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Mr. Robert Morris, Chair
Humboldt County Planning Commission
825 Fifth Street
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April 21, 2016

RE: April 21, 2016 hearing on Interim Use Local Coastal Plan Amendment

Please accept this letter as I am unable to attend tonight's hearing.

PROBLEM:

1. The County of Humboldt has a large amount of vacant, underutilized, and blighted industrial property around Humboldt Bay and the private and public sectors repeatedly stated that the primary obstacle to reasonable and foreseeable utilization of the industrially zoned properties is that the Coastal Commission's regulations concerning coastal dependent industrial uses are too restrictive.
2. The environmental community repeatedly state that the areas intensive industrial history around the bay has left a legacy of contamination.
3. The areas docks, infrastructure and building continue to deteriorate and collapse. It is common knowledge that for years some property owners have been forced to ignore zoning regulations and have allowed noncoastal dependent uses without proper permits in order to have any income whatsoever from their property. Once these non permitted uses have been established, property owners and lessee are unable to obtain building permits to improve their property without kicking out their unpermitted tenants.
4. The areas tax base continues to decline and has resulted in a fiscal crisis for the special districts that provide services to the area. As a result of the significant reduction in taxes and other revenue, the areas services and infrastructure have been severely impaired.

SOLUTION: Stop blaming the Coastal Commission and local property owners and take action to amend the Local Coastal Plan to regain local land use authority, as authorized by the Coastal Act, to allow local property owners the ability to obtain proper land use and building permits; clean up their property; market and recruit business to locate in the area; and reinvest in their property.

HOW DO WE IMPLEMENT THE SOLUTION: Develop a simple three step approach which would:

1. Remove the requirement for a coastal development permit for certain types of development in specific geographical areas.

2. Rezone/redesignate unneeded Coastal Dependent Industrial land.
3. TAKE INCREMENTAL STEPS NOW. Amend the Local Coastal Plan to allow interim uses in the MC – Industrial /Commercial Dependent Zone.

1. Remove the requirement for a coastal development permit for certain types of development in specific geographical areas. The Cities of Eureka and Arcata both have fairly large areas of commercial, industrial and residential zoned properties in their coastal zones which are categorically excluded from the requirement to obtain a coastal development permit. However, the County has two relatively small categorical exclusion areas in Manila and Myrtleowne. Although there are many other areas in the County, including MC designated lands, that were developed prior to January 1, 1977 and meet the requirements of Coastal Act Section 30610.5, the County has not requested and the Coastal Commission has not granted categorical exclusion areas for industrial development around the Bay. This is a common categorical exclusion that is utilized extensively by almost every local jurisdiction that has a local coastal plan. In these categorical exclusion areas, the Coastal Commission generally retains the ability to appeal a local decision.

Section 30610.5 of the California Coastal Act specifies: “Upon the request of a local government, an urban land area, as specifically identified by such local government, shall, after public hearing, be excluded by the commission from the permit provisions of this chapter where both of the following conditions have been met:

1. commercial or industrial area zoned and developed for such use on or before January 1, 1977.
2. The commission finds both the following:
 - (i) Locally permitted development will be infilling or replacement and will be either in conformity with the scale, size, and character of the surrounding community.
 - (ii) There is no potential for significant adverse effects, either individually or cumulatively, on public access to the coast or on coastal resources from any locally permitted development; provided, however that no area may be excluded unless more than 50% of the lots are built upon, to the same general density or intensity of use.”

Recommendation: Direct Staff to draft GIS mapping that shows all areas that were developed prior to 1977 that meet the requirement of Section 30610.5 of the California Coastal Act and to draft amendments to the County's Local Coastal Plan by expanding the categorical exclusion areas currently authorized in the County's approved Humboldt Bay Area Plan.

2. Rezone/redesignate unneeded Coastal Dependent Industrial land. Section 30232. of the County’s Coastal Commission approved Humboldt Bay Area Plans specifies: “The Planning Department shall maintain a list of vacant industrial parcels. When notice has been given that an industrial facility is permanently closing down, the Planning Department shall solicit recommendation, including from the owner or operator and the Humboldt Bay Harbor Recreation

and Conservation District, for appropriate future uses of the site. An LCP amendment shall be applied for where the Planning Department's recommendation is to change the land use designation." Section 3.14B3 outlines the priority coastal dependent industrial sites as:

"Priority 1 Sites: sites with existing facilities suitable, with minor alteration, to accommodate the proposed use, or that could accommodate the proposed use through expansion.

Priority 2 Sites: sites requiring the construction of new facilities which do not convert wetlands. Preferred sites within this category are those requiring the least site alteration (e.g. dredging, grading, habitat modification).

Priority 3 Sites: sites where the proposed use would require conversion of wetlands.

Priority 4 Sites: sites requiring dredging of a new deep water channel."

It is well documented that industrial facilities have been closed down for many years and that these closures have resulted in an abundance of vacant, underutilized, and blighted industrial properties throughout the coastal zone. These properties have often left a legacy of contamination that will only be cleaned up if the property owners are allowed to have uses on the property that are profitable. It is in the property owners, environmental advocacy groups and communities best interest to change the zoning. It is time to prioritize the regions coastal dependent industrial properties and implement Section 30232.b. of the Humboldt Bay Area Plan to change the land use designation to allow for other appropriate noncoastal industrial dependent uses.

Recommendation: Direct Staff to work with the property owners, operators, City of Eureka, and Humboldt Bay Harbor Recreation and Conservation District to review/suggest revisions to the Priority Site criteria and coordinated prioritization list of coastal dependent industrial properties on and around the shoreline and come back with recommendations on redesignation of specific properties out of the MC land use designation.

3. TAKE INCREMENTAL STEPS NOW. Amend the Local Coastal Plan to allow interim uses in the MC – Industrial /Commercial Dependent Zone. Staff has done a good job of crafting an amendment that they believe will get approved through the Coastal Commission. They should be commended for taking the initial steps required to correct this long standing problem. This is not an easy issue. It is complicated and there are many sides to consider. The solution they crafted is far better than the existing regulations that have resulted in vacant, underutilized and blighted properties, but is way too restrictive to provide the surety that is necessary for our local private property owners and investors to be willing to take the required risk to make the necessary private investment that is required to reverse the decline of these important assets.

Although I am a firm believer in the overall goals of the Coastal Act, caution should always be taken any time a jurisdiction is dealing with the Coastal Commission. A clear and legally sound strategy should be carefully and methodically followed. You're Staff and the Coastal Commission Staff are trained professionals and their advice should be generally followed. Many widely held beliefs about the Coastal Act; Local Coastal Program Amendments; and Coastal Development permitting are based on a myth that has perpetuated over the years and are not based on a clear reading of the exact language of Coastal Act itself. There is a tendency by almost everyone involved in the process to rely on commonly held beliefs and opinions that are repeatedly stated

as if they were facts, than to simply read the plain language of the Coastal Act. Always go to the source and read the Coastal Act and not some ones interpretation of what the Coastal Act says.

I encourage the Planning Commission to look at the plain language of Section 30255 of the Coastal Act and make your own determination on what the Coastal Act requires. In my opinion, and I do not claim to be an expert, Section 30255 has been misinterpreted to somehow mean that coastal dependent industrial uses are exclusively allowed on or near the shoreline. The Coastal Act clearly states that "coastal dependent developments shall have priority over other developments.....". It is the County's Local Coastal Plan that establishes this exclusivity, not the Coastal Act. The Coastal Act clearly gives priority to coastal dependent uses, but allows other noncoastal dependent uses on or near the shoreline as well.

When reviewing the County's Local Coastal Plan Amendment, the Coastal Commission's duty is to implement the Coastal Act. Section 30512.2(a) of the Coastal Act clearly states:

“(a) The commission's review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3 (commencing with Section 30200). In making this review, the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.”

In other words, it is State law that if the proposed amendment complies with the Coastal Act, the Coastal Commission shall approve the amendment.

In order to allow interim uses and amend the zoning requirements, the County Staff is properly amending its Local Coastal Plan (Humboldt Bay Area Plan). Once you amend the Local Coastal Plan to allow other noncoastal dependent uses in the MC designation, then the proposed zoning will be consistent with the County's local coastal plan. In my opinion the language Staff is recommending in Section 3.13.B.1.c is too specific as policies should be general. My specific concern is the cross referencing with Section 3.13-3.2 of the Coastal Zoning Regulations is highly problematic and should be deleted. Policies should never reference a zoning standard, however a zoning standard may reference a policy. I would also delete any reference to specific performance standards as these should be in the zoning standards and not a policy.

It is clearly in the County's and States best long term interest to prioritize Humboldt Bay's coastal dependent uses on or near the shoreline. However, we should also allow other compatible uses on the hundreds of vacant, underutilized and blighted acres that are not feasible to be utilized for coastal dependent uses. Numerous other jurisdictions have local coastal plans that provide a simple mechanism to allow noncoastal dependent uses on industrial properties on or near the shoreline, Humboldt County does not need to over regulate this.

If the Planning Commission is going to draft detailed performance standards then I would suggest that modify the zoning amendment to state that if you meet the performance standards that the use would be permitted. I do not see the need for the specific performance standards if you are going

to require a Coastal Development Permit and Conditional Use Permit as these can be reviewed on a case by case basis. If you make performance standards too stringent, then you lose local flexibility to conditionally approve projects that may be appropriate without implementing every proposed performance standard.

If the Planning Commission believes that the Coastal Act does not allow for noncoastal dependent uses on or near the shoreline, then the Coastal Commission cannot approve the proposed amendment. If the Coastal Act allows non coastal dependent uses after prioritization of Coastal dependent uses, then why are we allowing ourselves to be over regulated by the Coastal Commission? We need to stop blaming the Coastal Commission, because it is not the Coastal Act that is placing these regulatory burdens on our property owners it is our own local requirements.

The regions coastal dependent industrial base collapsed a long time ago. Yes, with a lot of hard work and proper zoning, we can regain some of this back. However, it is not "feasible" to utilize all of the MC designated lands for coastal dependent industrial uses and therefore we must allow other uses or we will lose the last remaining remnants of our once thriving infrastructure and buildings.

I suggest that the Planning Commission recommend a local coastal plan amendment that meets the following objectives:

1. complies with the Coastal Act;
2. prioritizes coastal dependent industrial uses on or near the shoreline;
3. assumes local land use control;
4. treats all property owners equally;
5. provides surety for local property owners and investors;
6. does not negatively impact existing and reasonable foreseeable future coastal dependent uses industrial uses on Humboldt Bay;
7. allows uses which will create local jobs and facilitate investment in the areas rapidly deteriorating buildings and infrastructure; and
8. protects the environment and rewards good stewardship of the land.

I believe that this is one of the most important long term decisions that the County can make to positively improve our community. I trust your judgment and I am available to discuss this with anyone whether they agree or disagree with my comments.

Respectfully Submitted:



Larry Oetker

ps: Coastal Act Section 30108 states that: ""Feasible" means capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social, and technological factors."