cannabis uses in CW districts will ensure that permitted development will not diminish recreational or visitor-serving opportunities.

Therefore, the Commission finds the proposed IP amendment, as submitted, conforms with and is adequate to carry out the certified LUP policies that protect and prioritize priority visitor-serving uses.

### Other Districts

#### *Office/Multi-family Residential (OR) District*

The proposed amendment removes cannabis distribution as a permitted use and cannabis testing facilities as a conditional use from the OR district; instead, cannabis general use will be added conditionally. The purpose of the OR land use designation as described in the certified LUP is to provide opportunities for offices of a commercial character to locate outside of commercial districts in a compatible mix of commercial and residential uses. Because cannabis general use facilities will be required to adhere to odor control, safety, and security measures, permitted general cannabis uses will be able to integrate into structures with office and residential uses with minimal adverse impact. Thus, as proposed, the IP amendment is sufficient to carry out the land use designation of the certified LUP.

#### *Neighborhood Commercial (CN) District*

In CN districts, cannabis distribution, retail, & microbusiness as a minor use, will be replaced with cannabis general use. The purpose of the CN land use designation as described in the certified LUP is to allow for the development of neighborhood commercial centers providing retail stores, offices, and personal service businesses that benefit the surrounding neighborhood. Because cannabis general use facilities will be required to adhere to odor control, safety, and security measures, permitted general cannabis uses will be able to integrate into structures comprised of commercial

business centers with minimal adverse impact. Thus, as proposed, the IP amendment is sufficient to carry out the land use designation of the certified LUP.

*Service Commercial (CS) District*

The subject amendment proposes to replace principally permitted distribution and testing facilities in CS areas with general cannabis use, retain cannabis retail as a conditional use, but strike cannabis distribution, manufacturing, research and development, and microbusinesses as conditional uses, and to remove minor use permit requirements for cannabis manufacturing and retail facilities. The CS District corresponds to the General Service Commercial (GSC) land use designation, which allows more intensive commercial uses including retail uses, warehouses, and wholesale commercial uses that do not have an adverse impact on commercial services. All proposed uses except mechanical extraction, testing laboratories, and indoor cultivation are permitted under current regulations. However, much like in CW districts, the minor expansion of uses largely encompasses activities which have already been permitted in CS zoned areas to date. Thus, the amendment, as proposed, is sufficient to carry out the CS land use designation of the certified LUP.

*Limited Industrial (ML) and General Industrial (MG) Districts*

The purpose of the ML and MG land use designation is to provide sites that can accommodate various scales of industrial development that can safely operate in close proximity to commercial uses with minimum adverse impact. As proposed, general cannabis uses will be principally permitted cannabis industrial areas and conditional uses will be limited to cannabis retail and chemical cannabis extraction. Minor use provisions will no longer be required. Because commercial cannabis uses in industrial zoned areas are remaining largely unchanged, these minor changes are found to be consistent with and adequate to carry out the intent of the certified LUP.

**2. Protection of Coastal Resources**

The City of Eureka has abundant lands and waters planned and zoned for natural resources uses. If not restricted, noise, illumination, and chemical runoff from commercial cannabis uses could adversely affect adjacent wetland and ESHA. Pertinent LUP policies include [emphasis added]:

Environmentally Sensitive Habitat Areas and Water Quality

***Applicable LUP Policies***

The LUP includes a number of policies to protect wetlands, ESHA, and marine resources in and around the City as follows (emphasis added):

6.A.1 The City shall maintain, enhance, and, where feasible, restore valuable aquatic resources, with special protection given to areas and species of special biological or economic significance. ...

6.A.3 The City shall maintain and, where feasible, restore biological productivity and the quality of coastal waters, streams, wetlands, and estuaries appropriate to maintain optimum populations of aquatic organisms and for the protection of human health through, among other means, minimizing adverse effects of wastewater and stormwater discharges and entrainment, controlling the quantity and quality of runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

6.A.6 The City declares the following to be environmentally sensitive habitat areas within the Coastal Zone:

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

6.A.7 Within the Coastal Zone, the City shall ensure that environmentally sensitive habitat areas are protected against any significant disruption of habitat values, and that only uses dependent on such resources shall be allowed within such areas. The City shall require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade such areas and be compatible with the continuance of such habitat areas.

6.A.8 Within the Coastal Zone, prior to approval of a development, the City shall require that all development on lots or parcels designated NR (Natural Resources) on the Land Use Diagram or within 250 feet of such designation, or development potentially affecting an environmentally sensitive habitat area, shall be found to be in conformity with the applicable habitat protection policies of the General Plan. All development plans, drainage plans, and grading plans submitted as part of an application shall show the precise location of the habitat(s) potentially affected by the proposed project and the manner in which they will be protected, enhanced or restored.

6.A.19 The City shall require establishment of a buffer for permitted development adjacent to all environmentally sensitive areas...

The currently certified Article 30 contains no specific provisions regarding protection of environmentally sensitive habitat areas (ESHA) with respect to cannabis regulation and allowed uses. In contrast, the proposed updates to Article 30 include specific requirements in Sec. 10.5.3004 (d)1 and (e)1a. which state, “The combined noise level for any commercial cannabis use, as measured within ESHA or required ESHA buffers, may not exceed 65 decibels” and “Exterior lighting must be shielded and directed away from ESHA and required ESHA buffers so that lighting does not disrupt of feeding, nesting, and other behavior patterns of wildlife inhabiting the ESHA.” The City may also require a Noise Plan which includes mitigation measures to reduce noise impacts and a photometric study to determine the effect commercial cannabis lighting may have on nearby ESHA.

In addition to noise and lighting protections, businesses with commercial cannabis use licenses must also reduce hazardous risks to the environment associated with uses of various chemicals. Commercial cannabis businesses must operate pursuant to a permit from the North Coast Regional Water Quality Control Board (RWQCB), comply with all applicable Health and Safety Code and California Fire Code requirements related to the storage, use, and handling of hazardous materials and the generation of hazardous waste, and refrain from the improper storage or use of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide and any activity that may adversely affect the health or safety of the facility occupants or employees, or nearby properties through the creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts.

Importantly, the proposed IP amendment does not affect coastal development permitting requirements of the certified IP, which maintain the need for a CDP for any construction of a structure or change in the density or intensity of use of land, or for any project that requires a use permit or minor use permit. Coastal development permit review will include the evaluation of specific impacts to ESHA and water resources resulting from individual cannabis projects and ensure that projects comply with natural resource protection policies of the certified LCP. Further, the proposed amendment does not allow the outdoor cultivation of cannabis and only allows indoor cultivation, ensuring that cannabis is grown in a contained environment where effluent discharges into coastal waters and wetlands can be avoided. No cannabis cultivation of any kind including outdoor cultivation or other commercial cannabis activities are allowed on natural resource or agricultural lands (which in the City are farmed wetlands).

As proposed, the amendments to the certified IP are consistent with and adequate to carry out the environmental resource protection policies of the LUP.

### Visual Resources

The development of commercial cannabis facilities and personal cannabis cultivation have the potential to impact visual resources. Pertinent LUP policies include [emphasis added]:

**Applicable LUP Policies**

The City’s LUP includes policies and goals related to visual resources and visual compatibility, including the following (emphasis added):

1.D.1. The City shall retain the historic waterfront building scale, building form, and general character in waterfront revitalization and development as a means of creating a “Victorian Seaport” identity for the waterfront area...

5.B.1 The City shall provide public open space and shoreline access through the Coastal Zone, particularly along the waterfront and First Street, through all of the following:

...

c. Consider and protect the scenic and visual qualities of coastal areas that are visible from scenic public vista points and waterfront walkways.

...

In addition, IP section 10-5.2944.2 requires permitted development within scenic coastal areas to minimize the alteration of natural landforms; be visually compatible with the character of the surrounding area; be sited and designed to protect views to and along the ocean and scenic coastal areas; and wherever feasible, restore and enhance visual quality in visually degraded areas.

The proposed amendment does not modify the above visual resource protection standards. To prevent visual and community character impacts from cannabis cultivation for personal use (on residential properties), proposed Article 30 prohibits any exterior visual evidence of cannabis cultivation from a public right-of-way and lighting fixtures that cumulatively exceed 1,200 watts. All indoor cultivation, for personal or commercial use, must occur in a fully enclosed structure and rely solely on artificial light. Further, all commercial cannabis use lighting fixtures must meet the International Dark Sky Association’s (IDA) requirements for reducing waste of ambient light (“dark sky compliant”) and must comply with the California Green Building Standards Code. Therefore, the proposed IP amendment, as submitted, conforms with and is adequate to carry out the visual resource protection provisions of the certified LUP.

Coastal Access Parking

Certain commercial cannabis uses, specifically temporary cannabis events, may impact public access to and along the waterfront by limiting available off-street parking facilities. Related LUP provisions that preserve coastal access include [emphasis added]:

**Applicable LUP Policies**

The City’s certified LUP includes a number of policies related to preserving public access to and along the waterfront, including the provision of adequate off-street

parking facilities. LUP Coastal Recreation and Access Policies 5.B.4, 5.B.9, and 5.B.10 state in applicable part [*emphasis added*]:

5.B.4. The City of Eureka shall protect and enhance the public's rights of access to and along the shoreline, consistent with protecting environmentally sensitive habitats, by:

...

c. Allowing only such development as will not interfere with the public's right of access to the sea, where such right was acquired through use or legislative authorization.

5.B.9. The City shall ensure that public access support facilities are distributed throughout the Eureka Coastal Zone. Off-street parking shall be provided in the waterfront area; however, it shall not be located immediately adjacent to the shoreline, unless there is no feasible alternative.

5.B.10. To the maximum extent feasible, the City shall ensure universal public access to the waterfront, including support facilities.

The aforementioned policies serve to protect and enhance the public's right of access to and along the coast, including off-street parking in the waterfront area. Cultivation of cannabis for personal use is prohibited from displacing required on-street parking unless replacement parking is provided elsewhere on the property. Commercial cannabis facilities will generate demand for off-street parking in the City's coastal zone. As the City's coastal zone is largely less than a quarter mile wide from the shoreline of Humboldt Bay to its inland boundary, any increase in demand for parking has the potential to impact public access parking near the waterfront.

Article 15 of the City's certified IP requires off-street parking spaces to be provided for new and expanded uses and includes a schedule for calculating the number of required off-street parking spaces for different use types. Proposed Article 30 requires adherence to parking requirements set forth in Article 15, as well as the following:

<b>Type of Cannabis Facility</b>	<b>Required Number of On-Site Parking Spaces</b>
Cannabis general use	1 per 1,000 sq. ft. of gross floor area
Cannabis retail use	1 per 500 sq. ft. of gross floor area
Chemical cannabis extraction use	1 per 2,000 sq. ft. of gross floor area

The parking requirements for each use generally mirror the requirements of Article 15, except the chemical cannabis extraction use, which requires less on-site parking due a lesser need to supply parking for visitors to the facility. The proposed parking requirements as submitted will ensure that new commercial cannabis facilities are served by an adequate supply of parking and thus will prevent overflow into public access parking facilities.



The proposed amendment allows for temporary cannabis events subject to CDP permitting requirements of Article 29 of the certified IP. The currently certified Article 30 only allowed for, “small, limited, private invitation-only events involving the use or exchange of cannabis shall be allowed within a structure housing a licensed cannabis facility.” The proposed update to Article 30 defines temporary cannabis events as those attended by five (5) or more persons and involving the on-site sale or consumption of cannabis products. Events must be held on the premises of a licensed commercial cannabis use, on private property without a licensed commercial cannabis use in any non-residential zoning district, or within a City facility or other public property in any zoning district. Along with a temporary cannabis event permit, cannabis events would also require State approval of a temporary cannabis event license, and outdoor events on public property would also require a City-approved special event permit.

Chapter 158 of the Eureka Municipal Code requires that temporary cannabis events supply adequate temporary parking to accommodate vehicular traffic generated by the temporary cannabis event, either on-site, or at alternate locations acceptable to the City. Additional parking can also be required as conditions of temporary cannabis event permits, if needed.

Therefore, the Commission finds the proposed IP amendment, as submitted, conforms with and is adequate to carry out the coastal access provisions of the certified LUP.

#### Conclusion

The proposed IP amendment amends the commercial cannabis use types and cannabis-specific standards of the IP while retaining existing coastal development permitting requirements, development standards, and coastal resource protections. In addition, the proposed IP amendment maintains cannabis uses of a type, character, and intensity similar to existing allowable uses in applicable zoning districts and includes protective standards to address cannabis-specific concerns to ensure the protection of coastal resources. The amendment also maintains consistency with and carries out the priority uses provisions of the certified LUP by permitting commercial cannabis facilities in general commercial and industrial zoning districts (and not coastal-dependent industrial); only above the ground floor of the City’s visitor-serving Waterfront Commercial District (except for cannabis retail); and by ensuring that cannabis facilities are avoided on lands reserved for natural resources, agriculture, coastal-dependent industry, commercial fishing, and recreational boating. In conclusion, for all of the reasons discussed above, the Commission finds that the proposed IP amendment as submitted conforms with and is adequate to carry out the certified LUP.

#### **IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As set forth in section 21080.9 of the California Public Resources Code, CEQA exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of an LCP. Instead, the CEQA responsibilities are assigned to the Coastal Commission, and the Commission's LCP review and approval program has been found

by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore, the Commission is relieved of the responsibility to prepare an EIR for each LCP or LCP amendment.

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

The City's LCP amendment consists of an IP amendment. The Commission incorporates its findings on Coastal Act and LUP conformity into this CEQA finding as if set forth in full herein. As discussed throughout the staff report and hereby incorporated by reference, the IP amendment conforms with and is adequate to carry out the policies of the certified LUP. The Commission finds that approval of the IP amendment will not result in significant adverse environmental impacts within the meaning of CEQA. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures which would substantially lessen any significant adverse impact, either individual or cumulatively, which the activity may have on the environment [14 CCR §§ 13542(a), 13540(f), and 13555(b)].

**APPENDIX A – Substantive File Documents**

LCP Amendment Application No. LCP-1-EUR-22-0049-1 and associated file documents

City of Eureka Certified Local Coastal Program