

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877



January 31, 2009

Sidnie Olson AICP, Principal Planner
City of Eureka
Community Development Department
531 K Street
Eureka, CA 95501

SUBJECT: Request for Comments on Draft Environmental Impact Report for *Marina Center Mixed Use Project*, Former Union Pacific Railroad Switching & Maintenance Yard, City of Eureka, Humboldt County, California (APNs 001-014-002, 002-021-009, 003-031-003, -007, -008, -012, -013, 003-041-005, -006, -007, & 003-051-001); CUE VI, LLC, Petitioner/Applicant; SCH # 2006042024

Dear Ms. Olson:

Thank you for the opportunity to comment on the draft environmental impact report (DEIR) for the above-referenced project. The Commission itself has not had the opportunity to review the document, but Commission staff has prepared the following comments.

The project entails the reclassification of property currently planned and zoned Public/Quasi-Public (PQP), and Light Industrial (LI) to Waterfront Commercial (WFC), General Services Commercial (GSC), Professional Office (PO), Light Industrial (LI) and Water Conservation (WC), with corresponding changes in zoning from Public (P) and Limited Industrial (ML) to Waterfront Commercial (CW), Commercial Services (CS), Office and Multi-Family Residential (OR), Limited Industrial (ML), Conservation Water (WC) districts over the majority of the approximately 43-acre property, consisting of a former railroad switching and maintenance yard and adjoining commercial-industrial sites in northwest Eureka. No amendments to the text policies and standards of the City's planning and zoning program are proposed.

Given their location within the California Coastal Zone, the proposed changes to land use and zoning designations of the property will require certification by the Coastal Commission of the changes as part of a Local Coastal Plan (LCP) amendment. The Commission's standard of the review for the amendments to the land use plan designation is whether the proposed changes meet the requirements of, and are in conformity with, the policies of Chapter 3 of the California Coastal Act (PRC §30200 *et seq.*). The Commission's standard of review for the amendments to the zoning designations is whether the proposed changes conform with, or are adequate to carry out, the provisions of the certified land use plan (as amended).

Once the changes to planning and zoning designations are presumably certified by the Commission, proposed physical development at the site would consist of the remediation of the petroleum hydrocarbons-, metals-, and volatile organic compounds-contaminated rail yard "brownfields" site and subsequent development of a mixed-use complex comprising over 500,000 square-feet of retail commercial, professional office, light industrial, multi-family

residential, and quasi-public (museum) uses, and related onsite and offsite road way, off-street parking, landscaping, lighting, and signage improvements. The project would also include development of a ±12-acre wetland restoration and enhancement area as well as perimeter pedestrian and bicycle pathways, and natural resources interpretative kiosk amenities.

The subsequent site improvements under the new designations will require the issuance of conditional use and coastal development permits, and other authorizations by the City of Eureka. Pursuant to Coastal Act Section 30603(a)(2), any site developments approved by the local government located within 100 feet of any wetland would be appealable to the Commission. The Commission's standard of review for hearing any such appeal, should one be filed, would be whether the development conforms to the standards set forth in the certified LCP and the public access policies of the Coastal Act.

Scope of Agency Comments

Pursuant to Section 15082(b) of the California Environmental Quality Act (CEQA) Guidelines (14 CCR §§15000 *et seq.*), the Coastal Commission as a consulted agency is to provide the lead agency with "...specific detail about the scope and content of the environmental information related to the ... agency's area of statutory responsibility." In addition to providing this information, the consulted agency must identify if it will be a "responsible" or "trustee" agency (or both) for the project. This designation will depend upon the physical location of the project site being studied and the types of entitlements involved in authorizing the development.

The entirety of the project site is located within the California Coastal Zone as defined in Chapter 2.5 of the California Coastal Act (Public Resources Code §30150 *et seq.*) and within the City of Eureka's certified coastal development permit jurisdiction and is subject to the policies and standards of the City's LCP. Accordingly, the Commission will function as both a trustee and responsible agency. The role of trustee agency is based upon the Commission's explicit jurisdiction by law over natural resources held in trust for the people of the State of California that could be affected by the project. The function of responsible agency derives from the role of the Commission in: (a) certifying LCPs for areas within the coastal zone under local governments' jurisdiction; (b) issuing coastal development permits (CDPs) within areas of Commission jurisdiction; or (c) hearing appeals on CDPs issued by local governments for certain classes of development in specified areas.

Organization of Comments

Under Sections 15251(c) and (f) of the CEQA Guidelines, the Secretary of Resources has certified the California Coastal Commission's regulatory program as a "functionally equivalent process" to CEQA. Accordingly, the adopted final EIR would be used as a technical background document in assessing the project's environmental effects and conformance with applicable policies and standards within City's LCP and/or the Coastal Act. The document would first be used in the review of the LCP amendment requested by the City, in terms of the changes in ultimate development potential the program modifications would afford. Secondly, assuming the requested changes to the City's coastal land use plan and zoning facilitating the proposed project are certified, the analysis within the environmental document would be considered in hearing any

future appeal of the coastal development permit for any development project undertaken at the site under the revised land use and zoning designations and/or changed plan policies and development regulations, should any such appeal be filed.

The comments provided below have been primarily directed to the evaluations pertaining to the potential effects relating to the LCP amendment portion of the project rather than those regarding the *Marina Center* development proposal proper. Although many of the comments relate to conformance with specific Coastal Act and LCP policy and standards, in keeping with the primarily “CEQA checklist” layout of the DEIR, the comments have been organized, where possible, consistent with the thematic format of the draft EIR with respect to the various classes of environmental effects. Pertinent LCP and Coastal Act sections (*Italicized*), and general plan policies are cited, quoted or paraphrased accordingly.

The following comments are provided for lead and responsible agency consideration for reviewing the draft EIR:

Format and Scope of Analysis

As described in Chapter III, the *Marina Center* development project comprises two independent and consecutive sets of authorizations: (1) City-adoption of amendments to its LCP’s land use plan and zoning designations for the Balloon Track and adjoining properties (and any related textual plan policies or development regulations) and subsequent certification of these amendments by the Coastal Commission; and (2) issuance of a coastal development permit by the City (or the Coastal Commission on appeal) for remediation of hazardous materials contamination, subsequent construction of the site improvements, and sanctioning the uses therein. Action on any discretionary permit which is inconsistent with general plan and/or zoning provisions may not be acted on until requisite changes to such policies and standards have first been formally adopted by the City and certified by the Commission. As a consequence, processing the entitlements for such projects must be administered in a legally bipartite fashion: Concurrent processing of the conditional use and coastal development permit requests by the City conditioned upon the presumed future certification of an LCP amendment by the Coastal Commission would not be appropriate.

We fully acknowledge that it is the City’s intent to prepare an analysis that comprehensively assesses the specific environmental effects of the regulatory programmatic changes together with those associated with the physical construction, and land uses to be conducted at the *Marina Center* project site. However, there is no firm guarantee at this time that: (a) the City will adopt the amendments to its LCP; and (b) the Commission would certify those changes, such that the second component of the overall described project —the *Marina Center* development proper— could be legally authorized. In addition, plans for the project could be abandoned, substantially revised, and/or alternative development undertaken by others whether the plan and zoning provisions are amended or not. Thus, our comments are focused primarily on the proposed changes to the City’s LCP.

LCP Certification Review Process

As directed by Coastal Act Section 30510(b) and detailed within the Commission's administrative regulations (14 CCR 13551 *et seq.*), an amendment to the City's local coastal program must include "materials sufficient for a thorough and complete review," including a "...discussion of the amendment's relationship to and effect on the other sections of the certified LCP..." Typically, where not otherwise statutorily exempted, many local governments choose to include this analysis within their CEQA documentation.

The policy analysis within the DEIR does not adequately provide for a thorough and complete review of the proposed LCP amendment, neither in terms of the land use plan designation changes with Coastal Act Chapter 3 policies, nor with respect to the proposed zoning designation changes in terms of their consistency with and adequacy for carrying out the policies of the land use plan (as amended). We suggest that the City supplement the DEIR coverage within Chapter IV-I to include the consistency analyses that will be required by the Coastal Commission in assessing the proposed changes to its LCP for purposes of certification. To this end, the analysis should be augmented to first focus on, under a generic "ultimate build-out" scenario, the environmental effects the plan and zoning designation changes would have on: (1) the range and types of principally- and conditionally-permissible land uses; (2) the permissible intensity of development (e.g., minimum lot dimensions; maximum heights, coverage, floor-area, and residential densities; yard requirements and setbacks, etc.); and (3) the consistency of the changes in land use plan with the Chapter 3 policies of the Coastal Act (i.e., Public Resources Code Sections 30200 through 30265.5, inclusive); and (5) the amended zoning regulations' (i.e., CZR §§10-5.2901 through 10-5.29316, inclusive)¹ consistency with, and adequacy to carry out, the land use plan as amended (i.e., *City of Eureka General Plan Policy Document* Policies 1.A.4-6, 1.D.1-6, 1.E.3, 1.G.3, 1.I.1, 1.L.11, 1.M.2-7, 3.A.7-8, 3.G.1-2, 4.A.4-7, 4.B.1, 5.B.1-11, 6.A.1-24, 6.B.2-5, 7.B.2-5, and 7.D.1, as applicable.)

Once, this primary LCP amendment analysis is completed, then the EIR should evaluate the environmental implications of specific development projects, such as the *Marina Center*, together with an appropriate set of feasible alternatives.

Additional further detail as to the scope of this supplemental analysis is provided under each effects heading section below.

III. Project Description

Site Remediation: From past discussions with the project proponents, it is the Commission's understanding that most of the petroleum and other hazardous materials at the project site will not be removed to disposal facilities, but instead "capped" beneath buildings, parking lots, and other impervious surfaces, and effectively confined *in situ*, consistent with state and federal standards for sites intending to be developed with commercial and industrial land uses. However, although alluded to in several sections of the DEIR (e.g., Table I-1), no specific details

¹ Alternately cited as: "Title XV, Chapter 156 of the Eureka Municipal Code" (EMC).

have been provided with regard to the extent and scope of the hazardous materials remediation to be undertaken at the project site, and the full array of types and levels of contaminants to be either removed or retained/confined. The particular remediation methodologies to be used, the types and concentrations of contaminants, and the end-points to which clean-up would be taken significantly affect the overall extent of excavation, filling, and grading at the site, the degree to which environmentally sensitive habitat areas would be impacted, the traffic and air emissions generated during that project phase, and the permissible land uses that may subsequently be developed at the remediated site. As previously commented upon in their scoping letter of April 25, 2006, the Department of Toxic Substances Control (DTSC), a potential oversight responsible agency, observed that any such remedial actions to be undertaken as part of the project should be discussed within the EIR.

We acknowledge that an approved remedial action plan has yet to be secured from the North Coast Regional Water Quality Control Board, the apparent responsible oversight agency. Nonetheless, the information contained in such a plan, prepared consistent with the standards of Division 20, Chapter 6.8 of the California Health and Safety Code, and the alternatives evaluation criteria within the U.S. Environmental Protection Agency's National Oil and Hazardous Substances Pollution Contingency Plan, will be crucial to the Commission for conducting a full assessment of the project's effects on coastal resources, especially as relate to the proposed changed land use and zoning designations, for determining the feasible least environmentally-damaging alternative, and for ensuring that the Commission does not modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality, as required by Coastal Act Section 30412(b).

Undergrounding Utilities: Several of the project rendering and photo visual simulations imply that some of the above-ground electricity and telephone utility poles and transmission lines would be removed as part of the project site improvements, presumably to be relocated into underground vaults. Although the DEIR states in several places that new utilities will be placed underground, there is no similar statement with respect to the applicant's intentions regarding existing utilities. Please clarify if the project would include the undergrounding of these structures.

IV. Environmental Setting, Impacts, and Mitigation Measures

IV. A. Aesthetics

Applicable Coastal Act and LCP Policies and Standards

Coastal Act Section 30251 requires that "... the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance." Permitted development is to be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize alteration of natural landforms, to be compatible with surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas.

The City's General Plan *View Corridors and Architectural / Landscape Character* policies include the following applicable provisions:

- 1.H.1. The City shall promote unobstructed view corridors to the waterfront from public streets and other public spaces through careful building siting and effective street tree maintenance.

Moreover, LUP Coastal Recreation and Access Policy 5.B.1, states, in applicable part:

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

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

In addition, Section 10-5.2944 of the Zoning Regulations of the City for the Coastal Zone (herein "Coastal Zoning Regulations" or "CZR")² establish numerous criteria for reviewing the potential effects of new development on visual resources. Development occurring in and near coastal scenic areas may be approved or conditionally approved only where it is established that: *(1) alteration of natural landforms is minimized; (2) **the project will be visually compatible with the character of the surrounding area**; (3) the project is sited and designed to protect views to and along the ocean and scenic coastal areas; and (4) visual quality in visually degraded areas will be restore and enhance, wherever feasible.* [Emphasis added.]

Comments

The DEIR coverage of visual resources impacts is limited to an assessment of the physical ramifications of the *Marina Center* site improvements, primarily in terms of the qualitative similarities and differences with surrounding buildings. No separate discussion of the potential impacts the stand-alone programmatic changes—namely the imposition of the various requested plan and zoning designations—would have on the siting and design of subsequent site improvements and whether such improvements could conditionally comply with the above-cited criteria. The DEIR should be supplemented to provide such analysis.

The DEIR should be supplemented to include a quantitative evaluation of the bulk and scale of development in the surrounding area, comparing and contrasting structural square-footages, heights, floor-area, and lot coverage with that for the proposed development project. Mitigation measures should be revisited, as necessary, to identify additional means to reduce any significant adverse effects to less-than-significant levels, including height and size restrictions, exterior treatments to the structures, landscaping, and creation of view corridors. Such information will be critical for determining whether the proposed big-box commercial buildings and other large structures are visually compatible with the character of the surrounding area as required by Section 30251 of the Coastal Act and by Section 10-5.2944 of the City's Coastal Zoning Regulations.

² Alternately cited as: EMC Section 156.054.

IV. C. Air Quality

Applicable Coastal Act Policies and Standards

Coastal Act Section 30253 directs, in applicable part:

New development shall: ...

- (3) *Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.*

Section 30414 states, in applicable parts:

(a) The State Air Resources Board and air pollution control districts established pursuant to state law and consistent with requirements of federal law are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. The provisions of this division do not authorize the commission or any local government to establish any ambient air quality standard or emission standard, air pollution control program or facility, or to modify any ambient air quality standard, emission standard, or air pollution control program or facility which has been established by the state board or by an air pollution control district...

(c) The State Air Resources Board and any air pollution control district may recommend ways in which actions of the commission or any local government can complement or assist in the implementation of established air quality programs. [Emphases added.]

Comments

The final EIR should discuss how the proposed LCP amendment and development project, with the attachment of specified mitigation measures would be consistent with requirements imposed by the North Coast Unified Air Quality Management District once that agency promulgates such standards. The mitigation and monitoring program should be augmented to include a robust set of measures, including but not limited to, market-based provisions for purchasing carbon off-sets, exchanges, banking credits, and/or other transactions for inclusion within the project design towards achieving significant, incremental reduction in greenhouse gas emissions by the years 2020 and 2050, as set forth in the California Global Warming Solutions Act (AB32).

IV. D. Biological Resources

Applicable Coastal Act and LCP Policies and Standards

Section 30121 of the Coastal Act defines “wetlands” as:

‘Wetland’ means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Section 13577 of the Commission’s administrative regulations (14 CCR 13001 *et seq.*), in applicable part, further defines “wetlands” as:

(1) ...Land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; **or**
- (C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

(2) For the purposes of this section, the term “wetland” shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

- (A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; **and**
- (B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands. [Emphases added]

Section 30233 of the Coastal Act states, in applicable part

(a) **The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:**

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (6) Restoration purposes.

(7) *Nature study, aquaculture, or similar resource dependent activities...*

(c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary... [Emphases added.]*

Coastal Act Section 30240 directs:

(a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

(b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The central precepts of these policies and standards are iterated as Policies 6.A.1 through 6.A.14 within LUP Part II, Section 6 – *Natural Resources*, and in CZR Section 10-5.2942.³ In addition, Section 10-5.2910⁴ directs:

No diking, filling, or dredging shall be permitted in the coastal zone, unless determined to be consistent with the provisions of all applicable Coastal Zone Development Standards, Part 3 of this Article, and all applicable policies of the land use plan of this LCP.

Comments

The two wetland delineations independently conducted have been reviewed by the Commission's staff biologist who provides the following observations:

Both delineators appropriately included a delineation utilizing the one-parameter definition in the Coastal Commission's administrative regulations (as contrasted with the U.S. Army Corps of Engineer's requirements that three wetland parameters be present). Similar wetland areas were identified by both delineators. The maps produced by the Huffman-Broadway Group were based on surveys using global positioning satellite (GPS) coordinates and are probably the more accurate. The wetlands that are present fall into two categories: seasonally wet depressions (i.e., palustrine emergent wetlands) that were created by human activities, and a remnant of Clark Slough (i.e., estuarine emergent wetlands) that is still connected to Humboldt Bay and receives muted tidal flows. The Clark Slough remnant covers about 1.06 acres (based on either CCC or ACOE definitions). There delineation discloses that are approximately 7.61 acres of CCC palustrine emergent wetlands, of which the proposed project would result in the permanent fill of about 5.54 acres of this ESHA. The project applicant proposes to create

³ Alternately cited as: EMC §156.052.

⁴ Alternately cited as: EMC §156.015.

additional tidal estuarine wetlands as mitigation for the proposed wetland fill⁵. A mitigation ratio of at least 1:1 is proposed. The possibility of additional mitigation in the form of off-site creation, restoration, or preservation is also suggested. A 50-foot buffer around the created and restored wetlands is proposed.

Only a portion of the wetlands that are present are proposed to be dredged or filled — it apparently is not necessary to remediate soil contamination throughout the site. To analyze the impacts of the project and the project's consistency with land use policies, it is important that each wetland be individually characterized with respect to contamination and proposed remediation. The DEIR should be supplemented to provide this information.

With respect to the proposed 1:1 compensatory replacement ratio, were the proposed development a permitted use under the LCP or otherwise allowable, the mitigation that has been proposed would be qualitatively appropriate. In this landscape setting, a well-constructed, relatively large tidal wetland would have a greater natural resource value than the existing small, scattered, and degraded seasonally wet depressions. However, since there would be temporal losses of habitat functions during restoration and creation activities and since there would be uncertainty concerning the success of the mitigation, a mitigation ratio greater than 1:1 would be appropriate.

As regards the project proposal to include a 50-foot buffer around the restored wetlands, Policy 6.A.19 of the Land Use Plan and CZR Section 10-5.2942.15⁶ require that the minimum width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of the type and size of the adjacent development, and/or proposed mitigation measures, that a smaller buffer will protect the resources of the habitat area. Technical Services biological staff find that it is unlikely that a buffer of 50 feet would be sufficiently protective of wildlife, especially given the probable high level of use of the proposed trails around the restored wetlands.

The DEIR should be supplemented to address the above-described permissible use and adequate mitigation inconsistencies.

Comments addressing Coastal Act and LCP consistency of the proposed dredging, diking, and filling of wetlands follow under the Land Use and Planning sub-heading, below.

IV.F/G. Geology and Soils / Hazards and Hazardous Materials

Applicable Coastal Act and LCP Policies and Standards

Section 30253 of the Coastal Act states:

⁵ Although Figure IV.D-3 suggests two categories of mitigation wetlands (2.68 ac Clark Slough Channel and adjacent tidal wetlands and 6.3 ac merely captioned "wetland"), Table IV.D-3 specifies that both areas will be muted tidal wetlands.

⁶ Alternately cited as: EMC §156.052(O).

New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Coastal Act Section 30232 directs:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Parallel provisions to these policies and standards are incorporated in the LCP as Policies 4.A.4., 7.B.2., 7.B.3.-.5, 7.D.1, through 7.E.4 within LUP Part II, Section 4 – *Public Facilities and Services* and Section 7 – *Health and Safety*, and in CZR Section 10-5.2943.⁷

Comments

In addition to echoing the hazards avoidance and risk minimization provisions of Coastal Act Section 30253, LUP Policy 7.B.5 and CZR Section 10-5.2943.3 direct the City to require the preparation of a geology and soils report, with particular content and coverage, “at the time of project application” for certain specified high density residential and other high occupancy development⁸ located in areas of significant liquefaction potential. The proposed residential, office, retail commercial, and restaurant components of the Marina Center development meet these project review criteria and thus require preparation of a geology and soils report. Additionally, as discussed in the *Geology, Soils, and Seismicity* sub-chapter, the site is historically known to be subject to significant liquefaction. Notwithstanding the citation of use of an unpublished 2006 “geotechnical characterization report” of the site, a timely geology and soils report has not been prepared and made available for review. Mitigation Measure F-1a proposes to further defer the preparation of until after adoption of the EIR. Preparation of the requisite site stability analysis should be expedited and made available as part of the environmental review process. Specific mitigation measures (i.e., pre-construction site preparation, foundation & structural design, and grading & drainage recommendations) to reduce any significant adverse impacts to less-than-significant levels should also be identified.

With respect to the DEIR’s coverage of hazardous substances impacts, please refer to the above comments under the III. Project Description – Site Remediation sub-heading.

IV. H. Hydrology and Water Quality

⁷ Alternately cited as: EMC §156.053.

⁸ These project types are defined as: (1) residential development having a gross density of eight or more units per acre; (2) office buildings of 10,000 square-feet or larger in size; and (3) visitor-serving facilities of 5,000 square-feet or larger in size.

Applicable Coastal Act and LCP Policies and Standards

Coastal Act Section 30230 states:

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

Section 30231 continues on to direct:

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.

Section 30253 of the Coastal Act states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Equivalent provisions are set forth within the LUP's *Stormwater Drainage, Aquatic Resources and Marine, Wetland, and Riparian Habitat*, and *Geological Hazards* sub-sections, and within CZR Sections 10-5.2912 and 10-5.2943.

Comments

The impact analysis identifies a number of mitigation measures (i.e., erosion/sediment control plans; dry-weather scheduling; inlet protection; soil stockpile management; dust abatement; material delivery, storage, and use protocols; monitoring; swale bio-filtration; prohibitions on certain herbicides and pesticides) to be taken to prevent and reduce address water quality impacts from stormwater-entrained pollutants and sedimentation both during the construction phase and long-term during the development's economic life. These water quality best management practices (BMPs) should serve to prevent significant impacts to receiving coastal waters both on- and off-site from site development sources.

Although Mitigation Measures H-4a and H-5a provide for collecting and conveying site runoff to appropriately designed drainage facilities and treatment of stormwater within drop inlet vaults, no preliminary analysis has been provided with regard to the initial sizing and types of these facilities. As regards post-construction water quality measures, in acting on past LCP amendment and permit applications, the Commission has utilized water design standards developed cooperatively with the State Water Resources Board and regional water quality control boards for treating, filtering, and infiltrating stormwater runoff up to and including the 85th percentile, 24-hour and/or one-hour storm event for a given area, for flow- and volumetric-based BMPs, respectively. The DEIR should be supplemented to address how such design goals could be implemented at the project site (see enclosure.)

With respect to water-borne hazards, namely coastal flooding, tsunami inundation, and the implications of global sea-level rise, the DEIR utilizes data derived from 1986 flood mapping 1993 and 1995 tsunami modeling, and 2006 sea-level projections. These sources are somewhat dated and more current scientific information is available and should be utilized in analyzing these impact types. The more recent and site-specific data developed and collated by the members of the Redwood Coast Tsunami Work Group⁹ and prepared for the Samoa Town Plan EIR (“Revised Tsunami Vulnerability Evaluation – Samoa Town Master Plan, Humboldt County, California,” GeoEngineers, Inc. and PlanWest Partners, Inc., ©2006, and revisions) should be considered in assessing potential tsunami inundation risks, including the establishment of appropriate floor elevations for residential development at the site.

As regards sea-level rise, in December 2008, a staff briefing was presented to the Coastal Commission on recent developments in the fields of climate change and global warming (see: <http://documents.coastal.ca.gov/reports/2008/12/F3.5-12-2008.pdf>). Much of the presentation regarding predicted global sea-level rise followed from the 2007 release of the fourth assessment report by the United Nations - World Meteorological Organization’s Intergovernmental Panel on Climate Change (IPCC) (see: <http://www.ipcc.ch/ipccreports/assessments-reports.htm>) and various scientific papers published after its release (e.g., Rahmstorf, S. 2007. “A Semi-Empirical Approach to Projecting Future Sea-Level Rise,” *Science*, v315, 368-370, DOI:10.1126/science.1135456 and W. T. Pfeffer, *et al.* “Kinematic Constraints on Glacier Contributions to 21st-Century Sea-Level Rise,” *Science* 321, 1340 (2008); DOI:10.1126/science.1159099.) These materials, as well as the pending 2008 *California Climate Action Report*, should be consulted in the preparation of a supplemental quantitative assessment of the effects of global sea-level rise on site stability and the exposure of persons and property to natural and anthropogenic hazards at the project site, including the effects such future inundation may have on the management of hazardous materials and contamination retained/confined at the project site.

IV. I Land Use and Planning

Applicable Coastal Act and LCP Policies and Standards

Section 30233 of the Coastal Act states, in applicable part

⁹ See <http://www.humboldt.edu/~geology/earthquakes/rctwg/> for contact information.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities...*

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary... [Emphases added.]

Coastal Act Section 30240 directs:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The central precepts of these policies and standards are iterated as Policies 6.A.1 through 6.A.14 within LUP Part II, Section 6 – *Natural Resources*, and in CZR Section 10-5.2942.¹⁰ In addition, Section 10-5.2910¹¹ directs:

No diking, filling, or dredging shall be permitted in the coastal zone, unless determined to be consistent with the provisions of all applicable Coastal Zone Development Standards, Part 3 of this Article, and all applicable policies of the land use plan of this LCP.

¹⁰ Alternately cited as: EMC §156.052.

¹¹ Alternately cited as: EMC §156.015.

Coastal Act Section 30250(a) directs, in applicable part:

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

Coastal Act Section 30252 continues on to state:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Moreover, Section 30255 of the Coastal Act directs that:

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

City of Eureka General Plan Policy 3.F.2 states:

The City shall work with the North Coast Railroad to determine if feasible locations for switching operations can be located outside the city, allowing the current balloon track area to be used for industrial or commercial development purposes.

In addition, Section One of the City's Land Use Plan (LUP) titled *Land Use and Community Design* contains numerous policies that relate to the proposed plan and zoning redesignations and site development. The policies most germane to the proposed development project include the following:

LUP *Land Use and Development Framework* Policy 1.A.2 states:

Within the coastal zone, the City shall ensure that coastal-dependent developments have priority over other developments on or near the shoreline. Except as provided elsewhere in this General Plan, coastal dependent development shall not be sited in a wetland.

Coastal-related developments shall generally be accommodated proximate to the coastal-dependent uses they support.

General Plan Policy 1.L.1 states, in applicable part:

The City shall discourage new commercial development within the city that will adversely affect the economic vitality of the Core Area...

General Plan Policy 1.L.8 states:

The City shall require major commercial development projects to either be located in areas served by public transportation or in areas to which the existing public transportation service can be feasibly extended.

LUP *Commercial Development* Policy 1.L.11 states, in applicable part:

The City shall protect and, where feasible, upgrade facilities serving the commercial fishing and recreational boating industries... [Emphasis added.]

General Plan Policy 1.L.12 states:

The City shall promote the concentration of automobile-oriented retail development in the ASC designated area at the west end of 6th and 7th Streets. In particular, the City will support the establishment and retention of auto dealerships in this area. The City shall also discourage the establishment of new dealerships outside of this area.

LUP *Industrial Development* Policy 1.M.5 states:

If efforts to develop a multi-purpose terminal at Dock B are unsuccessful, the City will support the development of a non-coastal industrial park in the Dock B area, including the "balloon track" and the Wright-Schuchart site. In developing such an industrial park, the City would retain the Dock A area for possible long-term cargo terminal development.

LUP *Industrial Development* Policy 1.M.8 states, in applicable part:

The City shall encourage coastal-dependent industrial facilities to locate or expand within existing sites...

General Plan Policy 1.M.8 states:

The City shall require that new industrial and heavy commercial development projects have convenient and safe access to major transportation facilities (highways, railroads, waterfront facilities) to minimize unnecessary and disruptive traffic through residential and other sensitive sections of the city.

General Plan Policy 1.N.9 states:

The City shall strive to provide high quality public facilities, utilities, and services throughout the urbanized area of Eureka and shall ensure that such facilities, utilities, and services are compatible with surrounding development.

LUP *Water Transportation* Policy 3.G.1 states, in applicable part:

The City shall protect and, where feasible, upgrade facilities serving the commercial fishing and recreational boating industries... Proposed recreational boating facilities shall, to the maximum extent feasible, be designed and located so as not to interfere with the needs of the commercial fishing industry.

Comments

As set forth in Policy 3.F.2 cited above, it is clear that the City's General Plan acknowledged a phase out of the former railroad uses on the proposed project site to be replaced with other commercial and/or industrial development. While such visioning may have been included within the City's long range planning program, the City must nonetheless ensure that any such change in use be consistent with all provisions within the LCP, including both land use plan policies and standards, and zoning regulations. Although this analysis was conducted for the land use plan policies (i.e., Table IV.I-2), other than with respect to the intent and purpose of the proposed new zoning designations, no similar analysis was conducted for the relevant coastal zoning regulations. A summary of each proposed zoning districts development standards was provided, however no analysis accompanied this summary with respect to the project's consistency with those standards.

The Coastal Act and LCP policies and standards enumerated in each environmental effect subsection categorically set out the more prominent issues that need to be addressed as part of the environmental review of the proposed LCP amendment and development project. Overall, with respect to analyzing conformance with these policies and standards, the EIR should bear in mind the following questions:

- Can the uses which would become permissible as a result of the amendment to the LCP be legally developable at the proposed location, taking into account site-specific conditions and characteristics and the setting (i.e., the presence or proximity of protected ESHA, surrounding development types and densities, shoreline adjacency, hierarchy of land use priorities, etc.)?
- Will the changes in site plan and zoning designations result in displacing or thwarting the development of other requisite, needed, or planned-for higher priority uses to other locations or timelines that could more effectively be provided for at the proposed project site and/or in a more expeditious timeframe?
- Are adequate community services, public utilities, and other support infrastructure available to serve the uses at this location under the proposed revised plan and zone categories?

- Will the development types that would be facilitated under the amended land use and zoning designations integrate in a non-conflicting manner with established and/or planned surrounding uses?

Permissibility of the Filling, Dredging, and Diking of Wetlands: The DEIR asserts that the wetlands on the site are neither a “sensitive natural community” under CEQA nor “Environmentally Sensitive Habitat Areas” (ESHA) as defined by the Coastal Act and the City’s LCP. However, the Eureka LCP identifies all wetlands as ESHA. Land Use Plan Policy 6.A.6 and Section 10-5.2942.3(2)¹² explicitly declare “wetlands and estuaries” to be “environmentally sensitive habitat areas.” Table IV.I-2 of the Draft EIR concludes that the project is “Consistent” with LUP Policy 6.A.7 despite the fact that this policy restricts development in ESHA to resource dependent uses.

Two of the more salient policies in the LUP regarding wetland impacts are Policy 6.A.9, which requires that any diking, filling or dredging of wetlands be a “permitted use,” and Policy 6.A.14, which enumerates all “permitted uses.” The Draft EIR in Table IV.I-2 asserts that the project is “consistent” with Policy 6.A.9 and that the project is “potentially inconsistent” with Policy 6.A.14. In fact, the project appears to be “inconsistent” with both policies since only the proposed wetland restoration component is a “permitted use.”¹³

With regard to consistency to Section 30233 of the Coastal Act, wetland restoration is included as a permissible use for wetland fill. However, as the DEIR acknowledges on page IV.1-14, the filling of wetlands for the purpose of site remediation is not listed as one of the permissible uses for filling of wetlands under Section 30233. The DEIR should also have indicated that filling of wetlands for the proposed reuse of the site for commercial and non-coastal dependent industrial development are also not included in the list of permissible uses for filling wetlands under Section 30233.

Despite these inconsistencies of the project with the uses permitted by Section 30233 for fill in wetlands, the DEIR concludes that the project is nonetheless consistent with the Coastal Act because the project would purportedly attain the overall objective of the Coastal Act to enhance and preserve coastal resources, presumably because wetland enhancement would be performed at Clark Slough and the project would not result in a net loss of wetlands. The DEIR cites the conflict resolution provisions of Section 30007.5 of the Coastal Act and erroneously suggests that this section of the Coastal Act could be used to override the acknowledged inconsistency of the project with Section 30233.

Section 30007.5 of the Coastal Act does not provide a basis for overcoming the inconsistencies of the project with the wetland fill policies in the manner suggested in the DEIR.

¹² Alternately cited as: EMC §156.052(C)(1)(b).

¹³ See also comments under Land Use and Planning regarding the invocation of Coastal Act Section 30007.5, the Commission’s conflict resolution “balancing provisions” for resolving the permissible use inconsistencies.

The Coastal Act provides that development may only be permitted where the development may be undertaken in conformity with all coastal resource, public access, and public recreation protection policies of the Act and/or an applicable local coastal program. The "conflict resolution process" provided by Coastal Act Section 30007.5 may only be invoked where an unavoidable conflict exists between competing Coastal Act policies. For example, construction of an impoundment for irrigation on a stream that supports threatened salmon could present a conflict between Coastal Act policies that seek to maintain agricultural production on the one hand and policies that require protection of habitat supporting sensitive species on the other hand. The Commission is required to resolve such conflicts in the manner that is most protective of significant coastal resources. The conflict resolution process is not applicable in cases where a proposed development is simply inconsistent with the Coastal Act absent a conflict between competing Coastal Act policies. In these cases, the development is simply prohibited.

In order to use the conflict resolution mechanism of Section 30007.5, the Commission must first identify a conflict between Chapter 3 policies of the Coastal Act. If there is no conflict between policies, Section 30007.5 is not applicable. Further, the conflict must be one that inevitably arises out of an attempt to meet another Chapter 3 policy. Thus, the Commission must find that in meeting the requirements of one Chapter 3 policy, it is impossible to meet the requirements of another Chapter 3 policy. More precisely, the Commission must find that denial of an LCP amendment due to a Chapter 3 inconsistency necessarily will itself result in an inconsistency with a Chapter 3 policy.

References in the DEIR to the conflict resolution section of the Coastal Act (Section 30007.5) are misleading because in this case there is no conflict between restoring wetlands at the site and limiting fill to only the uses permissible under Section 30233 of the Coastal Act. As discussed previously, if the City were to approve the proposed LCP amendment, the Commission would review for consistency with the Coastal Act the proposed re-designation of the bulk of the site in the LUP from "Public/Quasi Public," to various commercial and non-coastal dependent industrial uses, as well as the proposed corresponding changes to the zoning district applicable to the site. In reviewing the re-designation and rezoning of the site, the Commission could act in several ways that would not result in an inconsistency with a Chapter 3 policy. Wetland restoration is a use that could be allowed under the current Public/Quasi Public land use designation. Thus, denial of the LCP amendment would not preclude wetland restoration from occurring on the site and denial would not lead to a proposed project going forward that would fill wetlands for other uses that are not permissible under Section 30233. In addition, the Commission could consider various alternative land use designations for the areas proposed to be filled that allow for uses that are permissible for wetland filling under Section 30233 such as coastal dependent industry and wetland restoration development, including the designations of Coastal Dependent Industrial or Conservation Water. All of these courses of action would avoid a conflict with Chapter 3 policies. Therefore, the Commission could not use Section 30007.5 in the manner suggested in the DEIR because denial of the proposed LCP amendment due to its inconsistency with the wetland fill provisions of Section 30233 of the Coastal Act would not itself result in an inconsistency with another Coastal Act policy.

Priority Uses: The discussion in the DEIR concerning consistency with Coastal Act policies fails to address the need for use of the site for priority uses under the Coastal Act.

The Coastal Act contains numerous policy provisions relating to the protection of near shore areas for a variety of highly valued and functionally dependent uses that could not feasibly be provided or developed elsewhere. These include public accessways and related support facilities, water-oriented public and private recreation, coastal-dependent industrial operations, including aquaculture and commercial fishing-related uses, and other manufacturing or processing works requiring waterfront siting. The Coastal Act also includes other provisions for fostering the siting and development of visitor-serving facilities as a second-tier priority development type, provided such use and/or development does not adversely impact higher priority uses and developments, particularly those that are functionally-dependent upon shoreline-proximate locations. Section 30222 of the Coastal Act states:

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

In reviewing development proposals involving differing uses on locations within waterfront areas, the comparative coastal-dependency of the prospective proposed use, the relative availability of sites for coastal-dependent development, and the current and projected needs of the area need to be fully considered if significant impacts to high-priority coastal-dependent uses are to be avoided.

The proposed commercial and industrial land uses proposed for the site are not priority uses under the Coastal Act. In evaluating the proposed LCP amendment that would change the Public LUP and zoning designations to a mix of commercial and industrial designations, the Commission will need to evaluate the proposed amendment against the priority use policies of the Coastal Act and whether the proposed commercial and industrial uses would occupy land that is needed to serve priority uses. Given the proximity of the site to the waterfront and its location across Waterfront Drive from the Eureka Boat Basin, the need to evaluate the potential use of the site for priority uses is especially important. The DEIR should examine such potential uses as use of the site for coastal dependent industry, as a support area for shipping terminal uses, and for recreational boating uses. One of the most comprehensive analyses of port or harbor related development potential of Humboldt Bay performed in recent years is the Port of Humboldt Bay Harbor Revitalization Plan, prepared by consultants for the Humboldt Bay Harbor, Recreation and Conservation District in February, 2003. The City of Eureka and Humboldt County also participated in the study. The study identifies the project site as a site that should be considered particularly for use as a dry-boat storage facility for the storage of recreational boats on land. The study notes the proximity of the site to the boat launching ramp at the Eureka Boat Basin and suggests the utility of the site for such a priority use. The proximity to the marina, the recreational amenities of the waterfront, and its location across Waterfront Drive from Wharfinger building where many public and private meetings of various groups are held also suggest that the site may have particular utility for visitor serving uses, such as lodging and restaurants. The DEIR should fully evaluate the demand and feasibility for the use of the site for these specific uses as well as the range of priority uses identified in the Coastal Act.

IV.N. Recreation (and Coastal Access)

Applicable Coastal Act and LCP Policies and Standards

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Coastal Act Section 30213, in applicable part, directs:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Section 30222 of the Coastal Act states:

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

Coastal Act Section 30223 goes on to direct that:

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

In addition, Coastal Act Section 30234 states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land. [Emphasis added.]

Coastal Act Section 30252 continues on to state, in applicable part:

The location and amount of new development should maintain and enhance public access to the coast by... (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

LUP Coastal Recreation and Access Policy 5.B.3, in applicable part, states:

The City... where feasible, shall provide... facilities serving, commercial and recreational boating, including party and charter fishing boats.

LUP Coastal Recreation and Access Policy 5.B.9 states:

The City shall ensure that public access support facilities are distributed throughout the Eureka Coastal Zone. Offstreet 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. [Emphasis added.]

LUP Table 5-2, which sets forth the City’s coastal access inventory, identifies the project site directing, in applicable part, as follows:

Access Point/Area	Description of Proposed Access
Across the Northwestern Pacific Railroad right-of-way from Waterfront Drive to Old Town	The City shall, in conjunction with the California Public Utilities Commission and the Northwestern Pacific Railroad, prepare a implementable long-range plan for pedestrian and vehicular at-grade access, consistent with requirements of this General Plan, in order to maximize public access opportunities and ensure public safety.

Comments

As with much of the bulk of the DEIR, its analysis centers on the pedestrian and bike path amenities that would be provided by the proposed development project and does not separately address the impacts associated with the changes in plan designations and zoning. This assessment is especially pertinent to potential impacts to recreation opportunities and coastal access given: (1) the site’s proximity to the Eureka Public Marina; (2) the existing “Public/Quasi-Public” land use and “Public” zoning designations being specifically intended for providing such facilities more so than any other alternate land use and zoning category; and (3) the project locale having been identified in other City and regional planning documents as a potential site for development of a variety of similar facilities including “tourism / marine science cluster” (e.g., public aquarium, marine lab, cruise dock, naval vessel museum, and related activities) and “dry boat storage.”

Alternatives

Applicable Coastal Act and LCP Policies and Standards

Coastal Act Section 30233(a) reads, in applicable part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative... [Emphases added.]

Coastal Act Section 30260 directs, in applicable part:

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section ... if (1) alternative locations are infeasible or more environmentally damaging... [Emphases added.]

Comments

In the interest of avoiding and minimizing adverse impacts to coastal resources, the Coastal Act in several contexts requires a thorough assessment of alternatives both to designations for specific classes of land uses as part of reviewing for certification LCPs, port plans, public works plans and UC/CSU long range development plans, and in the siting and design of development projects. With regard to the requested land use plan and zoning amendment, these evaluations of the range of feasible alternatives in the DEIR were effectively limited down to three options: (1) the proposed *Marina Center* project (and a reduced project variant); (2) the “no project” wherein the existing P/QP and P designations would be retained; and (3) reclassifying the site’s zoning to “Light Industrial” (no corresponding land use plan designation for which the MG zoning would implement was disclosed.) Given the recent economic down-turn of the last three financial quarters and the current and pending availability of several large retail commercial properties, the alternatives section of the DEIR should be revisited to evaluate which if any or several of these existing developed sites could accommodate the proposed retail commercial, professional office, and commercial services uses.

Errata

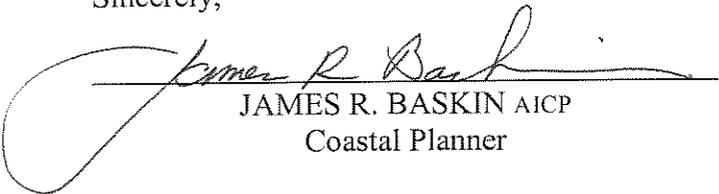
In addition to responding and providing supplemental evaluation of the potential environmental effects set forth in the above comments, the DEIR contains several erroneous statements which should be corrected within the final document:

- The coastal zone boundary in proximity to the project site is not the centerline of Broadway and Third Streets. Rather, pursuant to a motion adopted by the Commission on March 1, 1977 in conjunction with the jurisdictional maps prepared per Section 30103(b) of the Coastal Act, “where the Coastal Zone boundary follows road or railroad rights-of-way, the boundary of the Coastal Zone shall be the inland boundary of the improved right-of-way as it exists as of January 1, 1977, or as modified by closure or additional improvement thereafter provided that it shall not be more than 100 yards inland from the center line.” [Emphasis added.] (Chapter IV, Section I *Land Use and Planning*, p. IV.I-3)
- The City of Eureka’s LUP has been amended multiple times since the September 1998 certification; the 1998 LUP is not the “current City of Eureka Land Use Plan.” (Chapter IV, Section I *Land Use and Planning*, p. IV.I-10)
- Although the area is the subject of several land use policies, the Westside Industrial Area Study has never been transmitted to the Coastal Commission for certification review for inclusion as part of the LCP. (Chapter IV, Section I *Land Use and Planning*, p. IV.I-71)

- In its administration of the requirements of Coastal Act Section 30233, the Coastal Commission considers excavation, the extrication of earthen materials, and other forms of grading not otherwise comprising “filling” or “diking” as forms of “dredging.” (Numerous citations)

Thank you for the opportunity to provide comments as part of the preparation of the environmental analysis. Please call if you have any questions regarding this letter.

Sincerely,



JAMES R. BASKIN AICP
Coastal Planner

Encl: *85th Percentile Design Goal Implementation Considerations* and *Eureka WFO* weather station precipitation data

RSM/JRB:jb/lt