



COUNTY OF HUMBOLDT

Legislation Text

File #: 22-47, Version: 1

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Adoption of Coastal Commission Modifications to Amendments to the Humboldt Bay Area Plan and Zoning Maps to Allow the Samoa Peninsula Wastewater Project, Case Number: PLN 2020-16734

RECOMMENDATION(S):

That the Board of Supervisors:

1. Introduce an Ordinance Amending Section 311-7 of Chapter 1, Division 1, Title III of the Humboldt County Code (Zoning Maps) to Rezone Property in Fairhaven by title and waive further reading of Ordinance No. ____ [Attachment 2], reclassifying lands in the Fairhaven area from Residential Single Family\No Further Subdivision Allowed (RS\X) to Residential Single Family\No Further Subdivision Allowed with a Qualified combining zone (RS\XQ);
2. Receive and consider the staff report, the Planning Commission's recommendations and written comments received [Attachment 3], open the public hearing, and accept public comment;
3. Close the public hearing; and
4. Adopt the proposed Humboldt Bay Area Plan and Zoning Map amendments by taking the following actions:
 - a. Adopt Resolution No. ____ [Attachment 1], repealing and replacing Resolution 21-19 which was approved February 9, 2021, making findings the Humboldt Bay Area Plan and Zoning Map Amendments are exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) and making all the required findings for consistency with the General Plan, Zoning Ordinance and the Coastal Act, approving Humboldt Bay Area Plan amendments, acknowledging receipt of, accepting, agreeing to and approving modifications as adopted by the California Coastal Commission on December 16, 2021; and transmitting them along with the amendment to the Zoning Map to the California Coastal Commission for their review and certification;
 - b. Adopt Ordinance No. ____ [Attachment 2], repealing and replacing Ordinance 2665

which was approved February 9, 2021, amending Section 311-7 of Chapter 1, Division 1, Title III of the Humboldt County Code (Zoning Maps) to Rezone Property in Fairhaven;

- c. Direct the Clerk of the Board to publish the summary of the Zoning Map Amendment [Attachment 4] within 15 days after adoption, along with the names of those Supervisors voting for and against each ordinance and to post in the Office of the Clerk of the Board of Supervisors a certified copy of the full text of each adopted ordinance; and
- d. Direct Planning Staff to prepare and file a Notice of Exemption for the amendments to the Humboldt County Humboldt Bay Area Plan and Zoning Map with the County Clerk and Office of Planning and Research.

SOURCE OF FUNDING:

Long-Range Planning (1100-282)

State Water Resources Control Board Planning Grant Agreement No. D16-04034 (1100-282-3109)

DISCUSSION:

In taking the recommended actions the Board of Supervisors will accept the changes to the Amendments to the Humboldt Bay Area Plan and Zoning Maps made by the California Coastal Commission at their meeting in December to allow the Samoa Peninsula Wastewater Project (SPWP) to move forward. The changes made by the Coastal Commission do not significantly modify the original action on this ordinance, so staff is recommending approval of them.

Background

On Feb. 9, 2021, your Board adopted Resolution No. 21-19 and Ordinance No. 2665, amending the Humboldt Bay Area Plan (HBAP) and Zoning Map of the Humboldt County Local Coastal Program (hereafter referred to as "LCP amendment") to allow the Samoa Peninsula Wastewater Project to proceed and applying a Q-Qualified Zone to apply special restrictions and regulations on property in Fairhaven that is within 300 feet of a Samoa Peninsula Wastewater Project public sewer main. The LCP amendment was transmitted to the Coastal Commission on March 2, 2021, as LCP-1-HUM-21-0030-1 and deemed "submitted" on June 14, 2021. The Coastal Commission staff agreed that the proposed LCP amendment would protect and restore water quality and marine resources consistent with the Coastal Act, but found that as submitted, it would not minimize risk to life and property from significant geologic and flood hazards. Commission staff recommended suggested modifications to the Coastal Commission, which were approved on Dec. 16, 2021.

The LCP amendments, as modified by the Coastal Commission, are intended to allow construction and operation of a consolidated wastewater collection, treatment, and disposal system to correct public health and water quality problems resulting from failed on-site sewage disposal systems in the Samoa/Fairhaven area outside the Town of Samoa. The public wastewater system will serve existing residential, commercial/industrial, recreational, and institutional facilities currently served by onsite wastewater treatment systems that are located within the boundaries of the Peninsula Community Services District (PCSD).

Coastal Commission Modifications

In general, the suggested modifications limit new development within 300 feet of the public sewer mains (the distance within which any new approved development is required to connect to the wastewater system) to primary single family homes, increase the requirements for the disclosure or acknowledgement of the coastal hazards to which the approved new development is exposed, and requires that certain levels of replacement or redevelopment be subject to new performance standards relating to coastal hazards. The proposed amendments to allow the SPWP are briefly summarized below and contained in Attachments 1 and 2:

1. Amend HBAP Section 3.22, Public Services-Rural, subsection B (Development Policies) to add an exception to allow the extension of sewer service outside the Urban Limit Line established by the Samoa Town Master Plan (STMP) to allow the immediate establishment of service to existing structures outside the STMP that are served by onsite septic systems. In addition, sewer connections may be provided to future industrial uses and to Interim Conditionally Permitted uses in the Industrial/Coastal Dependent Zone. No further extension of the sewer mains will be allowed without a future amendment to the HBAP. (Attachment 1)

Additionally, Section 3.22 of the HBAP will be amended to include language specific to new residential development in Fairhaven located within 300 feet of a SPWP sewer main may only be approved subject to performance standards, adopted as part of a Q, Qualified zone, that will ensure that such development will be protective of public health, safety and welfare, and coastal resources relative to sea level rise and tsunami inundation, and will be protective of ESHA. (Attachment 1)

2. Amend Samoa Town Mater Plan (STMP) Land Use Designation Overlay New Development - Policy 9, to only allow wastewater flows from outside the STMP in a manner consistent with HBAP Section 3.22, Public Services-Rural, subsection B (Development Policies). (Attachment 1)
3. Clean up and clarify the language of HBAP Section 3.22 policies relating to the extension of water service, but do not change the meaning of the policy. (Attachment 1)
4. Amend Section 311-7 of Chapter 1, Division 1, Title III, of the Humboldt County Code (Zoning Maps) by reclassifying lands in the Fairhaven area from Residential Single Family\No Further Subdivision Allowed (RS\X) to Residential Single Family\No Further Subdivision Allowed with a Q-Qualified combining zone (RS\XQ), that applies to new residential development located within 300 feet of the sewer service extension in the community of Fairhaven through the application of interim performance standards. (Attachment 2)

The following is an analysis of the substantive suggested modifications.

1. **Suggested Modification to HBAP Section 3.22.B.1.(b)(3).** This suggested modification will require the PCSD to disclose to each residential property in Fairhaven that the connection to sewer service does not convey or imply any entitlement or commitment for Coastal

Development Permit authorization to be granted for any expansion or replacement of existing development on the subject property, and the PCSD must provide a plan for providing such notice to any successors and assigns of such existing development.

Staff analysis. These suggested modifications provide additional disclosure to property owners and are supported by the PCSD.

- 2. Suggested Modification to Ordinance 2665-Section 4.a.** This suggested modification will prohibit the allowance of various uses allowed under the LCP on the Fairhaven lands that could subject more people and development to hazard risks in this area of high geologic and flood hazard.

Analysis. Coastal Commission suggested modifications will disallow all conditionally permitted uses and Accessory Dwelling Units (ADUs) in the areas subject to the Q-Zone, which applies to properties within 300 feet of the proposed new sewer line. Conditionally permitted uses no longer allowed are:

- Manufactured Home Parks;
- Guest Houses;
- Community Assembly;
- Public and Private Recreation and Open Space;
- Bed and Breakfast Establishments;
- Neighborhood Commercial; and
- Private Institutions.

Although property owners will no longer be able to seek approval for the development of these uses in Fairhaven, based on Planning and Building Department files there no record of any Conditional Use Permit applications being submitted in Fairhaven in the past 30 years or more, so this modification is unlikely to have any significant impact on new development in the area.

Permitting ADUs is similarly unlikely in Fairhaven under the current regulatory framework. Deleting that use from the list of allowable uses is also not likely to have any significant impact on new development. Currently, ADUs may only be approved in tsunami runup areas of the HBAP if a licensed professional civil engineer with substantial experience evaluating tsunami hazards concludes the ADU will be safe from catastrophic failure or inundation caused by a local great Cascadia Subduction Zone earthquake event and accompanying tsunami. To date, there have been no ADUs approved anywhere in the HBAP tsunami runup area, including Fairhaven. Realistically, due to the extensive HBAP standards required for the development of

ADUs, there may be no real expectation that one would be feasibly constructed in Fairhaven.

It should be noted that the Draft Environmental Impact Report (EIR) for the Samoa Peninsula Wastewater Project certified by the Board of Supervisors on Oct. 6, 2020 (Item I-2) described the amendments to the HBAP relating to coastal hazards occurring in two phases. The first phase which is now being considered is intended to be an interim step to allow connection of existing homes to the new sewer line. After the first phase is completed, and following comprehensive amendments to the HBAP addressing sea level rise and tsunami hazard issues, Planning and Building Department staff will initiate Phase II, which will delete the Q-Zone and restore the conditionally permitted use allowances of the RS Zone and the allowance for ADU's to those properties.

3. **Suggested Modification to Ordinance 2665-Section 4.b.** This suggested modification requires applicants for new development and redevelopment in the Q-Zone in Fairhaven to execute and record a deed restriction against their property acknowledging the coastal hazard risks to which their development is exposed, assuming the risks of developing in hazardous locations, and acknowledging the possibility that no shoreline protection may be approved to protect the development.

Analysis. The Coastal Commission suggested modification requires recordation of a disclosure that would have been kept on file with the Planning and Building Department. The nature of the acknowledgement has not changed, but by recording the acknowledgement against the property deed, all future purchasers will be more certain to be fully aware of the hazards that apply to their homes.

4. **Suggested Modification to Ordinance 2665-Section 4.b,** This suggested modification requires in the Q-Zone area in Fairhaven that the replacement or redevelopment of 50% or more of an existing structure also be required to meet to the various special restrictions that would apply to new development on infill lots in Fairhaven. Those special restrictions are intended to ensure new development is safe from earthquake, tsunami and sea level rise throughout the economic life of the new structure.

Analysis. The Coastal Commission suggested modifications would require that the replacement or the redevelopment of 50% or more of an existing structure in the Q-Zone be subject to the special conditions that would have applied only to construction of new homes. They believe this is justified because the replacement or major remodeling of homes could extend their economic lifespan another 75 to 100 years into the future, exacerbating their risk to earthquakes and tsunamis which could happen at any time, and to flooding risks from sea level rise which are expected to be more severe in the future. As discussed above in the analysis to Modification #2, these restrictions are an interim step to enable existing homes to be connected to the new sewer line and they will be removed after approval of comprehensive amendments to the HBAP addressing tsunami and sea level rise hazards.

Planning Commission Review

The Coastal Commission suggested modifications do not substantially modify the project that was considered by, and recommended for approval by, the Planning Commission on Dec. 17, 2020. No further Planning Commission review of this project is required.

Findings for Approval

The Coastal Commission's suggested modifications do not substantially alter the factual evidence supporting the findings made by the Board of Supervisors in Resolution 21-19 which were sent to the Coastal Commission for review in Feb., 2021. The same evidence and analysis prepared to support the Board's initial findings for approval of these LCP amendments remain relevant and applicable to the modified Amendment. The Coastal Commission's modifications enhance the performance criteria to protect new development from, and disclosures relating to, coastal hazards consistent with the Coastal Act as analyzed in the Coastal Commission findings, further supporting the required finding of consistency with the Coastal Act for the Amendment modifications.

Conformance with the California Environmental Quality Act

Public Resources Code Section 21080.5 and 21080.9 and Sections 15250, 15251(f) and 15265 of the CEQA Guidelines identify that CEQA does not apply to the activities of a local government for the preparation and adoption of a Local Coastal Program, and therefore the County adoption of the LCP Amendment is statutorily exempt from environmental review. Approval of the proposed LCP Amendments by the California Coastal Commission is the functional equivalent of the environmental review process required by CEQA.

Although CEQA does not apply to proposed LCP Amendments, CEQA does apply to the SPWP as a whole. An Environmental Impact Report (EIR) was prepared for the SPWP (State Clearinghouse Number 2018042083) which concludes that all the project's impacts on the environment are either less than significant or can be mitigated to less than significant levels. No impacts were found to be significant and unavoidable. On Oct. 6, 2020, the Board of Supervisors certified the EIR and approved the wastewater project - initiating the process to amend the LCP. The EIR is used as evidence for the required findings to support the approval of the proposed LCP amendment.

FINANCIAL IMPACT:

Staff costs for review and approval of the LCP Amendment are approximately \$5,000 and are budgeted to come from the fiscal year 2021-22 General Fund contribution to the Long-Range Planning unit, 1100-282. Construction of the wastewater transmission line project will be grant funded. The newly formed Peninsula CSD will be applying for those funds and building out the project on their own. The project is expected to be developed and operated without the need for any future funding from the county.

The salary funding for preparing this staff report is included in the General Fund contribution to the Long-Range Planning unit, 1100-282. These costs will be partially offset by reimbursement from the 282-3109, State Water Resources Control Board Planning Grant Agreement No. D16-04034 in the

amount of \$550,000.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by creating opportunities for improved safety and health and protecting vulnerable populations.

OTHER AGENCY INVOLVEMENT:

Peninsula CSD

State Water Resources Control Board

Regional Water Quality Control Board

Humboldt Bay Harbor Recreation and Conservation District

California Coastal Commission

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to direct staff to bring the suggested modifications to the Planning Commission for review. Staff does not recommend further consideration of this alternative because the suggested modifications do not substantially alter the project that was previously considered by the Planning Commission. Alternatively, the Board could consider rejecting the proposed LCP amendments incorporating the Coastal Commission suggested modifications. This alternative should be selected if the Board believes the evidence presented does not support making all the required findings. Staff does not recommend further consideration of this alternative because based on the information in this staff report, there is evidence that supports making all the required findings.

ATTACHMENTS:

1. Resolution No. _____, A Resolution of the Board of Supervisors of the County of Humboldt making findings the project is exempt from environmental review pursuant to CEQA and findings pursuant to the General Plan and Humboldt County Code Section 312-50 - concerning adoption of HBAP and Zoning Map amendments and Title 14 §13551 of the California Code of Regulations and Public Resources Code, §30200 (Coastal Act), approving Humboldt Bay Area Plan (HBAP) Amendments associated with the proposed SPWP, and transmitting the HBAP and Zoning Map amendments, including all necessary supporting documentation, to the California Coastal Commission as an amendment to the certified Local Coastal Program for their review and certification in accordance with Public Resources Code Section 30514.
2. Ordinance No. _____, Amending the Zoning Regulations Section 311-7 of Chapter 1, Division 1, Title III of the Humboldt County Code (Zoning Maps) to Rezone Property in Fairhaven, reclassifying lands in the Fairhaven area from Residential Single Family\No Further Subdivision Allowed (RS\X) to Residential Single Family\No Further Subdivision Allowed with a Qualified combining zone (RS\XQ).
3. Planning Commission staff report for the January 7, 2021 meeting.
4. Post-Adoption Summary of Ordinance Amending Section 311-7 of Chapter 1, Division 1, Title III of the Humboldt County Code (Zoning Maps) to Rezone Property in Fairhaven.

PREVIOUS ACTION/REFERRAL:

Board Order No.: I-1

Meeting of: February 9, 2021
File No.: 20-1617