

COMMUNITY DEVELOPMENT AGENCY

October 2, 2012

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SUBJECT: Local Coastal Program Amendments (LCPA)
First Board Public Hearing – **Agriculture and Biological Resources**

Dear Members of the Board,

RECOMMENDATION:

Consider the Local Coastal Program Amendments recommended by the Planning Commission and additional alternatives to Agriculture, Biological Resources and policies governing interpretation of the LCP as set forth in Attachments 1 through 5.

BACKGROUND:

On February 23, 2012, after a lengthy and thorough review process, the Planning Commission approved a large number of amendments to the Local Coastal Program (LCP), addressing a wide variety of issues, and recommended that your Board adopt them and submit them for final approval, or "certification," by the California Coastal Commission (CCC). The Local Coastal Program Amendments (LCPA) preserve large amounts of the existing LCP while reconciling differences between Unit 1 and Unit 2, (the two parts of the existing Land Use Plan (LUP)), improving policies, adding provisions for new issues, such as sea level rise, and reorganizing the Development Code (Article V) to conform to the format for the Code as a whole adopted by the Board of Supervisors in 2003. The process included more than 50 public meetings, including two rounds of community meetings throughout the Marin Coastal Zone, 18 public issue workshops before the Planning Commission (PC), a joint Board and PC workshop upon the release of the Public Review Draft of the LCPA, eight formal hearings by the PC, innumerable letters, contacts and comments from individuals, groups and agencies, and the maintenance and availability of all related documents, both in print and on the LCP website. Your Board has also conducted two public workshops on March 20 and March 27, 2012 to receive an introduction to the proposed amendments.

Your Board is not in the position to, nor does it need to duplicate the prodigious work the Planning Commission has already accomplished. However, important differences of opinion persist, whether with the staff of the Coastal Commission or among major stakeholders involved in the LCPA process. This report focuses on such issues relative to agriculture and biological resources, and is formatted to assure that key issues receive priority attention. Your Board will review recommendations on the remaining LCPA topics at the November 13, 2012 hearing. At the December 11,

2012 hearing, staff will recommend that your Board adopt a Resolution approving the LCPA and directing staff to submit the approved amendments to the Coastal Commission.

SUMMARY:

The LCP Amendments adopted by the Planning Commission on February 23, 2012 are the baseline for your Board's review. In response to issues raised by the Coastal Commission staff and others, alternative language is offered in some cases for your Board's consideration. The enclosed attachments are organized to enable your Board to focus their attention on priority issues, while providing additional background and analysis for those seeking greater detail. The materials for the October 2, 2012 hearing address the issues related to Agriculture and Biological Resources and overall LCP interpretation policies.

- **Attachment 1** provides an executive summary of the staff's recommendations on the highest priority concerns.
- **Attachment 2** includes more detailed background and analysis on the topics covered in Attachment 1.
- **Attachments 3 and 4** are organized in the same way, but are recommended for approval on a "consent" agenda basis. That is to say if your Board as a whole has no objections to these changes, they will be deemed approved. Of course any Board member may identify any issue for public discussion before the LCPAs are approved.
- **Attachment 5** presents more minor corrections and revisions, also to be treated on a "consent" agenda basis.
- **Attachment 6** presents all the Alternative language in the context of the Planning Commission's recommended LCPA (provided for the Board and on the Web)

Also on the Web: Prior to the October 2 hearing staff will post the following at www.MarinLCP.org:

- Comparison of LCPA to Unit 1 and Unit 2 existing Land Use policies.
- Road map relating existing Title 22I to proposed LCPA Development Code.

Specific staff recommendations are set out in Attachments 1-5.

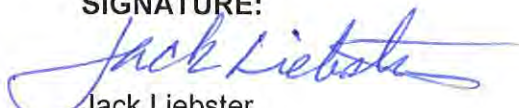
FISCAL/STAFFING IMPACT:

No fiscal or staffing impact as a result of the LCPA is expected since the work to complete the LCP amendments is budgeted in the current fiscal year and programmed in the Department's Performance Plan.

REVIEWED BY: (These boxes must be checked)

<input type="checkbox"/> Department of Finance	<input type="checkbox"/> N/A
<input checked="" type="checkbox"/> County Counsel	<input type="checkbox"/> N/A
<input type="checkbox"/> Human Resources	<input type="checkbox"/> N/A

SIGNATURE:


Jack Liebster
Principal Planner

Reviewed by:


Brian C. Crawford
Director

ATTACHMENT #1
Local Coastal Program Amendments (LCPA)

EXECUTIVE SUMMARY OF KEY ISSUES

The following is a summary of the key issues raised by the California Coastal Commission staff and other stakeholder organizations. A full detailed analysis of each issue is provided in Attachment #2 of this staff report, with corresponding issue numbers. The issues discussed in this report are related to LCPA Interpretive Policies and Agriculture and Biological Resource topics only. Issues on other topics will be addressed at the Board of Supervisors hearing on November 13, 2012.

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I. Agricultural Operations

- **LCPA Land Use Plan:** Policy C-AG-2
- **LCPA Development Code:** Section 22.68.030

The Coastal Commission staff (CCC) has commented that on-going agricultural operations do not require coastal permits, but that grading, intensification and structures associated with these agricultural operations might. Additional clarity in this regard would support the preservation of coastal agriculture by removing uncertainty and increasing the efficiency and effectiveness of the coastal permit process.

ALTERNATIVE FOR BOARD CONSIDERATION:

Agriculture-related grading projects may trigger the requirement for a coastal permit, if such projects are of a scale or character that meets the definition of “development.” In particular, the terracing of land and installation of irrigation facilities as part of converting land to viticulture would constitute “development.” The Planning Commission made viticulture subject to appeal to the CCC in the Development Code; the suggested Alternative would make the corresponding change in LUP Policy C-AG-2. Agriculture activities not requiring a coastal permit would also be added to §22.68.030.

Policy C-AG-2

...For the purposes of the C-APZ, the principal permitted use shall be...horticulture, ~~viticulture,~~ vermiculture...

Viticulture is a permitted use. Conditional uses in the C-APZ zone include...

§22.68.030 – Coastal Permit Required

A Coastal Permit is required for development in the Coastal Zone ...unless the development is categorically excluded, exempt, or qualifies for a De Minimis Waiver.

Development is defined in Article VIII of this Development Code and is interpreted to include ... the significant alteration of landforms.... On-going agricultural operations including cultivation, crop and animal management and grazing are not considered to be a significant alteration of land forms development.

II. Diversified Agricultural Uses as the Principal Permitted Use in the C-APZ (Coastal, Agricultural Production Zone) zoning district.

- **LCPA Land Use Plan:** *Policy C-AG-2*
- **LCPA Development Code:** *Sections 22.32.023, 22.62.060, 22.130.030*

The Planning Commission-approved LCPA would include an expanded definition of the Principal Permitted Use in the Coastal, Agricultural Production Zone (C-APZ) district. The LCPA would designate a single use as the Principal Permitted Use: Agriculture (coastal), as defined in LCPA Development Code Section 22.130.030. This refines the existing provision by including activities that are functionally-related to agricultural production itself, such as housing for the farm family and agricultural workers, as well as production and processing facilities that are necessary for diversification. Coastal Commission staff has commented that the Principal Permitted Use should be narrowed down to “agricultural production.” However, this fails to encompass all the activities essential to the viability of agricultural operations, and thus the long-term preservation of agriculture. Among the key reasons for this change are the following (see also the detailed discussion in Part B).

- It is essential to refine the provisions for the Principal Permitted Use in the C-APZ district to not only maintain, but to continue to strengthen the viability of the local agricultural economy and community.
- The existing LCP Code establishes that the Principal Permitted Use in the C-APZ district already encompasses uses beyond agricultural production alone, including an operator’s dwelling, limited overnight (B&B) rooms, and other accessory, incidental and supporting uses..
- The LCPA would refine the existing provision to clearly designate “agriculture” as the Principal Permitted Use in the C-APZ, and define it to include those uses essential to the viability of agricultural operations which are “functionally related to one another so as to be effectively one use type.” Excluding these uses diminishes the purpose of establishing Principal Permitted Uses.

The LCPA adds size limits on the farmhouse and intergenerational housing which will help protect Marin’s agricultural land from the pressures to convert to large rural estate development.

- The LCPA would streamline the permit requirements for agricultural uses in the C-APZ district by maintaining the Coastal Permit requirement, but removing the need to obtain a Master Plan requirement. The requirement to obtain a Coastal Permit and meet applicable development standards prior to approval fully accomplishes the function of a Master Plan without unnecessary and confusing duplication.

NO ALTERNATIVES RECOMMENDED FOR BOARD CONSIDERATION

Staff proposes minor modifications to LCPA Policy C-AG-2 and Development Code Sections 22.32.023, 22.62.060, and 22.130.030 for clarification; however no other alternative to the PC-approved LCPA provision is presented. See Part B for additional analysis and proposed edits. As described in the Board Letter, these changes will be incorporated if no Board Member objects.

III. Intergenerational Housing

- **LCPA Land Use Plan:** Policy C-AG-5
- **LCPA Development Code:** Section 22.32.024; Land Use Table 5-1-a

In order to support the viability of agriculture in the Coastal Zone and support Marin's existing family farms, the Planning Commission-recommended LCPA includes provisions to allow up to two "intergenerational homes" on agricultural properties in the Coastal Agricultural Production Zone (C-APZ) district, subject to density requirements. Coastal Commission staff and representatives of environmental groups have expressed concerns regarding the concept of intergenerational housing, which are addressed by staff in Part B. However, a brief summary of staff's responses is provided below.

- Agriculture in Marin County overwhelmingly consists of family farms. The ability of a family to live on the farm and to manage agricultural operations is essential.
- Intergenerational homes support multi-generational family farm operation and succession and should be considered part of the agricultural use of the property.
- All intergenerational homes would be subject to Coastal Permit review and extensive development standards related to issues such as access, clustering, and density requirements as well as criteria such as the applicant's history of and financial commitment to long term commercial agricultural production.
- Restrictive covenants would be required to ensure that intergenerational housing units are continuously occupied by the owner or operator's immediate family.
- Intergenerational homes would be subject to the total residential size limit for agricultural properties which would tend to encourage several smaller homes rather than one large estate home on a given property.

NO ALTERNATIVE RECOMMENDED FOR BOARD CONSIDERATION:

Staff proposes minor modifications to Section 22.32.024 (Standards for Agricultural Intergenerational Homes) to clarify the minimum lot size required for one or two intergenerational homes, however no alternative to the PC-Recommended provisions are presented. See Attachment 2 for additional details and proposed edits.

IV. Conservation Easements

- ***LCPA Land Use Plan:*** *Policy C-AG-7*
- ***LCPA Development Code:*** *Section 22.65.040*

The existing LCP requires that conservation easements be provided to offset the impacts on agricultural use before land divisions and/or non-agricultural development are permitted on coastal agricultural production zone (C-APZ) lands, consistent with state and federal law. Conservation easements continue to play the same role they have since 1981- if and when a property is subdivided or developed with non-agricultural uses consistent with the LCP policies, they would limit additional non-agricultural use, and subdivision. Consistent with the Board's adoption of a model agricultural conservation easement, they would also provide for affirmative agricultural operations. The LCPA would clarify that development of a farmhouse, agricultural worker housing, or intergenerational housing would be exempt from the conservation easement requirement, since these uses are defined as "agriculture" and support the continuation of ag. production. This exemption is to allow flexibility for the continuation of agriculture, as the majority of Marin's farms and ranches are family owned and operated, with many generations having worked the land.

NO ALTERNATIVE RECOMMENDED FOR BOARD CONSIDERATION.

V. Types of ESHA and ESHA Definition

TYPES OF ESHA:

- **LCPA Land Use Plan:** *Policy C-BIO-1*

Environmentally Sensitive Habitat Areas (ESHAs) in Marin include a wide range of habitat types, including wetlands, streams, riparian areas, nesting sites and others supporting a multitude of protected species. Broadly speaking, there are three main categories of ESHA within the Coastal Zone: wetlands; streams and riparian areas; and terrestrial (non-aquatic) ESHA. Except for limited development of wetland and stream areas provided in the Coastal Act and reflected in C-BIO-14 (Wetlands) and C-BIO-24 (Coastal Streams and Riparian Vegetation), all ESHAs would be subject to stringent limitations on their use and development and would require the establishment of buffers. While the protection of all sensitive habitats is implicit in the proposed LCPA, comments from the public as well as the Coastal Commission staff requesting upland ESHA protection policies have made it clear that further definition should be provided within the LCPA, particularly with respect to terrestrial ESHAs.

ALTERNATIVE FOR BOARD CONSIDERATION:

- Modify C-BIO-1 to more explicitly identify the varieties of ESHA encompassed within the biological resources policies of the LCP.

C-BIO-1 Environmentally Sensitive Habitat Areas (ESHAs) (excerpt)

...

2. For the purposes of this Chapter, ESHA is addressed in three general categories: wetlands, streams and riparian areas, and terrestrial ESHAs. Terrestrial ESHA refers to those non-aquatic habitats that support rare and endangered species; coastal dunes as referenced in C-BIO-7 (Coastal Dunes); and roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats). The ESHA policies of C-BIO-2 (ESHA Protection) and C-BIO-3 (ESHA Buffers) apply to all categories of ESHA, except where modified by the more specific policies of the LCP.

...

ESHA DEFINITION:

- **LCPA Development Code:** *Section 22.130.030*

Environmentally Sensitive Habitat Areas (ESHAs) are protected in the Coastal Zone through strictly limiting uses and establishing natural buffer areas. While the Coastal Commission has requested only minor modifications to the proposed ESHA definition, comments from the public have expressed concern about the broad designation of ESHA. In further evaluating this feedback, it has become clear that LCPA definition would expand the notion of ESHA beyond what currently is provided in the existing LCP Units I and II. In particular, broad designations of terrestrial plant communities have not been legislatively determined to be ESHA. Where the biological site assessment identifies the presence of threatened or endangered species, the assessment will also delineate the extent of the area that meets the definition of ESHA.

ALTERNATIVE FOR BOARD CONSIDERATION:

- Modify the definition of Environmentally Sensitive Habitat Areas to rely primarily upon the Coastal Act definition, with additional inclusion of widely acknowledged rare and sensitive resources (i.e., wetlands, coastal streams and riparian vegetation, species protected by the federal and state endangered species acts, rare plants listed by the California Native Plant Society).

Definitions, Development Code Section 22.130.030

Environmentally Sensitive Habitat Area (ESHA) (coastal). Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. ESHAs include wetlands, coastal streams and riparian vegetation, and habitats of special-status species of plants and animals (i.e., species listed under the Federal or California Endangered Species Act and existing populations of the plants listed as 1b or 2 by the California Native Plant Society).

~~The ESHAs in the County of Marin are habitats that are essential for the specific feeding, cover, reproduction, water, and activity pattern requirements of existing populations of special-status species of plants and animals, as designated by the California Department of Fish and Game and identified in the California Natural Diversity Database. In addition, ESHAs include existing populations of the plants listed as 1b or 2 by the California Native Plant Society and the following terrestrial communities that are identified in the California Natural Diversity Database:~~

- ~~A. Central dune scrub~~
- ~~B. Coastal terrace prairie~~
- ~~C. Serpentine bunchgrass~~
- ~~D. Northern maritime chaparral~~

~~Wetlands, estuaries, lakes and portions of open coastal waters are considered ESHAs. Coastal streams and the riparian vegetation surrounding them are considered ESHAs.~~

VI. Uses in ESHA and Site Assessments

ALLOWABLE USES IN ESHA:

- **LCPA Land Use Plan: Policy C-BIO-2**

The Coastal Commission staff has commented that the LCPA Policy C-BIO-2 would allow development in or adjacent to an ESHA, in conflict with the Coastal Act. Similar concerns were echoed by environmental organizations. While this is certainly not the intent of the LCPA, the wording and title of Policy C-BIO-2 could be revised to avoid a mistaken impression as to the use and development potential of ESHAs.

Other comments have been provided from the Coastal Commission and the public regarding the language of C-BIO-2 pertaining to site assessments, noting that the implementation and use of assessments in identifying the presence of ESHA and ESHA protection is unclear.

ALTERNATIVE FOR BOARD CONSIDERATION:

- Clarify C-BIO-2 to more accurately represent the intent of the policy and clarify the County's position with respect to avoidance of ESHA impacts.
- Provide more specific language as to the purpose of biological site assessments in confirming the extent of ESHA and recommending measures appropriate to protect the resource.

C-BIO-2 ESHA Protection. Development Proposal Requirements in ESHAs.

~~Allow development in or adjacent to an ESHA only when the type of development proposed is specifically allowed in the applicable Biological Resources Policies of the LCP. Consistent with the Coastal Act Sections 30233 and 30236, development in wetlands, estuaries, streams and riparian habitats, lakes and portions of open coastal waters are limited as provided in C-BIO-14 through C-BIO-26.~~

1. Prioritize avoidance of land use and development impacts to ESHAs. Where this is not feasible, protect ESHAs against disruption of habitat values, and only allow uses within those areas that are dependent on those resources. Disruption of habitat values occurs when the physical habitat is significantly altered or when species diversity or the abundance or viability of species populations is reduced. The type of proposed development, the particulars of its design, and its location in relation to the habitat area, will affect the determination of disruption. (relocated text from PC-Approved C-BIO-1.2)
2. Control public access to ESHAs, including the timing, intensity, and location of such access, to minimize disturbance to wildlife. (relocated text from PC-Approved C-BIO-1.2)
3. Avoid fences, roads, and structures that significantly inhibit wildlife movement, especially access to water. (relocated text from PC-Approved C-BIO-1.2)
4. Except for those limited uses provided in C-BIO-2.1, C-BIO-14 (Wetlands), C-BIO-15 (Diking, Filling, Draining and Dredging), and C-BIO-24 (Coastal Streams and Riparian Vegetation), or as allowed pursuant to C-EH-25 (Vegetation Management in an ESHA), maintain ESHAs in their natural condition. Any permitted development in an ESHA. Such uses must also meet the following general requirements:
 - a. There is no feasible less environmentally damaging alternative.
 - b. Mitigation measures are provided that will eliminate adverse environmental effects when possible, or, when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels.
 - c. Disruption of the habitat values of the resources is avoided.

5. ~~Development proposals within or adjacent to ESHA will be reviewed subject to a biological site assessment. Any development must also be determined to conform to all applicable Biological Resources policies in order to be permitted. This determination shall be based upon a site assessment which shall~~ The purpose of the biological site assessment is to confirm the extent of the ESHA, document any site constraints and the presence of other sensitive biological resources, recommend buffers, development timing, mitigation measures or precise required setbacks, provide a site restoration program where necessary, and provide other information, analysis and modifications appropriate to protect the resource ~~necessary to demonstrate compliance with the LCP.~~

SITE ASSESSMENTS:

- **LCPA Development Code:** Section 22.64.050

The Development Code amendments would require a biological (site) assessment in the potential presence of a sensitive environmental resource. The Coastal Commission staff and members of the public have commented that the LCPA should more specifically address implementation of site assessments (see discussion of Policy C-BIO-2 above). The Coastal Commission staff has additionally requested that guidance be provided for determining setbacks (buffers) and mitigation requirements. With the exception of wetlands, streams and riparian areas, the setbacks and/or mitigation measures for any terrestrial ESHA would depend upon the unique site features and the nature of development proposed. Given the complex interplay of species and habitat type, seasonal migration patterns, site conditions, and development impacts, final determination of habitat protection measures should be made at the site level. In accommodating the Commission staff's request, the Board may wish to modify Development Code Section 22.62.050 to incorporate the wetland mitigation policy by reference and specify minimum mitigation ratios, which may be adjusted on the basis of a site assessment.

ALTERNATIVE FOR BOARD CONSIDERATION:

- Consistent with the County's current practice, clarify that a biological study is necessary if available data (i.e., mapping resources, CNDDDB, etc.) indicates the potential presence of an ESHA.
- More clearly state the intended function of a site assessment to identify the ESHA and recommend protection measures.
- Provide specific guidance in the use of site assessments to determine ESHA buffers.
- Establish minimum habitat mitigation ratios which may be adjusted commensurate with the extent of habitat disruption or based upon the specific habitat requirements of the ESHA as determined through a site assessment.

Section 22.64.050 – Biological Resources (excerpt)

A. Submittal Requirements

1. Biological studies.

- a. **Initial Site Assessment Screening** The Marin County Community Development Agency (CDA) shall conduct an initial site assessment screening of all development proposals to determine the potential presence of Environmentally Sensitive Habitat Area (ESHA). The initial site assessment screening shall include a review of reports, resource maps, aerial photographs, site inspection and additional resources as necessary to determine the presence of ESHA.
- b. **Site Assessment.** A site assessment shall be submitted for those Coastal Permit applications where the initial site assessment screening may be required to provide a site assessment based on a review of the best available scientific and geographic information reveals the potential presence of an Environmentally Sensitive Habitat Area (ESHA) within 100 feet of the proposed development. The permit will be and subject to a

level of review that is commensurate with the nature and scope of the project ~~and the potential existence of an Environmentally Sensitive Habitat Area (ESHA).~~ A site assessment shall be prepared by a qualified biologist hired by the County and paid for by the applicant, and shall confirm the extent of the ESHA, document any site constraints and the presence of other sensitive resources, recommend buffers, development timing, mitigation measures or precise required setbacks and provide other information, analysis and potential modifications necessary to protect the resource.~~demonstrate compliance with the LCP.~~ Where habitat restoration or creation is required to eliminate or offset potential impacts to an ESHA, a detailed Restoration and Monitoring Plan shall be required, as provided in this section. ~~The Restoration and Monitoring Plan shall be consistent with the guidance provided in the California Coastal Commission LCP Guide for Local Governments, *Protecting Sensitive Habitats and Other Natural Resources* (undated).~~

- c. **Buffer Areas.** Buffers shall be provided for ESHAs in accordance with the policies of C-BIO-3 (ESHA Buffers), C-BIO-19 (Wetland Buffers), or C-BIO-24 (Coastal Streams and Riparian Vegetation), in combination with the findings of a site assessment, as necessary to ensure the biological integrity and preservation of the habitat they are designed to protect. Maintain ESHA buffers in their natural condition, except as provided in C-BIO-20 (Wetland Buffer Adjustments), C-BIO-25 (Stream Buffer Adjustments) or C-BIO-4 (Protect Major Vegetation).

Determination of ESHA buffer requirements should consider the following:

- 1) Habitat requirements of the ESHA, including the migratory patterns of affected species and tendency to return each season to the same nest site or breeding colony;
- 2) Sensitivity of the ESHA to disturbance;
- 3) Topography of the site;
- 4) Movement of stormwater;
- 5) Permeability of the soils and depth to water table;
- 6) Vegetation present;
Behavior and movement of habitat dependent wildlife
- 7) Unique site conditions;
- 8) Whether vegetative, natural topographic, or built features (e.g., roads, structures) provide a physical barrier between the proposed development and the ESHA; and
- 9) The likelihood of increased human activity and disturbance resulting from the project relative to existing development.

- d. **Habitat Mitigation.** New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate significant impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Residual adverse impacts to ESHA shall be fully mitigated, with priority given to on-site habitat mitigation. Off-site or fee-in-lieu habitat mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site habitat mitigation is more protective in the context of a biological analysis prepared by a qualified scientist and approved by the County of Marin. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.

Habitat mitigation shall occur in accordance with the provisions of C-BIO-21 (Wetland Impact Mitigation) for wetlands or the findings of a site assessment, and shall be provided at a minimum ratio of 2:1 for on-site mitigation; 3:1 for off-site mitigation or 4:1 for an in-lieu fee where applicable. In determining required mitigation, the acreage of habitat impacted shall be determined based on the size of the approved development area, road/driveway area, required fuel modification on the project site, and required vegetation clearance, if any, on adjacent properties. Habitat mitigation may be required at an adjusted ratio or through other appropriate techniques commensurate with the extent of habitat disruption, based on the specific requirements of the ESHA as determined through the site assessment.

VII. ESHA Buffers

- **LCPA Land Use Plan: Policy C-BIO-1.3**

The Coastal Commission staff has commented that specific policies should be added for non-aquatic (i.e., terrestrial) ESHAs; there have additionally been comments regarding the inclusion of buffers within the ESHA itself and the impact of ESHA buffers on land use. Consistent with Coastal Commission policy guidance, ESHA buffers are established as a means of protecting an ESHA and do not constitute rare or sensitive habitat unto themselves. Thus staff recommends maintaining the distinction between ESHAs and their buffers that is provided in the LCPA. While buffer policies are clearly established for wetlands (C-BIO-19) and streams and riparian areas (C-BIO-24), the buffer requirement for terrestrial ESHAs should be clarified.

ALTERNATIVE FOR BOARD CONSIDERATION:

- Establish a policy for ESHA buffers generally (C-BIO-3).
- Establish a minimum buffer distance of 50' for terrestrial ESHA, a distance that may be adjusted as appropriate to protect the habitat value of the resource.
- For terrestrial ESHAs, clarify that buffers are determined on the basis of a site assessment and should be maintained in a natural condition allowing only those uses otherwise permitted in an ESHA.

C-BIO-3 ESHA Buffers. (proposed)

1. In areas adjacent to ESHAs and parks and recreation areas, site and design development to prevent impacts that would significantly degrade those areas, and to be compatible with the continued viability of those habitat and recreation areas. *(relocated text from PC-Approved C-BIO-1.3)*
2. Provide buffers for wetlands, streams and riparian areas in accordance with C-BIO-19 and C-BIO-24, respectively.
3. Establish buffers for terrestrial ESHA to provide separation from development impacts. Maintain such buffers in a natural condition, allowing only those uses that will not significantly disrupt the habitat. Generally, buffers for terrestrial ESHA shall be 50 feet, a distance that may be adjusted by the County as appropriate to protect the habitat value of the resource. Such adjustment shall be made on the basis of a biological site assessment supported by evidence that includes but is not limited to:
 - a. Sensitivity of the ESHA to disturbance;
 - b. Habitat requirements of the ESHA, including migratory patterns of affected species and tendency to return each season to the same nest site or breeding colony;
 - c. Topography of the site;
 - d. Movement of stormwater;
 - e. Permeability of the soils and depth to water table;
 - f. Vegetation present;
 - g. Unique site conditions;
 - h. Whether vegetative, natural, topographic, or built features (e.g., roads, structures) provide a physical barrier between the proposed development and the ESHA;
 - i. The likelihood of increased human activity and disturbance resulting from the project relative to existing development.

VIII. Wetlands

- ***LCPA Land Use Plan: Policy C-BIO-14***

The agricultural community has expressed concerns about the broad coastal definition of wetlands to encompass wet areas typically associated with or created by agricultural land use, and has suggested that consideration should also be given to wet areas created incidental to normal agricultural activities (e.g., cow wallowing, tire track, etc.). Policy C-BIO-14 may be modified to allow for continued use of wetlands that have emerged due to agricultural activities, where such areas remain in agricultural use and do not support species that meet the definition of ESHA (i.e., listed under the federal or state endangered species acts or listed as 1B or 2 by the California Native Plant Society).

ALTERNATIVE FOR BOARD CONSIDERATION:

- Add language to C-BIO-14 that would allow continued agricultural use of wetlands that emerged primarily due to agricultural activities, where such wetlands do not otherwise constitute ESHA.

C-BIO-14 Wetlands. (excerpt)

4. Where there is evidence that a wetland emerged primarily from agricultural activities (e.g., livestock management, tire ruts, row cropping) and does not provide habitat for any species that meet the definition of ESHA, such wetland may be used and maintained for agricultural purposes and shall not be subject to the buffer requirements of C-BIO-19 (Wetland Buffers).

IX. Streams

- **LCPA Land Use Plan: Policy C-BIO-24**

The existing LCP Units I and II apply buffers only to streams in the “coastal zone, perennial or intermittent, which are mapped by the United States Geological Survey (U.S.G.S.) on the 7.5 minute quadrangle series.” The USGS maps are now contained in the “National Hydrographic Dataset,” and the stream definition could be updated accordingly. Riparian vegetation, special status species and other ESHA not associated with perennial or intermittent streams by definition fall under Policy C-BIO-3.3 as proposed for revision, and its associated policies.

ALTERNATIVE FOR BOARD CONSIDERATION:

- Correct the definition of “Coastal Stream (coastal)” to carry forward the policies of the current LCP, and bring it up to date with current USGS mapping processes.

Chapter 22.130 Definitions

Coastal Stream (coastal). Streams in the Coastal Zone, perennial or intermittent, which are mapped by the United States Geological Survey (USGS) in the National Hydrographic Dataset. ~~In addition, those ephemeral streams that are not mapped by the United States Geological Survey if the stream: (a) supports riparian vegetation for a length of 100 feet or more, or (b) supports special status species or another type of ESHA, regardless of the extent of riparian vegetation associated with the stream.~~

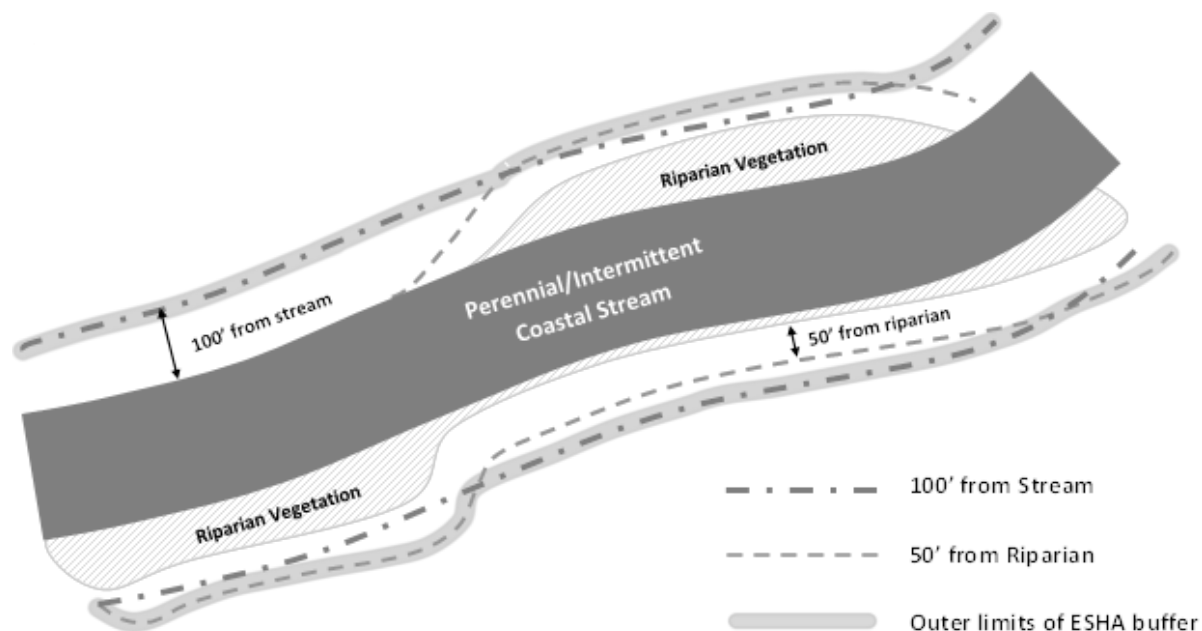


Illustration only, N.T.S

X. Buffer Adjustments

- **LCPA Land Use Plan:** Policy C-BIO-20, C-BIO-25

The LCPA carries over policies from the certified LCP requiring a 100' buffer for wetlands and streams, and provides that they can be adjusted on the basis of a biological assessment. The Coastal Commission staff has commented that a 50' absolute minimum buffer should be established for these resources; others have commented that the buffer policy is either too rigid or too lax. Standards for buffer adjustment (Policy C-BIO-20.1.a through c) are redundant with Policy C-BIO-2. The addition of Coastal Commission staff's recommended 50' minimum buffer has further obviated the need for these standards. Note also that recommended Policy C-INT-1 "Consistency with Other Law," which had previously been addressed in the text of the LUP Introduction, would apply to buffers as well as other cases which would otherwise result in a taking.

ALTERNATIVE FOR BOARD CONSIDERATION:

- LCPA Policy C-BIO-20 and C-BIO-25: Establish an absolute minimum buffer of 50' for wetlands, streams and riparian areas.
- LCPA Policy C-BIO-20 and C-BIO-25: Modify buffer adjustment standards to also account for takings impacts.

C-BIO-20 Wetland Buffer Adjustments and Exceptions (excerpt)

Consider granting adjustments ~~and exceptions~~ to the wetland buffer width standard identified in policy C-BIO-19 in certain limited circumstances for projects that are ~~implemented~~ undertaken in the least environmentally damaging manner. An adjustment may be granted in any of the following circumstances:

1. The County determines that the applicant has demonstrated that a 100-foot buffer is unnecessary to protect the resource because any significant disruption of the habitat values of the resource is avoided by the project, and specific proposed protective measures are incorporated into the project. A wetland buffer may be adjusted to a distance of not less than 50 feet if such reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with incorporated siting and design measures, will prevent impacts which would significantly degrade those areas, and will be compatible with the continuance of those habitat areas. ~~An adjustment to the wetland buffer may be granted only where:~~
 - a. ~~There is no feasible less environmentally damaging alternative;~~
 - b. ~~Measures are provided that will eliminate adverse environmental effects when possible, or when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels; and~~
 - c. ~~Any significant disruption of the habitat value of the resource is avoided.~~

C-BIO-25 Stream and Riparian Buffer Adjustments and Exceptions (excerpt)

Consider granting adjustments ~~and exceptions~~ to the ~~coastal~~ stream buffer standards in policy C-BIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. ~~An adjustment or exception~~ may be granted in any of the following circumstances:

1. The County determines that the applicant has demonstrated that a ~~400/50-~~ stream buffer (see Policy C-BIO-24.3) is unnecessary to protect the resource because any significant disruption of the habitat value of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. A stream buffer may be adjusted to a distance of not less than 50 feet from the top of the stream bank if such a reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with

X. Buffer Adjustments

~~incorporated siting and design measures, will prevent impacts which would significantly degrade those areas, and will be compatible with the continuance of those habitat areas.~~

~~a. There is no feasible less environmentally damaging alternative;~~

~~b. Measures are provided that will eliminate adverse environmental effects when possible, or, when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels; and~~

~~c. Any significant disruption of the habitat values of the resource is avoided.~~

XI. Interpretation Policies (*new chapter for the LCPA Land Use Plan)

The Introduction to the Land Use Plan (LUP) of the Planning Commission-approved LCPA currently includes a subsection entitled “Interpretation of the Land Use Plan” which provides guidance on issues such as policy interpretation, legal consistency, terminology, and community plans. During subsequent review of the document, staff determined that the conversion of these guidance statements into interpretive policies, located in a new separate chapter at the beginning of the document, would strengthen and clarify their applicability to all subsequent LUP policies. Accordingly, staff recommends that the following text be added as a new chapter following the Introduction. Please note that duplicative text proposed to be deleted from the Introduction to the LUP is shown in conjunction with other minor modifications to the Introduction as part of Attachment 5 – “Staff Recommended Changes and Corrections to Planning Commission Approved Draft.”

C-INT-1 acknowledges and reinforces the Constitutional protections against uncompensated takings. If a situation ever arose where development might need to be allowed to avoid such a taking, it is in the interest of all involved to have clear guidelines for the determination of what development might be allowed. Moreover, such a situation would most likely occur in an area subject to appeal to the Coastal Commission, and the County and the Commission should have a consistent set of guidelines to avoid conflicting and uncoordinated informational and policy requirements that would place unnecessary burdens on a landowner. Therefore, a corresponding new section 22.70.180 (below) is proposed in the Development Code to codify the analysis of a potential takings.

ALTERNATIVE FOR BOARD CONSIDERATION

Policies for Interpretation of the LCPA Land Use Plan (new chapter)

The Marin County Local Coastal Program (LCP) is the primary document that governs land development in the Marin County Coastal Zone. However, the policies of the LCP must be applied and interpreted within the context of other applicable Local, State, and Federal laws, as well as other local plans, policies and regulations. The following policies apply to the interpretation of all policies within the Natural Systems and Agriculture, Built Environment, and Socioeconomic Sections of the Land Use Plan.

C-INT-1 Consistency with Other Law. The policies of the Local Coastal Program are bound by all applicable Local, State and Federal laws, and none of the provisions of the LCP will be interpreted by the County in a manner which violates those laws. In particular, as required by the Coastal Act, Public Resources Code Section 30010, Marin County shall not grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation therefor. This policy is not intended to increase or decrease the rights of any property owner under the Constitutions of the State of California or the United States.

C-INT-2 Precedence of LCP. The LCP supersedes and takes precedence over other local plans, policies and regulations, including any conflicting provisions of the Countywide Plan, Community Plans and relevant sections of the Marin County Code. Provisions that are not addressed by the Coastal Act and the LCP (e.g. policies that address education, diversity, public health, etc.) that apply throughout the County, also apply within the Coastal Zone. Where conflicts occur between one or more provisions of the LCP such conflicts shall be resolved in a manner which on balance is the most protective of significant coastal resources. Broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

C-INT-3 Community Plans. Community plans are part of the Marin Countywide Plan (CWP), and are implemented through measures such as Design Review and Use Permits. The existing Dillon Beach and

Bolinas Gridded Mesa community plans have been certified by the Coastal Commission and made part of the LCP; all other community plans have not. However, the public LCP process identified many community plan policies that have been directly incorporated into, and will be implemented through, the LCP.

C-INT-4 Terminology. The following rules of interpretation shall apply, consistent with Marin County Development Code Sec.20.02.020.

1. Where the imperative form of a verb is used to start a policy, the policy will be interpreted as being a mandatory requirement which, if written in a "subject-verb" format, would incorporate the term "shall." When used in the Land Use Plan, the words "shall," "will," "is to," and "are to" are always mandatory. "Should" is not mandatory but is strongly recommended; and "may" is permissive. The present tense includes the past and future tenses; and the future tense includes the present. The singular number includes the plural number, and the plural the singular, unless the natural construction of the word indicates otherwise.

"Including" means ". . . including but not limited to. . .".

2. Policy headings and titles are provided for convenience only. To the degree that these headings or titles conflict with the text they accompany, the text shall govern.

...

Section 22.70.180 Potential Takings Economic Evaluation

If the application of the policies, standards or provisions of the Local Coastal Program regarding use of property designated as Environmentally Sensitive Habitat Area (ESHA would likely constitute a taking of private property, then a use that is not consistent with the ESHA provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking as determined through an economic evaluation. The applicant shall supplement their application materials to provide the required information and analysis as specified below.

A. Filing. The economic evaluation shall include the entirety of all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application. Before any decision on a coastal development permit, the applicant shall provide the following information, unless the Director determines that one or more of the particular categories of information is not relevant to the analysis:

1. The date the applicant purchased or otherwise acquired the property, and from whom.
2. The purchase price paid by the applicant for the property.
3. The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time.
4. The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition.
5. Any development restrictions or other restrictions on use, other than government regulatory restrictions described in subsection d above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition.
6. Any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances and the relevant dates.
7. A discussion of whether the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased.
8. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.
9. Any offers to buy all or a portion of the property which the applicant solicited or received,

including the approximate date of the offer and offered price.

10. The applicant's costs associated with the ownership of the property, annualized for each of the last five (5) calendar years, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs.
11. Apart from any rents received from the leasing of all or a portion of the property, any income generated by the use of all or a portion of the property over the last five (5) calendar years. If there is any such income to report it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.
12. Any additional information that the City requires to make the determination.

B. Evaluation. To evaluate whether a restriction would not provide an economically viable use of property as a result of the application of the policies and standards contained in the LCP regarding use of property designated as ESHA, an applicant shall provide information about resources present on the property sufficient to determine whether all of the property, or which specific area of the property, is subject to the restriction on development, so that the scope and nature of development that could be allowed on any portions of the property that are not subject to the restriction can be determined.

Based upon this analysis, the least environmentally damaging feasible alternative shall be identified. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be mitigated to the maximum extent feasible, with priority given to on---site mitigation. Off---site mitigation measures shall only be approved when it is not feasible to mitigate impacts on---site. Mitigation shall not substitute for implementation of the feasible project alternative that would avoid adverse impacts to ESHA.

C. Supplemental Findings for Approval of Coastal Development Permit. A Coastal Permit that allows a deviation from a policy or standard of the LCP to provide a reasonable economic use of the parcel as a whole may be approved or conditionally approved only if the appropriate governing body, either the Planning Commission or City Council, makes the following supplemental findings in addition to the findings required in Section 22.70.070 (Required Findings):

1. Based on the economic information provided by the applicant, as well as any other relevant evidence, no use allowed by the LCP policies, standards or provisions would not provide an economically viable use of the applicant's property.
2. The use proposed by the applicant is consistent with the applicable zoning.
3. The use and project design, siting, and size are the minimum necessary to avoid a taking.
4. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified LCP other than the provisions for which the exception is requested.
5. The development will not be a public nuisance. If it would be a public nuisance, the development shall be denied.

ATTACHMENT #2
Local Coastal Program Amendments (LCPA)

DETAILED ANALYSIS OF KEY ISSUES FROM ATTACHMENT #1

The following is a detailed analysis of the key issues raised by the California Coastal Commission staff and other stakeholder organizations, as summarized in Attachment #1 of this staff report. The issues discussed in this report are related to LCPA Interpretive Policies and Agriculture and Biological Resource topics only. Issues on other topics will be addressed at the Board of Supervisors hearing on November 13, 2012.

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I. Agricultural Operations

- A. **ISSUE:** The Coastal Commission staff (CCC) has indicated that on-going agricultural operations do not require coastal permits, but that grading, intensification and structures associated with these agricultural operations could.
- B. **INTENT:** To support the preservation of coastal agriculture by providing predictability in which agricultural activities may require coastal permits, and which do not.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

<ul style="list-style-type: none">• LCPA Development Code:• <i>Section 22.68.030 Coastal Permit Required (p. 89, LCPA Dev. Code)</i>
<p>22.68.030 – Coastal Permit Required</p> <p>A Coastal Permit is required for development in the Coastal Zone ...unless the development is categorically excluded, exempt, or qualifies for a De Minimis Waiver.</p> <p>Development is defined in Article VIII of this Development Code ... Agricultural crop management and grazing are not considered to be a significant alteration of land forms.</p>

- D. **CCC ISSUE:** "...general routine, on-going agricultural operations would not require coastal permits; what require permits are the grading, intensification and structures associated with these operations..."(CCC Staff, 9/15/11, pg. 3)

E. OTHER INPUT:

Support for LCPA provision:

Members of the agricultural community have opposed requiring coastal permits for normal agricultural operations, and expressed concern that certain normal agricultural operations have been determined by the CCC to constitute development.

STAFF ANALYSIS:

Staff welcomes the CCC staffs confirmation that "on-going agricultural operations" such as agricultural crop management and grazing do not require coastal permits, and that the proposed amendment is acceptable in this regard. The CCC however has identified "grading, intensification and structures associated with these [agricultural] operations" as potentially requiring coastal permits. Grading in the Coastal Zone is generally associated with other development, such as construction of a house. A single coastal permit can authorize all aspects of such development, including grading and construction. Where a project involves grading alone, the current LCP states that if a grading permit is required by Title 23, then a coastal permit is also required. Furthermore, if a coastal permit is required, then the existing LCP contains standards for how such grading should be performed, in order to protect against erosion. Such standards, however, apply only to the movement of 150 cubic yards or more of material (Title 22I, §22.56.130.C) and not to smaller projects.

The LCPA provides that if a coastal permit is required for a project that involves grading of any amount (i.e., whether 150 cubic yards of material or not), then the project shall be subject to erosion control measures to protect water quality. At the same time, the LCPA clarifies that no coastal permit

I. Agricultural Operations

is required for routine grazing and crop management operations, which are not considered to constitute a “significant alteration of land forms” and thus do not require a coastal permit.

Although routine agricultural activities do not require a coastal permit, certain agriculture-related grading projects may trigger the requirement for a coastal permit, if such projects are of a scale or character that meets the definition of “development.” In particular, the terracing of land and installation of irrigation facilities as part of converting land to viticulture would constitute “development.” Such a project typically includes installation of structures and movement of significant amounts of soil. However, due to a pervasive lack of water in the coastal agricultural zone, such conversions have been extremely rare and are not expected to significantly expand in the future. Nevertheless, the Planning Commission designated viticulture as a permitted (rather than principal permitted) use in the LCPA Development Code (Table 5-1-a, pg. 29), making this use subject to potential appeal to the Coastal Commission, as well as requiring a Coastal Permit, and a separate permit under the County Vineyard Erosion and Sediment Control Ordinance (Marin County Code Chapter 23.11).

F. ALTERNATIVE FOR BOARD CONSIDERATION:

To conform the Land Use Plan and Development Code the following correction is recommended to Policy C-AG-2:

Policy C-AG-2

...For the purposes of the C-APZ, the principal permitted use shall be...horticulture, ~~viticulture~~, vermiculture...

Viticulture is a permitted use. Conditional uses in the C-APZ zone include...

To further clarify coastal permit requirements associated with grading, your Board may choose to incorporate the following definition of the term into the LCP:

“Grading” means any excavation, stripping, cutting, filling, stock-piling, or any combination thereof which alters land or vegetation.’

Although this definition of “grading” is drawn from Marin County Code Title 23, the grading permit requirements of that title are separate from the coastal permit requirements for grading that are contained in the LCP. Furthermore, as noted above, grazing and crop management activities are not considered “development,” even if they involve minor incidental alteration of land or vegetation.

To further clarify that routine cultivation and animal management do not require a coastal permit, those terms are added in the Alternative below:

22.68.030 – Coastal Permit Required

A Coastal Permit is required for development in the Coastal Zone ...unless the development is categorically excluded, exempt, or qualifies for a De Minimis Waiver.

Development is defined in Article VIII of this Development Code and is interpreted to include ... the significant alteration of landforms.... On-going agricultural operations including cultivation, crop and animal management and grazing are not considered to be a significant alteration of land forms development.

With these amendments, the LCP continues to be consistent with and adequate to carry out the Coastal Act in Marin County.

II. Diversified Agricultural Uses as the Principal Permitted Use in the C-APZ (Coastal, Agricultural Production Zone) zoning district.

- A. **ISSUE:** The expansion of the Principal Permitted Use (PP) in the Coastal, Agricultural Production Zone (C-APZ) zoning district to include those activities essential for the viability of agricultural operations beyond just agricultural production itself, such as housing for the agricultural operators, agricultural worker housing, as well as agricultural homestays, a Coastal Act priority visitor-serving use.
- B. **INTENT:** To provide the reasonable flexibility necessary for farmers to carry on a viable operation with minimal interference and associated costs.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** Policy C-AG-2 (p. 11)
- **LCPA Development Code:** Sections 22.32.023 (p. 2), 22.62.060.B.1 (p. 26), 22.130.030 (p. 113)

C-AG-2 Coastal Agricultural Production Zone (C-APZ).

...

For the purposes of the C-APZ, the principal permitted use shall be agriculture, defined as uses of land for the breeding, raising, pasturing, and grazing of livestock; the production of food and fiber; the breeding and raising of bees, fish, poultry, and other fowl; the planting, raising, harvesting and producing of agriculture, aquaculture, horticulture, viticulture, vermiculture, forestry crops, and plant nurseries; substantially similar uses of an equivalent nature and intensity; accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including one farmhouse per legal lot, one intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities.

...

22.62.060 – Coastal Agricultural and Resource-Related Districts

...

- B. **Purposes of zoning districts.** The purposes of the individual zoning districts are as follows.

1. C-APZ (Coastal, Agricultural Production Zone) District.

...

The principal use of lands in the C-APZ district is intended to be agricultural, including activities that are accessory and incidental to, in support of, and compatible with agricultural production. These activities include use of land for the breeding, raising, pasturing, and grazing of livestock; the production of food and fiber; the breeding and raising of bees, fish, poultry, and other fowl; the planting, raising, harvesting and producing of agriculture, aquaculture, horticulture, viticulture, vermiculture, forestry crops, and plant nurseries; substantially similar uses of an equivalent nature and intensity; accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including one farmhouse per legal lot, an intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities. (Policy C-AG-2)

...

** Note: see also Table 5-1-a on p. 29 of the LCPA Development Code, which lists each agricultural use individually along with its permit requirement in each agricultural zoning district.*

Section 22.130.030 – Definitions

Agriculture (coastal). This land use consists of agricultural production, and the facilities that are accessory and incidental to, in support of, and compatible with the property's agricultural production, including agricultural accessory structures and activities, one farmhouse per legal lot, up to two intergenerational homes, agricultural worker housing, limited agricultural product sales and processing, non-profit and owner-operator conducted agricultural tours, and agricultural homestay facilities.

Principal Permitted Use (coastal). A land use allowed by Article V (Zoning Districts and Allowable Land Uses) including activities which are functionally related to one another so as to be viewed as effectively one use type or group. Such uses are subject to compliance with all applicable provisions of this Development Code, and subject to first obtaining any building permit or any other permit required by the County Code. [See Section 22.70.080.B.1 for Appeal of Coastal Permit Decisions]

Agricultural Production (land use) (coastal). This land use consists of the raising of animals used in farming or the growing and/or producing of agricultural commodities for commercial purposes, including the following and substantially similar uses of an equivalent nature and intensity:

1. Livestock and poultry - cattle, sheep, poultry, goats, rabbits, and horses provided that horses are accessory and incidental to, in support of, and compatible with the property's agricultural production.
2. Livestock and poultry products (such as milk, wool, eggs).
3. Field, fruit, nut, and vegetable crops – hay, grain, silage, pasture, fruits, nuts, seeds, and vegetables.
4. Nursery products - nursery crops, cut plants.
5. Aquaculture and mariculture
6. Viticulture
7. Vermiculture
8. Forestry
9. Commercial gardening
10. Beekeeping

D. CCC ISSUES:

The California Coastal Commission (CCC) staff has maintained that the Local Coastal Program Amendment (LCPA) needs to identify a single Principal Permitted Use for each coastal zoning district, for consistency with Coastal Act Section 30603. This section establishes that any development not designated as the Principal Permitted Use for the applicable zoning district is appealable to the Commission. CCC staff feels that the proposed Principal Permitted Use of "Agriculture (coastal)" for the Coastal, Agricultural Production Zone (C-APZ) zoning district is too inclusive, especially when coupled with the removal of the Master Plan requirement [see issue #3 in this report]. CCC staff has requested that the Principal Permitted Use in the C-APZ district be limited to agricultural production, instead of encompassing other agricultural uses such as intergenerational housing and agricultural homestays.

Pursuant to Section 22.57.032I of the Interim Title 22 Development Code, the existing certified Principal Permitted Use in the C-APZ district includes: one single-family dwelling, accessory structures and uses, and bed and breakfast operations (3 or fewer guest rooms), all in addition to

II. Diversified Agriculture as the Principal Permitted Use in the C-APZ District

agricultural production. CCC staff is comfortable with this, because the existing code provision requires a Master Plan approval for these uses prior to the issuance of a coastal permit in the C-APZ district. They are concerned that without this requirement, and without appealability to the Commission, it will be difficult for the County to ensure that any newly proposed use is indeed related to, and necessary for, the viability of the agricultural production on the property.

CCC staff does not agree that agricultural homestays and intergenerational homes are “agricultural uses,” and would like to see them categorized as residential, visitor-serving, or educational uses as appropriate. They also requested that such uses be required to adhere to strict development standards. CCC staff has further asserted that the permitting of any type of residential development (i.e. a farmhouse or intergenerational home) in the C-APZ district should require an affirmative agricultural easement or deed restriction to ensure that the land continues to be made available for agriculture. They are hesitant to include agricultural worker housing as an “agricultural use” as well, but state that this may be considered if “there are sufficient guarantees and restrictions in place that the use is related to agriculture.”

CCC staff is concerned that the LCPA would not include adequate provisions to ensure that agricultural accessory structures and uses (e.g. barns, greenhouses, etc.) do not adversely affect long-term agricultural productivity. They acknowledge that there are certain provisions that would require such structures and uses to be compatible with, and supportive of, agriculture, however they do not feel that this is “directive enough.” They would like to see additional requirements that specifically address the number, size and location of such facilities.

E. OTHER INPUT:

Support for LCPA provision: The agricultural community supports this LCPA provision, based on the fact that the new uses that would be part of the Principal Permitted Use (PPU) in the C-APZ district would include those that are essential to continue and improve the viability of local agriculture. Members of the agricultural community assert that agricultural retail sales and processing uses have widespread benefits to the County. Allowing farmers to sell their products direct-to-consumer boosts agricultural income, thereby supporting the local farmers and helping to promote local tourism, which in turn lends to increased County revenues overall. Local farmers point out that the profit margin for agriculture is often slim, and additional income from retail sales, visitor serving activities and other diversification options is essential to their continued survival. Other such options include agritourism-related activities such as educational tours and agricultural homestay facilities, which result in similar benefits.

The agricultural community also strongly supports the proposed inclusion of intergenerational housing as a Principal Permitted Use in the C-APZ district. Marin ranchers and farmers state that this land use is a necessary part of any viable family farm operation. Housing in the Coastal Zone is limited, especially affordable housing, making it difficult for those working the land to afford to live elsewhere in the County on their limited farming income. For the elder generations looking to retire, it is equally as difficult to find housing that is within close proximity to the family farm and is available at reasonable cost. These family members need to have the option to stay on the family farm as they transition to retirement, while the housing needs of those taking over the daily farm operations are met. The LCPA provision would include the first intergenerational home as a Principal Permitted Use, and require a Conditional Use for a second intergenerational home. While this is an improvement upon what is currently allowed, members of the agricultural community have argued that it is still too restrictive for larger families and would like to see at least two intergenerational homes included as a Principal Permitted Use in the C-APZ district. *[Note: for more details on Intergenerational Housing, see issue discussion #2 in this report]*

Concerns with LCPA provision: Some environmental and community groups generally support the CCC staff's opinion on the issue of limiting agricultural Principal Permitted Uses (PP) for the purpose of determining whether a coastal permit is appealable to the Coastal Commission. Other

II. Diversified Agriculture as the Principal Permitted Use in the C-APZ District

groups have raised concerns about including agricultural retail sales and processing uses as well as other agritourism-related activities as part of the Principal Permitted Use in the C-APZ district. These groups are concerned about the possibility of increased impacts to local infrastructure and community character from the tourists that such uses can attract.

STAFF ANALYSIS:

Chapter 22.57 of the Interim Zoning Code is part of the existing Local Coastal Program's Implementation Plan. The Implementation Plan, which also includes Chapter 22.56, was certified in 1982 by the Coastal Commission. Chapter 22.57 provides that in the C-APZ district the following are allowed as Principal Permitted Uses: uses of land to grow and/or produce agricultural commodities for commercial purposes, one single-family dwelling per parcel, accessory structures or uses appurtenant and necessary to the operation of agricultural uses, and bed and breakfast operations which offer not more than three guest rooms. That these uses all fall under the umbrella of the "agriculture" Principal Permitted Use is demonstrated by the code's statement of purpose:

The purpose of the agricultural production zone is to preserve lands within the zone for agricultural use. The principal use of lands in the C-APZ districts shall be agricultural. Development shall be accessory, incidental, or in support of agricultural land uses, and shall conform to the policies and standards as set forth in this chapter. (Section 22.57.031)

- The provisions of the LCPA provide for the continuation of these certified LCP's Principal Permitted Uses, even further restricting their scope to strengthen their agricultural character: a "farmhouse" instead of a "single-family dwelling;" limits on the total house size, limits on the size of accessory sales and processing facilities, and substitution of up to three agricultural homestay rooms for the three Bed and Breakfast rooms. In addition, the Coastal Commission in certifying an LCP Amendment for Mendocino County (MEN- MAJ-1-08), found that developments and activities which are "functionally related to one another so as to be viewed as multiple examples of effectively one use type or group" are principally permitted uses. Excluding these uses diminishes the purpose of establishing Principal Permitted Uses.

The Coastal Act provides that development that is potentially appealable to the Coastal Commission includes "Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map...." (PRC Sec. 30603(a)(4)) Coastal Commission staff has advised that although multiple Principal Permitted Uses may be designated in an LCP for various zoning districts, for the purpose of defining potential appeals to the Coastal Commission only a single, unitary use may be designated for each district. The Coastal Commission staff has commented also that only "agricultural production" should be considered the Principal Permitted Use for the C-APZ district, for purposes of appeals to the Coastal Commission. However, this fails to encompass all the activities essential to the viability of agricultural operations, and thus the long-term preservation of agriculture.

The Planning Commission-approved LCPA would designate a single use as the Principal Permitted Use: agriculture. Similarly, the existing LCP provides that the principal use of lands in the C-APZ district shall be agricultural. Both the existing LCP and the LCPA provide additional guidance regarding the components of agriculture that are considered part of the Principal Permitted Use. For instance, the LCPA would provide that the Principal Permitted Use includes agricultural production activities, such as the breeding, raising, pasturing, and grazing of livestock, and the production of food and fiber. The LCPA provides also that uses necessary to the operation of agricultural uses are part of the Principal Permitted Use, including one farmhouse per legal lot, one intergenerational home, agricultural worker housing, and certain related uses. By describing the components of "agriculture," neither the existing LCP nor the proposed LCPA should be construed as listing more than one use for purposes of the Principal Permitted Use.

II. Diversified Agriculture as the Principal Permitted Use in the C-APZ District

The Planning Commission-approved LCPA would refine provisions for the C-APZ district in several ways. First, the LCPA would include in Article VIII a definition of “Agriculture (coastal).” That definition, which is not found in the existing LCP, would provide that the term encompasses both agricultural production and related facilities that are accessory to agricultural production, including one farmhouse, intergenerational housing, agricultural worker housing, and other agriculture-related uses. In an area characterized by family farms, such as Marin County, a farmhouse located on the property has always been considered an essential part of an agricultural operation. To adequately tend livestock, milk cows, and carry out myriad agricultural tasks, the operator must be in close proximity to agricultural operations.

By placing the current C-APZ district requirements for a Master Plan directly into the Coastal Permit (as supported by the Coastal Commission staff), the LCPA would both more reliably and more efficiently assure such uses would meet all applicable development standards of Chapters 22.32 and 22.65, and the rest of the LCP, prior to approval. Furthermore, permit requirements for agricultural uses that are appurtenant to agricultural production would be simplified in order to support the agricultural operations in the Coastal Zone.

It is essential to refine the provisions for the Principal Permitted Use in the C-APZ district to not only maintain, but to continue to strengthen the viability of the local agricultural economy and community. Farmers are finding it increasingly difficult to earn a minimal profit or even to break even given the rising costs of farming and falling prices of agricultural commodities. This is especially true for the 27 dairies of Marin, which produce 20 percent of the Bay Area’s milk supply. Commodity milk prices have hit an all-time low, prompting many dairy farmers to modify and diversify their operations if their agricultural use is to survive. This includes transitioning to organic practices, as well as producing value-added products such as cheese, yogurt, and other dairy products. Necessary to this type of diversification is the development of processing and retail sales facilities, to produce and then sell agricultural products directly to the consumer. Such facilities, along with other agritourism-related services such as educational tours and agricultural homestays, have become a crucial component to the viability of local farms. The LCPA proposes to allow modest agriculture-related enterprises, such as agricultural homestays with three or fewer guest rooms, as part of the Principal Permitted Use.

The existing LCP allows a farmhouse as part of the Principal Permitted Use but places no limit on the size of that farmhouse. By contrast, the LCPA would essentially allow the farmhouse to be approved as a Principal Permitted Use in two components: one main house plus one intergenerational unit. However, the LCPA would also place an upper limit on the size of that farmhouse/intergenerational unit combination. LCPA Policy C-AG-9 provides that a farmhouse plus an intergenerational unit may not exceed 7,000 square feet. A second intergenerational unit is also allowed as a Conditional, as opposed to a Principal Permitted Use, but that unit too must be included within the 7,000-square-foot limit. Exceptions to the 7,000-square-foot limit are provided only in limited cases, such as for agricultural worker housing, garage and agricultural office space, and agricultural accessory structures. In sum, the changes proposed to the Principal Permitted Use as reflected in the Planning Commission-approved LCPA are refinements of existing LCP provisions. By placing size limits on dwellings, in fact, those refinements help protect Marin’s agricultural land from the pressures to convert to large rural estate development.

In sum, the Planning Commission-approved LCPA refines and clarifies provisions for the C-APZ district. Minor additional clarification might result from modifying slightly the provisions of LCPA Policy C-AG-2 in order to avoid the impression that two different definitions of “agriculture” are included in the LCPA. “Agriculture (coastal)” is defined in LCPA Development Code Section 22.130.030 (Definitions), and therefore the word “defined” might be deleted from Policy C-AG-2. Policy C-AG-2 does not define “agriculture” but instead describes the Principal Permitted Use, and a slight rewording, as shown below, might sharpen that meaning. Furthermore, Policy C-AG-2 would be easier to read if it were reformatted. Accompanying minor refinements might be made to Development Code Sections 22.32.023, 22.62.060 and 22.130.030, also as shown below.

F. ALTERNATIVE FOR BOARD CONSIDERATION:

C-AG-2 Coastal Agricultural Production Zone (C-APZ). Apply the Coastal Agricultural Production Zone (C-APZ) to preserve privately owned agricultural lands that are suitable for land-intensive or land-extensive agricultural productivity, that contain soils classified as Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, or Grazing Land capable of supporting production agriculture, or that are currently zoned C-APZ. Ensure that the principal use of these lands is agricultural, and that any development shall be accessory and incidental to, in support of, and compatible with agricultural production.

~~For the purposes of~~ In the C-APZ zone, the principal permitted use shall be agriculture, ~~defined as follows:~~

1. uses of land for the breeding, raising, pasturing, and grazing of livestock;
2. the production of food and fiber;
3. the breeding and raising of bees, fish, poultry, and other fowl;
4. the planting, raising, harvesting and producing of agriculture, aquaculture, horticulture, viticulture, vermiculture, and forestry crops, and plant nurseries;
5. substantially similar uses of an equivalent nature and intensity; and
6. accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including one farmhouse per legal lot, one intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities.

Conditional uses in the C-APZ zone include additional agricultural uses and non-agricultural uses including residential development potentially up to the zoning density, consistent with Policies C-AG-7, 8 and 9.

Development shall not exceed a maximum density of 1 residential unit per 60 acres. Densities specified in the zoning are maximums that may not be achieved when the standards of the Agriculture policies below and other relevant LCP policies are applied.

Section 22.32.023 – Agricultural Homestays (Coastal)

(Coastal) Agricultural Homestays are subject to the requirements of this Section. The intent of these provisions is to ensure that the Homestay is accessory and incidental to, in support of, and compatible with the property's agricultural production.

...

B. Land Use Requirements. An Agricultural Homestay:

...

5. Shall operate within the same structure as an otherwise permitted farmhouse or intergenerational home on the property.
6. Shall be limited to one per legal lot.
7. Shall not be allowed if there is already a bed and breakfast operation on the property.

...

22.62.060 – Coastal Agricultural and Resource-Related Districts

...

B. Purposes of zoning districts. The purposes of the individual zoning districts are as follows.

- 1. C-APZ (Coastal, Agricultural Production Zone) District.** The C-APZ zoning district is intended to preserve privately owned agricultural lands that are suitable for land-intensive or land-extensive agricultural production. (Policy C-AG-2)

II. Diversified Agriculture as the Principal Permitted Use in the C-APZ District

The principal permitted use of lands in the C-APZ district is ~~intended to be~~ agricultural, including activities that are accessory and incidental to, in support of, and compatible with agricultural production. These activities include use of land for the breeding, raising, pasturing, and grazing of livestock; the production of food and fiber; the breeding and raising of bees, fish, poultry, and other fowl; the planting, raising, harvesting and producing of agriculture, aquaculture, horticulture, viticulture, vermiculture, forestry crops, and plant nurseries; substantially similar uses of an equivalent nature and intensity; accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including one farmhouse per legal lot, ~~an~~ one intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities...

Section 22.130.030 – Definitions

...

Agriculture (coastal). This land use consists of agricultural production, and the facilities that are accessory and incidental to, in support of, and compatible with the property's agricultural production, including agricultural accessory structures and activities, one farmhouse per legal lot, ~~up to two~~ intergenerational ~~homes-housing~~, agricultural worker housing, ~~limited~~ agricultural product sales and processing, non-profit and owner-operator conducted agricultural tours, and agricultural homestay facilities.

...

III. Intergenerational Housing

- A. ISSUE:** The C-APZ (coastal, agricultural production zone) zoning district currently allows only one single-family dwelling per parcel (defined as all contiguous parcels under common ownership) regardless of parcel size. Additional housing units may only be permitted for agricultural workers with Use Permit approval. During development of the LCPA, the agricultural community expressed a need for greater flexibility with respect to farm housing. A majority of Marin County's farms and ranches are third and fourth generation family-owned operations; the average ranch owner is over 59 years old. Accordingly, there is an urgent need for additional farm family housing that would enable owners to pass their ranch property and operation to the younger generation and retire without having to leave their land. In other cases, one or more family members may work at off-site jobs in order to supplement income derived from agricultural production. In either case, there is a strong desire to keep these family farms intact and producing, and to reduce pressures to subdivide the property. Many testified that this "intergenerational transfer" is a key to long-term agricultural protection and continuity in Marin County.
- B. INTENT:** To support existing agricultural operations, ensure the viability of agriculture in the Coastal Zone, and facilitate multi-generational family farm operation and succession by allowing up to two "intergenerational homes" on properties in the Coastal Agricultural Production Zone (C-APZ) district subject to density requirements.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** Policy C-AG-5 (p. 14)
- **LCPA Development Code:** Section 22.32.024 (p. 3); Table 5-1-a (p. 29); Section 22.130.030 (p. 138)

C-AG-5 Intergenerational Housing. ... In addition to the farmhouse, up to two additional dwelling units per legal lot may be permitted in the C-APZ designation for members of the farm operator's or owner's immediate family. Such intergenerational family farm homes shall not be subdivided from the primary agricultural legal lot, and shall be consistent with the standards of LCP Policy C-AG-7 and the building size limitations of Policy C-AG-9. ...

D. CCC issues:

Through correspondence and testimony at Planning Commission hearings, Coastal Commission staff expressed concerns regarding the concept of intergenerational housing, including the following specific issues:

1. *Intergenerational housing units should not be considered an agricultural use if occupants are not required to be actively engaged in agricultural operations on the property.*

STAFF ANALYSIS: Intergenerational homes would support existing agricultural uses in Marin County by facilitating multi-generational family farm operation and succession. As such, they should be considered a component of the agricultural activities of the property, regardless of whether every occupant is directly involved in day-to-day agricultural operations. The University of California Cooperative Extension study, *The Status of Marin Agriculture (2003)*, surveyed Marin County agricultural producers and found that a

III. Intergenerational Housing

majority of Marin's farms and ranches are family owned and operated, over 80 percent have between one and four family members involved in the operation, and over 70 percent have family members who are interested in continuing farming on the property. Therefore, in most cases, family members occupying intergenerational housing would likely be engaged in the agricultural use. However, there are situations where an occupant, even if not actively engaged in agriculture, could support the overall operation by living on the property. For example, a "retired" farmer who no longer actively farms but is able to continue living on the property as a result of intergenerational housing could continue to provide advice and long term experience to the younger generation operating the farm, thus contributing to the success of the operation. Similarly, a family member who lives on the property but is employed elsewhere may provide supplemental income which is necessary to support the farm. The UCCE report cited above found that 63 percent of existing agricultural operations surveyed in 2003 were either unprofitable or marginally profitable, demonstrating that "off-site" income from family members employed elsewhere may be critical to the long term viability of the agricultural operation. For these reasons, intergenerational housing should be considered an important component of the overall agricultural use, even if the family members living there are not required to be engaged in on-site agricultural activities.

2. *As proposed, the LCPA does not include sufficient standards regarding the siting of intergenerational homes or criteria to clarify under what circumstances they would be permitted.*

STAFF ANALYSIS: All intergenerational homes would be subject to Coastal Permit approval. The second intergenerational home on a property would also require Use Permit approval. Accordingly, the siting and design of such homes would be subject to all LCP policies as well as the standards for intergenerational homes contained in Section 22.32.024, the Coastal Agricultural District standards in Section 22.62.060, the Coastal Zone Development and Resource Management Standards in Chapter 22.64, and the Coastal Zone Planned District Development Standards contained in Chapter 22.65. Together, these code provisions incorporate development standards related to issues including access, development clustering, adequacy of services (water and septic), biological resource impacts, water resource issues, design character, and size limitations, among others. As stated in the policy itself, intergenerational homes could only be considered on properties with adequate acreage (120 acres to allow the first intergenerational home and 180 acres for consideration of a second intergenerational home). In addition, provisions in Section 22.62.060.E allow consideration of criteria such as the applicants' history and experience in commercial agricultural production, their financial commitment to long term capital investments in agriculture and related infrastructure, and their commitment to sound land stewardship practices when considering applications for intergenerational homes on a given property. Therefore, as proposed, the LCPA does include adequate standards and criteria for the siting and approval of intergenerational homes.

3. *The restriction of intergenerational homes to "family members" is not enforceable.*

STAFF ANALYSIS: The Intergenerational Homes standards contained in Section 22.32.024.F require the preparation and dedication of a restrictive covenant running with the land for the benefit of the County ensuring that such housing will continuously be occupied by the owner or operator's immediate family. Although there are practical challenges with monitoring and enforcing such restrictive covenants, the likelihood of abuse is limited given the acknowledged need for family housing in the agricultural community and the limited number of intergenerational homes that could be permitted on any given property. In addition, the restrictive covenant would serve to notify any future

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property owners or operators of the applicable restrictions. Finally, it should be noted that restrictive covenants and deed restrictions are commonly used by the County as well as the Coastal Commission to ensure compliance with a wide range of requirements related to issues such as open space, parking, public access, housing affordability, natural resource protection, and other special conditions and restrictions.

4. *Intergenerational housing would bring non-farm related housing into agricultural areas, thereby increasing the potential for conflict between agricultural and rural residential lifestyles.*

STAFF ANALYSIS: Intergenerational housing is not “non-farm related”. The intent of intergenerational housing is to facilitate multi-generational family farm operation and succession, and it should therefore be considered a component of the agricultural activities on a property. By definition, intergenerational housing is restricted to family members of the farm owner/operator, many of whom would most likely be involved with on-site agricultural operations. Therefore, the likelihood of the occupants of an intergenerational home objecting to agricultural activities conducted by their own family seems extremely remote. It should be noted that Marin County has a “right-to-farm” ordinance which requires development on or adjacent to agricultural lands to record a disclosure statement acknowledging that inconveniences or discomforts related to agricultural activities are not considered to constitute a nuisance.

5. *The policy could lead to the development of estate homes on agricultural lands, thereby driving up land values.*

STAFF ANALYSIS: Exactly the opposite is true. The Coastal Agricultural District standards contained in Section 22.62.060.E limit the total residential development on a given property to 7,000 square feet (not including limited garage areas and several agriculture-related exclusions). This overall size limit applies regardless of the number of residential units on the property (farmhouse only or farmhouse plus intergenerational units). Currently there is no limit on the size of a house in the C-APZ zone. The proposed limits, while amply accommodating the needs of most agricultural families (the average size of farm homes in the CAPZ is less than 2000 square feet), would be a strong counterweight against the speculative development pressure for large, non-agricultural estate homes. In fact, the overall size limit in combination with the allowance for intergenerational homes would instead tend to encourage several smaller homes, rather than one large estate home (for example, a 3,000 square foot farmhouse plus two 2,000 square foot intergeneration units rather than one 7,000 square foot residence). In addition, by facilitating multi-generational family farm operation and succession, intergenerational homes would support continued operation of a farm or ranch by the existing family and reduce the likelihood of a ranch being sold off to a buyer who may be more interested in using the property as a rural estate than in maintaining the agricultural operations. Finally, it should be noted that studies have shown that land values in coastal Marin County have already escalated far beyond what agricultural revenues can support (Marin County Agricultural Economic Analysis, Strong Associates, 2003), which makes the preservation of existing family farms even more critical moving forward.

6. *If intergenerational homes are allowed, they should not be exempt from the requirement for an Agricultural Production and Stewardship Plan (APSP) or conservation easements and deed restrictions.*

STAFF ANALYSIS: The purpose of an APSP is to demonstrate the long term protection of at least 95 percent of an agricultural property in conjunction with potential non-

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agricultural development or subdivision within the remaining area. As noted previously, intergenerational homes are considered to be a component of the agricultural activities on a property. Therefore, it is unnecessary to require the preparation of an APSP where no subdivision or non-agricultural development is proposed. Similarly, the requirement for conservation easements in conjunction with the development of intergenerational housing would be unnecessary and excessively onerous considering that such housing is intended to support multi-generational ownership and continued operation of family farms. Based on testimony from the agricultural community, the requirement for a conservation easement would be an extreme disincentive to the development of intergenerational homes and could inadvertently encourage the subdivision or forced sale of agricultural properties, contrary to Coastal Act and Marin County goals. Imposing the same easement requirement on intergenerational homes as is required of a subdivision would create a financial incentive to pursue property subdivision (which allows sale of resulting parcels) rather than development of intergenerational homes (which are restricted to family members and cannot be sold separately). Similarly, if there is no means of providing needed family housing without relinquishing valuable development potential through a conservation easement, agricultural property owners may determine that selling the property is the best way to address generational transfer issues, which would defeat the goal of preserving Marin County's family farm operations.

E. OTHER INPUT:

Marin Farm Bureau: The Marin Farm Bureau and other members of the agricultural community strongly support provisions to allow intergenerational housing, with the following additional comments or suggestions:

- The limit of two intergenerational homes is unfair to larger families.
- For properties with adequate acreage, the second intergenerational home should not require Use Permit approval.
- Additional intergenerational homes (beyond the first two) should be allowed, subject to density requirements and Use Permit approval.
- The Farm Bureau strongly opposes any requirements for conservation easements or Agricultural Production and Stewardship Plans (APSP) in association with intergenerational homes.

STAFF ANALYSIS: Staff acknowledges that the limit of two intergenerational homes may not be adequate to accommodate large families. However, given the concern expressed by the Coastal Commission staff regarding the general concept of intergenerational homes, the Planning Commission recommended the two home limit as a reasonable approach that could assist ranch owners to accommodate more family members than would currently be allowed without resulting in significant additional residential development.

Environmental Organizations: Representatives of various environmental groups have echoed the concerns identified by the Coastal Commission. Specifically, they support the suggestion that intergenerational housing should not be considered to be a Principal Permitted agricultural use and should not be exempt from APSP requirements. There is also concern that the policy text is confusing, and could imply that additional density (beyond one unit per 60 acres) would be granted for intergenerational housing. Lastly, it has been requested that minor revisions be incorporated into the LCPA to clarify that intergenerational housing is required to be clustered.

STAFF ANALYSIS: Staff has addressed these concerns. Please see responses #1 and #6 above regarding intergenerational homes as a Principal Permitted Use and the

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requirement of Agricultural Production and Stewardship Plans. It is unclear which part of the policy text is confusing. To clarify the meaning of “an equivalent density of 60 acres per unit,” an example density calculation could be added to Section 22.32.024 of the Development Code as indicated below.

Section 22.32.024 – Agricultural Intergenerational Homes (Coastal)

...

- A. Permitted use, zoning districts.** Up to two intergenerational homes in addition to the Farmhouse may be permitted in the C-APZ for members of the farm operator’s or owner’s immediate family. An equivalent density of 60 acres per unit shall be required for each home, including any existing homes (i.e., a minimum of 120 acres for a Farmhouse plus one intergenerational unit and a minimum of 180 acres for a Farmhouse plus two intergenerational homes).

IV. Conservation Easements

- A. ISSUE:** Conservation easements are used as tool to protect agricultural land and agricultural production in the Coastal Zone by permanently restricting development in agricultural areas. The LCPA proposes to continue to require permanent conservation easements on land not used for the physical development for proposed land divisions, non-agricultural development, and residential projects. The farmhouse, agricultural worker housing, and intergenerational housing will be excluded from this requirement.
- B. INTENT:** In order to preserve lands for agricultural use, Agricultural Policy 5.b (LCP Unit II, p. 99) of the existing LCP requires that all land divisions and development on C-APZ zoned lands shall require a master plan showing how the proposed division of development would affect the subject property. As part of the approval of the master plan, the LCP requires permanent conservation easements over those portions of the property not used for physical development or services to promote the long-term preservation of these lands. Further, only agricultural uses are allowed under these easements. The existing LCP also supports the objectives of the Marin Agricultural Land Trust to protect agricultural lands through the transfer, purchase, or donation of development rights or conservation easements on agricultural land in Agricultural Policy 7 (Unit II, p. 101). Agriculture Policy 5 is implemented through Section 22.57.035I(2) (p. 93) of the Interim Development Code.

Policy C-AG-7(B)(3)—and corresponding language in Section 22.65.040(2)(a)—in the proposed LCPA continues to require conservation easements for non-agricultural development and proposed land divisions on C-APZ zoned lands. One difference is that the Coastal Permit would now replace the Master Plan process, which is discussed above in Issue VII. While the subdivision of land and residential development of two or more units would still require a conservation easement, new language would exempt the farmhouse and both agricultural worker and intergenerational housing as a means of promoting agricultural viability.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** Policy C-AG-7 (p. 14)
- **LCPA Development Code:** Section 22.65.040 (p. 77)

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.

Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP , and in particular the policies of the Natural Systems and Agriculture Element of the LUP.

...

B. Standards for Non-Agricultural Uses:

In addition to the standards of Section A. above, all of the following development standards apply to non-agricultural uses, including division of agricultural lands or construction of two or more dwelling units (excluding agricultural worker or intergenerational housing). The County shall determine the density of permitted residential units only upon applying Policy C-AG-6 and the following standards and making all of the findings listed below.

...

3. Consistent with state and federal laws, a permanent agricultural conservation easement over that portion of the property not used for physical development or services shall be required for proposed land divisions, non-agricultural

IV. Conservation Easements

development, and residential projects, other than a farmhouse, agricultural worker housing, or intergenerational housing, to promote the long-term preservation of these lands. Only agricultural and compatible uses shall be allowed under the easement. In addition, the County shall require the execution of a covenant not to divide for the parcels created under this division so that each will be retained as a single unit and will not be further subdivided.

...

22.65.040 – C-APZ Zoning District Standards

...

2. Standards for Non-Agricultural Uses

Non-agricultural uses, including division of agricultural lands or construction of two or more dwelling units (excluding agricultural worker or intergenerational housing) shall meet the requirements of Section 22.65.040C above and the following additional requirements:

- a. **Conservation easements.** Consistent with state and federal laws, the approval of non-agricultural uses, a subdivision, or construction of two or more dwelling units, excluding agricultural worker and intergenerational housing, shall include measures for the long-term preservation of lands proposed or required to remain undeveloped. Preservation shall be accomplished by permanent conservation easements or other encumbrances acceptable to the County. Only agricultural uses shall be allowed under these encumbrances. In addition, the County shall require the execution of a covenant prohibiting further subdivision of parcels created in compliance with this Section and Article VI (Subdivisions), so that each is retained as a single unit.

...

- D. CCC ISSUE:** Coastal Commission staff support the use of conservation easements as a means of restricting development to certain areas and protecting the available land. In the January 7, 2012 letter, Coastal Commission staff indicates they have seen a trend towards proposed estate homes on agricultural lands, which impacts the agricultural economy and agricultural productivity by driving up the value of the land and bringing non farming related housing into agricultural areas. While traditional agricultural easements assure that the land is available to continue to be farmed, there is also potential for the land to remain as open space, since these traditional easements do not contain mechanisms that require land to be kept in active agricultural production.

The concern is over the growing popularity of using farmland for solely residential purposes. Sections 30241 and 30242 of the California Coastal Act mandate that the maximum amount of agricultural land is maintained in agricultural production. Traditional easements do not guarantee that the land will continue to be farmed. Thus, Coastal Commission staff support the use of affirmative agricultural easements or deed restrictions, which require that agricultural lands are not only protected but are affirmatively made available for farming. Affirmative agricultural easements include provisions that require the restricted land to be actively farmed. Affirmative easements can be required by regulatory agencies as conditions of development, or they can be established voluntarily by landowners.

- E. OTHER INPUT:** Some agricultural groups have raised concerns that requiring a conservation easement for an additional residential home (noting that Intergenerational and farmworker housing will be exempt from this requirement) not only limits the farm family's ability to grow in the

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future, but the conservation easement reduces the value of the land since the remaining development potential is eliminated. The concern is that once the development potential is eliminated, the property owner loses the ability to sell those rights to organizations such as MALT. As discussed below, however, a conservation easement is only required if the landowner seeks to create subdivisions or other residential and non-agricultural development on productive agricultural lands, and would apply to the remaining agricultural land. Granting an easement to protect the remaining agricultural land is a tradeoff for converting agricultural land to potentially valuable non-agricultural development.

Another concern is that the conservation easement requirement may be an illegal taking without an adequate nexus. The argument is that the loss in development rights and the ability to subdivide should be commensurate or proportionate to the impact of the proposed development, with the rancher adequately compensated for this loss. There is concern that the conservation easements will negatively impact the rancher's ability to obtain loans against the property in order to build infrastructure for the ranching operations and facilities, which could in turn further negatively impact the ranch's economic feasibility and, ultimately, the value of the land.

Finally, some contend that the conservation easement should be an option, not a requirement, which the rancher can willingly choose to participate. It is argued this could encourage more compliance with the conditions of the conservation easement.

With respect to affirmative agricultural easements, other concerns include:

- A. The lack of sufficient funding for monitoring and enforcement of easement conditions
- B. The effect of potential court challenges given the newness of this type of easement
- C. The difficulty in appraising affirmative easement for property valuation purposes, and
- D. The long-term viability of the easement through future changes in the economy, natural resources, and infrastructure.

Despite these concerns, there is strong support for organizations such as the Marin Agricultural Land Trust that eliminate development potential on farmland by voluntarily acquiring conservation easements from landowners. MALT conservation easements have protected more than 44,100 acres on 68 family farms and ranches. In the Coastal Zone, MALT holds agricultural conservation easements on 31 farms and ranches, permanently protecting 14,531 acres. According to Bob Berner, Executive Director, most of these were purchased for the independently appraised value of the easement. So far, these investments in the Coastal Zone have cost MALT more than that \$22 million.

STAFF ANALYSIS:

The existing LCP (Section 22.57.035I.2 on p.94) requires that conservation easements be provided to offset the impacts on agricultural use before land divisions and/or non-agricultural development are permitted on Coastal Agricultural Production Zone (C-APZ) lands. The findings required before such non-agricultural development can be permitted are described in the existing Development Code section 22.57.036I.2 as follows:

22.57.036I Required Findings. Review and approval of development permits including a determination of density shall be subject to the following findings:

1. The development will protect and enhance continued agricultural use and contribute to agricultural viability.
2. The development is necessary because agricultural use of the property is no longer feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property.

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3. The land division of development will not conflict with the continuation or initiation of agriculture, on that portion of the property which is not proposed for development, on adjacent parcels, or those within one mile of the perimeter of the proposed development.
4. Adequate water supply, sewage disposal, road access and capacity and other public services are available to service the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream habitats or significantly reduce freshwater inflows to Tomales Bay, either individually or cumulatively.
5. Appropriate public agencies are able to provide necessary services (fire protection, police protection, schools, etc.) to serve the proposed development.
6. The proposed land division and/or development will have no significant adverse impacts on environmental quality or natural habitats, including stream or riparian habitats and scenic resources. In all cases, LCP policies on streams and natural resources shall be met.

*[*Note: The corresponding findings to this section are found in Section 22.65.040.C, p. 77-78 of the LCPA Development Code]*

Specifically, it is the case with item 2 above that a conservation easement is required, as specified in existing LCP Development Code Section 22.57.035I.2:

2. Permanent conservation easements over that portion of the property not used for physical development or services shall be required to promote the long-term preservation of these lands. Only agricultural uses shall be allowed under the easements. In addition, the county shall require the execution of a covenant not to divide the parcels created under this division so that they are retained as a single unit and are not further subdivided.

As with other provisions of the current master plan, the LCPA would transfer the substantive standards and requirements for conservation easements directly to the coastal permit process itself. Otherwise, this concept would remain unchanged in the LCPA, reaffirming that “agricultural uses shall be allowed under the [conservation] easements” (§22.57.035I.2). The LCPA would clarify that development of a farmhouse, agricultural worker housing, or intergenerational housing would be exempt from the conservation easement requirement. This exemption is to allow flexibility for the continuation of agriculture, as the majority of Marin’s farms and ranches are family owned and operated, with many generations having worked the land. Many of Marin’s principal agricultural operators are approaching retirement, and transitioning, family operations are a critical part of maintaining and continuing agriculture. In addition, providing suitable housing for farmworkers is a critical component of sustainable agriculture. This is discussed in more detail with regards to the issue of Intergenerational Housing [Issue VI].

By granting the conservation easement the landowner forfeits the right to subdivide and develop those areas covered by the easement in the future. However, the landowner still retains title to the property and can still sell or use the property as collateral on a loan, restrict public access, farm the land, and remain eligible for state and federal programs including the Williamson Act. The property subject to a conservation easement remains on the local tax rolls. Furthermore, there are various income and estate tax benefits available to family farmers and ranchers for donating a conservation easement.

Staff recommends the proposed policy language in C-AG-7(B)(3) (p. 15 in the LUP) and corresponding language in Section 22.65.040(C)(2)(a) of the Development Code.

IV. Conservation Easements

F. NO ALTERNATIVES PRESENTED FOR BOARD CONSIDERATION:

The proposed LCPA continues to utilize conservation easements as a means of protecting and enhancing agriculture in the Coastal Zone. The proposed language clarifies the original LCP concept to make it more clear that agricultural development (a farmhouse, agricultural worker housing, or intergenerational housing) will be exempt from the conservation easement requirement. No additional alternative is suggested.

V. Types of ESHA and ESHA Definition

- A. ISSUE:** Environmentally Sensitive Habitat Areas (ESHAs) are protected through strictly limiting uses and establishing natural buffer areas. ESHAs in Marin include a wide range of habitat types, including wetlands, streams, riparian areas, nesting sites and other supporting a multitude of protected species. Broadly speaking, there are three main categories of ESHA within the Coastal Zone: wetlands; streams and riparian areas; and terrestrial (non-aquatic) ESHA. While the protection of all sensitive areas is implicit in the proposed LCPA, comments from the public as well as the Coastal Commission requesting upland ESHA protection policies have made it clear that further definition should be provided within the Land Use Plan, particularly with respect to terrestrial ESHAs.

While the Coastal Commission has requested only minor modifications to the proposed ESHA definition, comments from the public have expressed concern about the broad designation of ESHA. In evaluating this feedback, it has become clear that LCPA definition would expand the notion of ESHA beyond what currently is provided in the existing LCP Units I and II. In particular, broad designations of terrestrial plant communities have not been legislatively determined to be ESHA. Where the biological site assessment identifies the presence of threatened or endangered species, the assessment will also delineate the extent of the area that meets the definition of ESHA

- B. INTENT:** The objective in modifying the ESHA definition is to incorporate text from the Coastal Act definition¹ to establish a clear framework for designating ESHA that accounts for current scientific knowledge.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** Policy C-BIO-1 (p. 22)
- **LCPA Development Code:** Section 22.130.030 (p. 127)

C-BIO-1 Environmentally Sensitive Habitat Areas (ESHAs). *(excerpt)*

1. An environmentally sensitive habitat area (ESHA) is any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and developments.

...

Section 22.130.030 (Definitions):

Environmentally Sensitive Habitat Area (ESHA) (coastal). Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and

¹ The Coastal Act defines an ESHA within Section 30107.5 as follows: "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

developments.

The ESHAs in the County of Marin are habitats that are essential for the specific feeding, cover, reproduction, water, and activity pattern requirements of existing populations of special-status species of plants and animals, as designated by the California Department of Fish and Game and identified in the California Natural Diversity database. In addition, ESHAs include existing populations of the plants listed as 1b or 2 by the California Native Plant Society and the following terrestrial communities that are identified in the California Natural Diversity Database:

- A. Central dune scrub
- B. Coastal terrace prairie
- C. Serpentine bunchgrass
- D. Northern maritime chaparral

Wetlands, estuaries, lakes and portions of open coastal waters are considered ESHAs. Coastal streams and the riparian vegetation surrounding them are considered ESHAs.

D. CCC ISSUE

- The LCP should provide a map of existing/known habitat and review of areas adjacent to ESHAs to ensure land use designations and development standards are compatible with resource protection. (Commission staff, 10/4/2011)
- There should be specific policies for non-water ESHAs, such as habitats of rare and endangered species, unique plant communities and dunes. (Commission staff, 11/30/2011)
- Revise the first sentence of the second paragraph in the ESHA definition to note that ESHAs include rather than are “habitats that are essential...”. (Commission staff, 10/4/2011)
- Include a reference to federally listed species. (Commission staff, 10/4/2011)

E. OTHER INPUT

Agriculture:

- The Coastal Commission has been designating ESHA with a very large brush, to the extent that large portions, or even the entirety of our ranches and farms, could be so designated. (Marin County Farm Bureau, 3/25/12)
- Grazing of prairie and grassland areas has been in practice for over 100 years. Grazing can be beneficial; these areas are sustained by disturbances that prevent invasion by other plants. (Marin County Farm Bureau 3/25/12; UC Cooperative Extension 11/28/11)
- There should be clear standards/ guidelines for designation of “habitat area”. (Marin County Farm Bureau, 6/18/11)

Environment:

- ESHAs should include vegetated habitat areas and their buffers. (Marin Audubon, 3/27/12)
- Policy C-BIO-2 only addresses “wet” ESHAs (wetlands, streams, estuaries, etc.) and should provide similar protections for upland ESHAs. (Community Marin, 3/27/12, 11/30/11; West Marin EAC 11/28/11; Marin Audubon 3/27/12)

STAFF ANALYSIS:

ESHAs in Marin County include a range of habitat types, such as wetlands, streams, sand dunes, bird nesting areas and butterfly overwintering trees – resources that are acknowledged and addressed in

V. Types of ESHA and ESHA Definition

LCP Units I and II². Except for limited development of wetland and stream areas provided in Coastal Act Sections 30233 and 30236, all ESHAs are subject to the stringent requirements of Coastal Act Section 30240.

The LCPA would provide standards for review of development in all ESHAs (i.e., *only* when there is no feasible less environmentally damaging alternative; mitigation measures are provided and disruption of habitat values is avoided). These standards would uphold the provisions of Coastal Act Section 30240(a) to protect ESHAs against any significant disruption of habitat values. The Coastal Commission staff and some comments from environmental interests have suggested that policies be developed for non-water or upland ESHAs (i.e., terrestrial ESHAs). Nevertheless, it is apparent from comments provided to date that the structure of the Policy with respect to terrestrial ESHAs is unclear. The Board may wish to consider an alternative that modifies C-BIO-1 to clearly state that terrestrial ESHAs (i.e., non-aquatic habitats that support rare and endangered species or native plant communities, including coastal dunes and roosting and nesting habitats) are also covered by the policies of the Biological Systems Section.

Per Coastal Act Section 30107.5, there are two primary conditions that must be met for designation of Environmentally Sensitive Habitat Area (ESHA):

1. Plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem, *and*
2. The habitats could be easily disturbed or degraded by human activities and developments.

The current LCP Units I and II provide important context for natural and habitat areas as summarized below:

LCP Unit I: Habitat Protection (p.30-31)

Resource and habitat areas are identified in community plans for Muir Beach, Stinson Beach and Bolinas, as well as 1975 publication, "Natural Resources of the North Central Coast Region", North Central Coastal Commission. They include:

- Monarch butterfly roosting habitat;
- Shorebird foraging areas on grassy uplands of Bolinas Lagoon;
- Egret & Heron roosting areas;
- Bolinas Quail Refuge
- White-tailed Kite Habitat;
- Duxbury Reef

LCP Unit II: Coastal Dunes & Other Sensitive Habitats (p.70)

Environmentally sensitive habitat areas are defined in Section 30107.5 of the Coastal Act as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem". More specifically, such habitats may serve as prime examples of particular natural communities; be unique, rare or fragile; provide habitat for rare or endangered species of wildlife and thus be vital to species survival; or be of particular scientific or educational interest.

The LCPA would incorporate the Coastal Act definition and expand upon it by identifying the types of habitat that are essential for the specific feeding, cover, reproduction, water, and activity pattern requirements of existing populations of:

- Special-status species of plants and animals as designated by the Department of Fish and Game and identified in the California Natural Diversity Database

² Policies pertaining to certain ESHAs are adapted from LCP Units I and II, and contained in C-BIO-7 (Coastal Dunes); C-BIO-9 (Stinson Beach Dune and Beach Areas); C-BIO-10 (Roosting and Nesting Habitat); C-BIO-11 (Development Adjacent to Roosting and Nesting Habitat); and C-BIO-11.a (Grassy Uplands Surrounding Bolinas Lagoon).

V. Types of ESHA and ESHA Definition

- Plant species are listed as 1b or 2 by the California Native Plant Society³

In addition to these parameters, the proposed LCPA definition specifically identifies the following additional habitat areas as ESHA:

- The following terrestrial communities identified in the California Natural Diversity Database: central dune scrub; coastal terrace prairie; serpentine bunchgrass; northern maritime chaparral
- Wetlands, estuaries, lakes, and portions of open coastal waters
- Coastal streams and the surrounding riparian vegetation

The Coastal Commission has suggested minor wording changes and inclusion of a reference to federal endangered species within the definition of ESHA. The Commission staff has also requested that maps be prepared to illustrate the location of potential/known habitat and ensure alignment of development standards with habitat protection. Several maps are provided within the LCPA that reflect the best available information with regard to these resources; however, because natural systems are dynamic it is not possible to know the precise location of every sensitive resource⁴. While the maps provide a high-level reference as to the potential presence of ESHA, the important consideration on a case-specific basis is the location of sensitive resources on the ground, where they exist at the time that a development proposal is made. The requirements of LCPA Policy C-BIO-2 would ensure this individual level of review by requiring site assessments as necessary to determine the extent of the ESHA and recommend measures to avoid habitat impacts. The County's proposed approach in this regard is supported by the Coastal Commission's 2007 guidance document, *Protecting Sensitive Habitats and Other Natural Resources* which states, "While maps can serve as one illustrative tool to help identify potential resources, the presence of ESHA on the ground dictates the application of policies. LCPs must be updated to ensure that ESHA and wetland determinations are based on site specific biological surveys at the time of proposed development or plan amendment, and that any area that actually meets the definitions of either must be given all the protection provided for in the Coastal Act, regardless of its prior identification on a resource map."

Feedback from environmental interests recommends that the definition of ESHA be modified to incorporate the buffer itself. Referring to the Coastal Act definition, an ESHA is based upon the presence of a rare or especially valuable resource. Buffers are established as a means of protecting the ESHA and are not, in and of themselves, resources that demand protection. Incorporation of buffers into the ESHA definition is not recommended.

F. ALTERNATIVE FOR BOARD CONSIDERATION:

C-BIO-1 Environmentally Sensitive Habitat Areas (ESHAS). (excerpt)

1. An environmentally sensitive habitat area (ESHA) is any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and developments.
2. For the purposes of this Chapter, ESHA is addressed in three general categories: wetlands, streams and riparian areas, and terrestrial ESHAs. Terrestrial ESHA refers to those non-aquatic habitats that support rare and endangered species; coastal dunes as referenced in C-

³ Per the CNPS: Plants with a California Rare Plant Rank of 1B are rare throughout their range; are mostly endemic to California; have declined significantly over the last century; and constitute the majority of taxa in the CNPS *Inventory*. Plants with a California Rare Plant rank of 2 are distinguished from the 1B list in that they are common beyond the boundaries of California.

All of the plants constituting California Rare Plant Rank 1B and 2 meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. It is mandatory that they be fully considered during preparation of environmental documents relating to CEQA.

⁴ See: Vegetation (Map 5); Special-Status Species and Sensitive Natural Communities (Map 6); Wetlands and Streams (Map 7); Major Watersheds (Map 8); Wildland-Urban Interface Zone (Map 13); and Open Space and Parks (Map 24). Additional online resource information will be made available to the public for reference.

V. Types of ESHA and ESHA Definition

BIO-7 (Coastal Dunes); and roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats). The ESHA policies of C-BIO-2 (ESHA Protection) and C-BIO-3 (ESHA Buffers) apply to all categories of ESHA, except where modified by the more specific policies of the LCP.

(note: C-BIO-1.2 and 1.3 in PC-approved LCPA may be incorporated into Policy C-BIO-2 as described in VI. Allowable Uses in ESHA and Site Assessments)

Definitions, Development Code Section 22.130.30

Environmentally Sensitive Habitat Area (ESHA) (coastal). Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. ESHAs include wetlands, coastal streams and riparian vegetation, and habitats of special-status species of plants and animals (i.e., species listed under the Federal or California Endangered Species Act and existing populations of the plants listed as 1b or 2 by the California Native Plant Society).

~~The ESHAs in the County of Marin are habitats that are essential for the specific feeding, cover, reproduction, water, and activity pattern requirements of existing populations of special-status species of plants and animals, as designated by the California Department of Fish and Game and identified in the California Natural Diversity Database. In addition, ESHAs include existing populations of the plants listed as 1b or 2 by the California Native Plant Society and the following terrestrial communities that are identified in the California Natural Diversity Database:~~

- ~~A. Central dune scrub~~
- ~~B. Coastal terrace prairie~~
- ~~C. Serpentine bunchgrass~~
- ~~D. Northern maritime chaparral~~

~~Wetlands, estuaries, lakes and portions of open coastal waters are considered ESHAs. Coastal streams and the riparian vegetation surrounding them are considered ESHAs.~~

VI. Uses in ESHA and Site Assessments

- A. ISSUE:** The Coastal Commission expressed concern that the LCPA Policy C-BIO-2 would allow development in or adjacent to an ESHA, in conflict with the Coastal Act. Similar concerns were echoed by environmental organizations. Thus, it appears that the current wording and title of Policy C-BIO-2 creates an impression as to the use and development potential of ESHAs that is inconsistent with the LCP.

Other comments have been provided from the Coastal Commission and the public regarding the language of C-BIO-2 pertaining to site assessments, noting that the implementation and use of assessments in identifying the presence of ESHA and ESHA protection is unclear.

- B. INTENT:** The objective of C-BIO-1 and C-BIO-2 as it relates to allowable uses in ESHAs would be to reflect the language of the Coastal Act (specifically Section 30240); carry forward policies from LCP Units I and II regarding habitat protection and environmentally sensitive areas; fully protect ESHAs while avoiding “takings”, and establish standards and procedures for reviewing such proposals (e.g., site assessment).

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** *Policies C-BIO-1, C-BIO-2 (p. 22)*
- **LCPA Development Code:** *Section 22.64.050 (p. 56)*

C-BIO-1 Environmentally Sensitive Habitat Areas (ESHAS). *(excerpt)*

...

2. Protect ESHAs against disruption of habitat values, and only allow uses within those areas that are dependent on those resources. Disruption of habitat values occurs when the physical habitat is significantly altered or when species diversity or the abundance or viability of species populations is reduced. The type of proposed development, the particulars of its design, and its location in relation to the habitat area, will affect the determination of disruption. Control public access to ESHAs, including the timing, intensity, and location of such access, to minimize disturbance to wildlife. Avoid fences, roads, and structures that significantly inhibit wildlife movement, especially access to water.

...

Policy C-BIO-2 Development Proposal Requirements in ESHAs. *(excerpt)*

Allow development in or adjacent to an ESHA only when the type of development proposed is specifically allowed in the applicable Biological Resources Policies of the LCP. Consistent with the Coastal Act Sections 30233 and 30236, development in wetlands, estuaries, streams and riparian habitats, lakes and portions of open coastal waters are limited as provided in C-BIO-14 through C-BIO-26.

Any permitted development in an ESHA must also meet the following general requirements:

1. There is no feasible less environmentally damaging alternative.
2. Mitigation measures are provided that will eliminate adverse environmental effects when possible, or, when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels.
3. Disruption of the habitat values of the resources is avoided.

Section 22.64.050

A. Submittal requirements.

1. **Biological studies.** Coastal Permit applications may be required to provide a site assessment based on a review of the best available scientific and geographic information and subject to a level of review that is commensurate with the nature and scope of the project and the potential existence of an Environmentally Sensitive Habitat Area (ESHA). A site assessment shall confirm the extent of the ESHA, document any site constraints and the presence of other sensitive resources, recommend precise required setbacks and provide other information, analysis and potential modifications necessary to demonstrate compliance with the LCP. Where habitat restoration or creation is required to eliminate or offset potential impacts to an ESHA, a detailed Restoration and Monitoring Plan shall be required. The Restoration and Monitoring Plan shall be consistent with the guidance provided in the California Coastal Commission LCP Guide for Local Governments, Protecting Sensitive Habitats and Other Natural Resources (undated).

Any recommendations given in the site assessment regarding buffer widths should consider the following: 1) topography of the site; 2) movement of stormwater; 3) permeability of the soils and depth to water table; 4) vegetation present; 5) proposed activities; and 6) behavior and movement of habitat dependent wildlife.

...

D. CCC ISSUE:

- The first sentence in C-BIO-2 is inconsistent with the Coastal Act (Commission staff, 10/4/2011)
- There should be clear direction as to the process for determining when and what extent of ecological restoration will be required as mitigation for damage to ESHA. (Commission staff, 11/30/2011)
- The Code should have detailed provisions for implementing the site assessment, including procedures for determining whether a habitat is significantly disrupted and guidelines for determining the setback (buffer) area. (Commission staff, 10/4/2011)

E. OTHER INPUT:

Agriculture:

- A change in agricultural usage is not development. The survival of farming operations depends upon the ability to shift agricultural regimes instantly. (Marin County Farm Bureau, 11/25/11)
- Since agricultural activities are not necessarily dependent on ESHA resources, to "only allow uses within those areas that are dependent on those resources" could potentially disallow any agriculture activities. (Marin County Farm Bureau, 3/25/12)
- The standard of a "less environmentally damaging alternative" could disallow placement of agricultural uses and infrastructure (e.g., barn) in the optimum location for best management practices. An exception should be made for agricultural activities and accessory structures. (Marin County Farm Bureau 3/25/12)
- Language in C-BIO-2 stating that the only type of development proposed is that which is "specifically allowed in the applicable Biological Resources Policies of the LCP" is ambiguous. (CLASS, 11/30/11)
- Fences within agricultural areas keep wildlife out of an ESHA yet are conducive to wildlife connectivity. Agricultural roads are generally not located within ESHAs, are closed to the public and have little traffic. Fences and private roads for agricultural purposes should not be restricted within ESHAs. (Marin County Farm Bureau 3/25/12)

Environment:

- Any intensification of land use (e.g., a decision by a local agricultural producer to change the primary use from ranching to vineyards) should require a coastal permit to ensure avoidance of negative environmental impacts. (West Marin EAC, 10/7/11)
- There should be consideration of cumulative impacts in addition to the project impacts. (EAC, 11/23/11)
- Strict guidelines need to be established for staff rather than depending on the permittee to declare if there is an ESHA present or adjacent to his/her property. (Cela O'Connor 2/13/12)
- Policy C-BIO-2 and Development Code 22.64.050 provide inadequate guidance on the circumstances requiring a site assessment. (Community Marin, 3/27/11; West Marin EAC, 11/28/11)

STAFF ANALYSIS:

Policy C-BIO-1 would mirror the Coastal Act in requiring that ESHAs be protected against significant disruption of habitat values and allowing only uses dependent on such resources. Policy C-BIO-2 would carry out the protection policies for all ESHAs by requiring consideration of development alternatives that might be less environmentally damaging, adoption of mitigation measures, and documentation that habitat values would not be disrupted in order for development to be considered.

Comments surrounding allowable uses in ESHAs have been directed toward farming. The agricultural and environmental communities have divergent opinions regarding the authorization of agricultural uses, which hinge upon the definition of "development"⁵. While the topic of permitting is not specific to ESHAs, the nature of ESHA restrictions and the associated feedback from various community groups indicates that current and future agricultural uses within ESHA are a matter of unique concern.

Preservation of productive agricultural land is a priority of the Coastal Act as well as the proposed LCP amendments. In correspondence dated September 15, 2011, Ruby Pap of the California Coastal Commission staff states:

"...general, routine, ongoing agricultural operations would not require coastal permits. What require permits are the grading, intensification, and structures associated with these operations."⁶

The County staff's 2009 issue summary for the Planning Commission is consistent with the first part of the Commission staff statement:

"While the definition of development is very broad, it does not include agricultural harvesting or timber harvesting. Nor has the County considered grazing of livestock to be development for the purpose of implementing Coastal Permit requirements."

While both the Commission staff and the proposed LCPA agree that agricultural uses are not subject to permit review if they are "general, routine and ongoing," the Commission staff comments leave ambiguity that could cause unnecessary confusion and conflict in the future. Does a field left fallow mean that the agricultural operation is no longer "ongoing"? Does planting a crop that may require 10% more water from an existing well constitute "intensification"? These and related issues are

⁵ Per Coastal Act Section 30106: "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

⁶ Certain structures (e.g., barns, water lines, storage tanks, open fences) are categorically excluded from Coastal Development Permits subject to conditions as contained in Categorical Exclusion Orders E-81-2 and E-81-6

VI. Uses in ESHA and Site Assessments

addressed in I. Agricultural Grading, which shows how the proposed LPCA provisions provide additional clarity in accordance with the Commission staff's guidance.

Routine, ongoing agricultural activities are not "development" and certain agricultural developments (such as barns and fences) are Categorically Excluded from a coastal permit as shown in the Coastal Commission official maps. Policy C-BIO-4 (Major Vegetation) would require a permit for the removal and harvesting of "major vegetation," which in the Definitions includes any vegetation in an ESHA or its buffer, but excludes "agricultural croplands and pastures." Thus, maintaining a farm field or grazing area would not require a permit, but a proposal to clear riparian vegetation in order to expand a pasture for livestock, would.

The Commission staff has commented that the first sentence of C-BIO-2 is inconsistent with the Coastal Act. However, the following key findings support staff's analysis regarding development within ESHAs as follows:

1. The Coastal Act permits development *within* ESHAs when such development is resource-dependent (Section 30240(a));
2. The Coastal Act permits development *adjacent to* ESHAs when such development is compatible and would not significantly degrade the resource (Section 30240(b));
3. The Coastal Act permits specific, limited uses/development within wetland and stream areas (Section 30233 and 30236)⁷;
4. The CCC has approved LCP policies recognizing that development on a parcel entirely or nearly entirely covered by ESHA may sometimes be necessary in order to avoid an unconstitutional taking of the property.⁸

Both agricultural and environmental interests have expressed concern about the term "feasible less environmentally damaging alternative" that would be established as a standard of review in Policy C-BIO-2. Agricultural producers are concerned that consideration of development alternatives will result in placement of structures and uses that do not meet agricultural operating needs; environmental proponents are requesting clarification of the phrase. This proposed standard adapts language used in the Coastal Act policies for diking, filling and dredging (Coastal Act Section 30233) and would apply it to ESHAs across the board. While the LPCA policies would establish first and foremost that there is generally no development allowed in ESHAs, where such development is proposed it would be required to meet two strict tests – it must be resource-dependent (or otherwise permitted via Coastal Act policies for wetlands and streams) *and* it must comply with the three standards of review provided in Policy C-BIO-2 (i.e., there is no feasible less environmentally damaging alternative; mitigation measures are provided; and disruption of habitat values is avoided). For example, a barn or other agricultural accessory structure would not be permitted in an ESHA if it could be located elsewhere on the property. However, certain resource-dependent or permitted uses (e.g., recreational trails, utility infrastructure) would be reviewed in light of the ESHA itself, the applicable requirements of the LCP, and also the existence/feasibility of other less environmentally damaging alternatives. Thus, the policies of the LPCA would provide a higher standard of ESHA protection generally than what might otherwise be achieved under the Coastal Act provisions alone.

The Board may wish to consider alternative wording that more clearly addresses those limited instances in which development may occur in ESHAs as specifically provided in the Coastal Act. This can be achieved by reorganizing the text within LPCA Policies C-BIO-1 and C-BIO-2 to achieve the following objectives:

- Modify to title of the policy to accurately reflect its intent;
- Clarify that avoidance of ESHAs is the highest priority;

⁷ Development within wetlands, lakes and estuaries is addressed in Section 30233, and rivers/streams are addressed in Section 30236.

⁸ For example, the Malibu LCP includes Policy 3.10 which states, in summary, that if the application of ESHA policies would likely constitute a taking of private property, then a use that is not consistent with the ESHA provisions shall be allowed, provided that such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking.

VI. Uses in ESHA and Site Assessments

- State that ESHAs should remain in their natural condition with exceptions contained in the Coastal Act and incorporated in to the LCPA [Coastal Act Section 30240(a) allows resource-dependent uses; Section 30233(a) allows diking, filling and dredging for certain purposes; and Section 30236 allows channelization, dams and alterations for water supply and flood control];
- Apply development standards (i.e., no feasible alternative; mitigation measures; avoidance of disruption to habitat values) to *all* proposed development in ESHA;
- Clarify the purpose of site assessments in evaluating and protecting ESHA.

The framework for identification and review of development impact would be established in LCPA Policy C-BIO-2 and implemented by the provisions of LCPA Development Code Section 22.64.050, which would establish submittal requirements and biological resource standards for site assessments⁹. The Coastal Commission has requested additional guidance regarding procedures for identifying ESHA and determining mitigation and setback requirements. Environmental advocates have requested similar clarification and also would like to see staff (rather than the petitioner) assume responsibility for determining ESHA location.

The County's current practice for all biological studies associated with development proposals is to require the applicant to commission a qualified professional to prepare a report detailing existing natural resources, potential impacts, and other information/alternatives as appropriate. The decision to require a site assessment is based upon the best available scientific and geographic information to determine the presence of a resource, and is commensurate with the nature and scope of the project. Site assessments compile relevant information and apply it to the situation at hand to result in informed decision-making. Such reports are subject to staff or peer review and become a part of the public record. In light of comments from the Coastal Commission and public generally, the Board may wish to consider alternative language that provides additional detail regarding the procedures and considerations for site assessments.

Commission staff additionally requested clearer guidance regarding procedures for mitigation and restoration. Given the complex interplay of species and habitat type, seasonal migration patterns, site conditions, and development impacts, the final determination of habitat protection measures should be made at the site level rather than determined solely on the basis of a general minimum ratio. Policy C-BIO-21 (Wetland Impact Mitigation) may be further refined to incorporate the Countywide Plan's policies for wetland mitigation (CWP Implementing Program BIO-3.e). However, the Board may also wish to modify Development Code Section 22.62.050 to incorporate the wetland mitigation policy by reference and specify minimum mitigation ratios, to be adjusted as appropriate on the basis of a site assessment. The Board may also wish to consider an alternative that fully incorporates the text of the Coastal Commission's guidance on restoration and monitoring as provided in their 2007 document *Protecting Sensitive Habitats and Other Natural Resources* (see Attachment 3).

F. ALTERNATIVE FOR BOARD CONSIDERATION:

C-BIO-2 ESHA Protection. Development Proposal Requirements in ESHAs.

~~Allow development in or adjacent to an ESHA only when the type of development proposed is specifically allowed in the applicable Biological Resources Policies of the LCP. Consistent with the Coastal Act Sections 30233 and 30236, development in wetlands, estuaries, streams and riparian habitats, lakes and portions of open coastal waters are limited as provided in C-BIO-14 through C-BIO-26.~~

1. Prioritize avoidance of land use and development impacts to ESHAs. Where this is not feasible, protect ESHAs against disruption of habitat values, and only allow uses within those

⁹ Development Code 22.64.050 requires that applicants for a coastal permit may be required to provide a site assessment to determine the extent of an ESHA; document site constraints and the presence of other sensitive resources; recommend setbacks and provide other information, analysis and potential modifications necessary to demonstrate compliance with the LCP.

VI. Uses in ESHA and Site Assessments

areas that are dependent on those resources. Disruption of habitat values occurs when the physical habitat is significantly altered or when species diversity or the abundance or viability of species populations is reduced. The type of proposed development, the particulars of its design, and its location in relation to the habitat area, will affect the determination of disruption. *(relocated text from PC-Approved C-BIO-1.2)*

2. Control public access to ESHAs, including the timing, intensity, and location of such access, to minimize disturbance to wildlife. *(relocated text from PC-Approved C-BIO-1.2)*
3. Avoid fences, roads, and structures that significantly inhibit wildlife movement, especially access to water. *(relocated text from PC-Approved C-BIO-1.2)*
4. Except for those limited uses provided in C-BIO-2.1, C-BIO-14 (Wetlands), C-BIO-15 (Diking, Filling, Draining and Dredging) and C-BIO-24 (Coastal Streams and Riparian Vegetation), or as allowed pursuant to C-EH-25 (Vegetation Management in an ESHA), maintain ESHAs in their natural condition. Any permitted development in an ESHA. Such uses must also meet the following general requirements:
 - a. There is no feasible less environmentally damaging alternative.
 - b. Mitigation measures are provided that will eliminate adverse environmental effects when possible, or, when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels.
 - c. Disruption of the habitat values of the resources is avoided.
5. Development proposals within or adjacent to ESHA will be reviewed subject to a biological site assessment. Any development must also be determined to conform to all applicable Biological Resources policies in order to be permitted. This determination shall be based upon a site assessment which shall The purpose of the biological site assessment is to confirm the extent of the ESHA, document any site constraints and the presence of other sensitive biological resources, recommend buffers, development timing, mitigation measures or precise required setbacks, provide a site restoration program where necessary, and provide other information, analysis and modifications appropriate to protect the resource necessary to demonstrate compliance with the LCP.

Section 22.64.050 – Biological Resources *(excerpt)*

A. Submittal Requirements

1. Biological studies.

- a. **Initial Site Assessment Screening.** The Marin County Community Development Agency (CDA) shall conduct an initial site assessment screening of all development proposals to determine the potential presence of Environmentally Sensitive Habitat Area (ESHA). The initial site assessment screening shall include a review of reports, resource maps, aerial photographs, site inspection and additional resources as necessary to determine the presence of ESHA.
- b. **Site Assessment.** A site assessment shall be submitted for those Coastal Permit applications where the initial site assessment screening may be required to provide a site assessment based on a review of the best available scientific and geographic information reveals the potential presence of an Environmentally Sensitive Habitat Area (ESHA) within 100 feet of the proposed development. The permit will be and subject to a level of review that is commensurate with the nature and scope of the project and the potential existence of an Environmentally Sensitive Habitat Area (ESHA). A site assessment shall be prepared by a qualified biologist hired by the County and paid for by the applicant, shall confirm the extent of the ESHA, document any site constraints and

the presence of other sensitive resources, recommend buffers, development timing, mitigation measures or precise required setbacks and provide other information, analysis and potential modifications necessary to protect the resource.~~demonstrate compliance with the LCP.~~ Where habitat restoration or creation is required to eliminate or offset potential impacts to an ESHA, a detailed Restoration and Monitoring Plan shall be required, as provided in this section. ~~The Restoration and Monitoring Plan shall be consistent with the guidance provided in the California Coastal Commission LCP Guide for Local Governments, *Protecting Sensitive Habitats and Other Natural Resources* (undated).~~

- c. **Buffer Areas.** Buffers shall be provided for ESHAs in accordance with the policies of C-BIO-3 (ESHA Buffers), C-BIO-19 (Wetland Buffers), or C-BIO-24 (Coastal Streams and Riparian Vegetation), in combination with the findings of a site assessment, as necessary to ensure the biological integrity and preservation of the habitat they are designed to protect. Maintain ESHA buffers in their natural condition, except as provided in C-BIO-20 (Wetland Buffer Adjustments), C-BIO-25 (Stream Buffer Adjustments) or C-BIO-4 (Protect Major Vegetation).

Determination of ESHA buffer requirements should consider the following:

- 1) Habitat requirements of the ESHA, including the migratory patterns of affected species and tendency to return each season to the same nest site or breeding colony;
 - 2) Sensitivity of the ESHA to disturbance;
 - 3) Topography of the site;
 - 4) Movement of stormwater;
 - 5) Permeability of the soils and depth to water table;
 - 6) Vegetation present; ~~Proposed activities;~~ and Behavior and movement of habitat dependent wildlife
 - 7) Unique site conditions;
 - 8) Whether vegetative, natural topographic or built features (e.g., roads, structures) provide a physical barrier between the proposed development and the ESHA; and
 - 9) The likelihood of increased human activity and disturbance resulting from the project relative to existing development.
- d. **Habitat Mitigation.** New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate significant impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Residual adverse impacts to ESHA shall be fully mitigated, with priority given to on-site habitat mitigation. Off-site or fee-in-lieu habitat mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site habitat mitigation is more protective in the context of a biological analysis prepared by a qualified scientist and approved by the County of Marin. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.

Habitat mitigation shall occur in accordance with the provisions of C-BIO-21 (Wetland Impact Mitigation) for wetlands or the findings of a site assessment, and shall be provided at a minimum ratio of 2:1 for on-site mitigation; 3:1 for off-site mitigation or 4:1 for an in-lieu fee where applicable. In determining required mitigation, the acreage of habitat impacted shall be determined based on the size of the approved development area, road/driveway area, required fuel modification on the project site, and required vegetation clearance, if any, on adjacent properties. Habitat mitigation may be required at an adjusted ratio or through other appropriate techniques commensurate with the extent of habitat disruption, based on the specific requirements of the ESHA as determined through the site assessment.

VI. Uses in ESHA and Site Assessments

...

VII. ESHA Buffers

- A. ISSUE:** The Coastal Commission has requested specific policies for non-aquatic (i.e., terrestrial) ESHAs; there have additionally been comments regarding the inclusion of buffers within the ESHA itself and the impact of ESHA buffers on land use. Consistent with Coastal Commission policy guidance, ESHA buffers are established as a means of protecting an ESHA and do not constitute rare or sensitive habitat unto themselves. Thus staff recommends maintaining the distinction between ESHAs and their buffers that is provided in the LCPA. While buffer policies are clearly established for wetlands (C-BIO-19) and streams and riparian areas (C-BIO-24), the buffer requirement for terrestrial ESHAs is unclear in the LCPA.
- B. INTENT:** Establish policies consistent with the provisions of Coastal Act Section 30240(b) to ensure that development adjacent to ESHAs and parks does not significantly degrade those areas.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan: Policy C-BIO-1 (p. 22)**

C-BIO-1 Environmentally Sensitive Habitat Areas (ESHAs). *(excerpt)*

...

3. In areas adjacent to ESHAs and parks and recreation areas, site and design development to prevent impacts that would significantly degrade those areas, and to be compatible with the continued viability of those habitat and recreation areas.

- D. CCC ISSUE:** There should be specific policies for non-water ESHAs, such as habitats of rare and endangered species, unique plant communities and dunes. (Commission staff, 11/30/2011)

E. OTHER INPUT

Agriculture:

- Restrictions on lands *adjacent* to ESHA and ESHA buffers could effectively condemn all agricultural lands. (CLASS, 11/30/11)
- The most productive soils are the bottom lands adjacent to creeks and laced with wetlands and ESHAs. We cannot allow the elimination of our most productive land in favor of creating arbitrary buffer zones. (Marin County Farm Bureau, 11/25/11)
- The implementation of ESHA buffers as determined by permitting authorities on ranch land can be hugely cost prohibitive and may deter producers from making important improvements in infrastructure. (Marin County Farm Bureau, 11/25/11)

Environment:

- ESHAs should include vegetated habitat areas and their buffers. (Marin Audubon, 3/27/12)

STAFF ANALYSIS:

The term ESHA “buffer” refers to a setback area established to protect an ESHA by limiting the impacts of development. Environmental advocates have commented that ESHAs should include vegetated habitat as well as their buffers. Agricultural interests have expressed concern about extending ESHA restrictions to the areas adjacent to ESHAs. With respect to comments from both groups, it’s important to recall that the objective of an ESHA is to protect habitat that contains a rare or especially valuable resource. The buffer, in contrast, is not considered rare or especially valuable, but is established as a means of protecting the ESHA. The Coastal Commission alludes to this fact in its 2007 document, *Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetland and Other Environmentally Sensitive Habitat Areas*, which states “a buffer area is not itself part of the ESHA, but a ‘buffer’ or ‘screen’ that protects the habitat area from adverse environmental impacts caused by development” (p.9). Thus, combining the two would dilute the meaning of the ESHA and be an overly broad application of the Coastal Act’s provisions. Staff recommends maintaining a distinction between ESHAs in their buffers, as would be provided in the proposed LCPA.

In determining the allowable uses and development within a buffer, the key consideration is whether a particular use would significantly degrade the habitat value of the ESHA. Through 30 years of coastal planning, the County has applied site-specific analysis in evaluation of development proposals to achieve its habitat protection goals. The existing LCP Units I and II take varying approaches to the nature of development permitted in ESHA buffers. LCP Unit I establishes certain dune setbacks within the Stinson Beach and Seadrift areas that are adapted in C-BIO-9 and guidance for wildlife nesting and roosting areas to ensure that development is set back and/or timed so as to minimize impacts on the habitat area (C-BIO-10). Unit II similarly requires development adjacent to ESHAs to be set back a sufficient distance to minimize impacts on the habitat area. As proposed in the LCPA and consistent with the Coastal Act, development or uses on areas adjacent to ESHAs would be required to be sited, designed and managed to avoid significant impacts.

Coastal Commission staff has recently pursued more directive buffer policies within LCP updates. In recent years, the Coastal Commission staff has consistently suggested modifications to major LCP updates (Crescent City, Arcata, Fort Bragg, Del Norte County, Chula Vista) to establish a standard buffer of 100’ for all ESHA. In their correspondence, Commission staff has made the following comment: “To protect ESHA from adjacent developments, the practice has been to require stable buffer areas between the ESHA and the development. Generally, the Commission has considered 100-feet to be the standard buffer width to protect ESHA.” In its 2007 report, “Policies in Local Coastal Programs regarding Development Setbacks and Mitigation Ratios for Wetlands and other Environmentally Sensitive Habitat Areas”, the Coastal Commission staff states:

“Although it is often not feasible to establish buffers as wide as is recommended in the scientific literature (e.g., the 450-foot wetland buffers, 900 feet between human disturbance and nesting herons), the Commission can work toward updating LCP policies that are clearly inadequate by increasing the width of protective buffers....Regarding other terrestrial ESHA buffers, policies requiring buffer widths less than 50 feet should be reviewed and in most cases increased to 50 feet. In some cases, 100 feet or wider will be warranted.”

The Coastal Act itself does not set a standard buffer distance from ESHA, but provides more generally in Section 30240(b) that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas and be compatible with the continuance of those habitat areas. As provided in the LCPA and in accordance with the Coastal Act requirements, the County would continue to apply a site-specific approach to development review that comprehensively accounts for natural resources and the impacts of development, including determination of buffer, mitigation and other habitat protection measures. If a standard buffer were to be established within the LCP as suggested by Commission staff, this would nevertheless be subject

VII. ESHA Buffers

to evaluation and refinement through the site assessment/ development review process to account for unique conditions on the ground as provided by LUP Policy C-BIO-2.

Given that Marin's current ESHA protection and buffer policies have been in place for over three decades, any new policies should reflect the possibility that policies may not be amended again for years or decades into the future. While policies for specific terrestrial ESHA types might be written to reflect appropriate protocols at this point in time, such a suite of policies would be unlikely to account for future ESHA types and may in fact have the unintended consequence of limiting an appropriate regulatory response. Thus, if the Board of Supervisors is inclined to accept Commission staff's initial recommendation and move forward in establishing standard ESHA buffers beyond what presently exists for wetlands and streams/riparian areas, it is recommended that this be done in a general approach allowing for adjustment on the basis of a site assessment. Given the diversity and abundance of sensitive resources in the Coastal Zone, the LCP should avoid establishing arbitrary standards that selectively regulate individual species or terrestrial habitat areas, or truncate application of future protocols. Rather, Marin's coastal biological policies should provide flexibility to allow for the most responsive approach to habitat preservation as can be achieved by up-to-date scientific knowledge and management practices.

F. ALTERNATIVE FOR BOARD CONSIDERATION:

C-BIO-3 ESHA Buffers. (proposed)

1. In areas adjacent to ESHAs and parks and recreation areas, site and design development to prevent impacts that would significantly degrade those areas, and to be compatible with the continued viability of those habitat and recreation areas. *(text relocated from PC-Approved C-BIO-1.3)*
2. Provide buffers for wetlands, streams and riparian areas in accordance with C-BIO-19 and C-BIO-24, respectively.
3. Establish buffers for terrestrial ESHA to provide separation from development impacts. Maintain such buffers in a natural condition, allowing only those uses that will not significantly disrupt the habitat. Generally, buffers for terrestrial ESHA shall be 50 feet, a distance that may be adjusted by the County as appropriate to protect the habitat value of the resource. Such adjustment shall be made on the basis of a biological site assessment supported by evidence that includes but is not limited to:
 - a. Sensitivity of the ESHA to disturbance;
 - b. Habitat requirements of the ESHA, including the migratory patterns of affected species and tendency to return each season to the same nest site or breeding colony; Topography of the site;
 - c. Movement of stormwater;
 - d. Permeability of the soils and depth to water table;
 - e. Vegetation present;
 - f. Unique site conditions;
 - g. Whether, vegetative, natural topographic or built features (e.g., roads, structures) provide a physical barrier between the proposed development and the ESHA;
 - h. The likelihood of increased human activity and disturbance resulting from the project relative to existing development.

VIII. Wetlands

- A. ISSUE:** Wetland policies are carried over from the existing LCP Units I and II. While the Coastal Commission does not have any outstanding concerns specific to wetland and buffer policies, comments from the agricultural and environmental communities have addressed use and buffers for wetlands created due to human activities. Some environmental proponents have questioned the impact of buffer adjustments for wetlands created for mitigation or water storage. With respect to agriculture, the LCPA as written would not address “wet” areas arising from routine agricultural use; however, due to the CCC’s “single parameter” definition of “wetland” such wet areas would be subject to a 100’ buffer and the high standards for buffer adjustment provided in C-BIO-20.1.
- B. INTENT:** Carry over standard buffer policies from existing LCP Units I and II, and provide for consideration of buffer adjustments under certain circumstances. Allow for continued use of wetlands that have emerged due to agricultural activities, where such areas remain in agricultural use and do not support species that meet the definition of ESHA (i.e., listed under the federal or state endangered species acts or listed as 1B or 2 by the California Native Plant Society).

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** Policies C-BIO-14 (p.25), C-BIO-19, C-BIO-20 (p. 27)

C-BIO-14 Wetlands. *(excerpt)*

Preserve and maintain wetlands in the Coastal Zone as productive wildlife habitats, water filtering and storage areas, and, as appropriate, recreational open space, consistent with the policies in this section.

C-BIO-19 Wetland Buffers. Maintain a buffer area, a minimum of 100 feet in width, in a natural condition along the periphery of all wetlands. An additional buffer may be required based on the results of a site assessment, if such an assessment is determined to be necessary, and the site assessment concludes that a buffer greater than 100 feet in width is necessary to protect wetland resources from the impacts of the proposed development, including construction and post-construction impacts. Coastal Permits shall not authorize development within these buffer areas unless the project is otherwise determined to be consistent with policy C-BIO-20 Wetland Buffer Adjustments and Exceptions.

- D. CCC ISSUE:** The California Coastal Commission (CCC) staff does not have any outstanding concerns at this time.

E. OTHER INPUT

Agriculture:

- Exclusions should be made for artificially created areas such as agricultural stock ponds, ditches, row crops and livestock-created wallows, as these areas may appear to the uneducated eye as natural wetlands over time. (Marin County Farm Bureau, 3/25/12)
- Wet areas created through agricultural processes and activities (wallows, stock ponds, irrigation channels), which could be construed as seasonal wetlands, should be excluded through C-BIO-20.2. (Marin County Farm Bureau, 3/25/12)

Environment:

- The 100' wetland buffer is a small distance. (EAC, 11/28/11; Linda Nicoletto, 10/13/11)

STAFF ANALYSIS:

The agricultural community has expressed concerns about the broad coastal definition of wetlands to encompass wet areas typically associated with or created by agricultural land use¹⁰. Wetland delineation is technical task completed in the field based upon a scientific analysis of hydrology, vegetation and soils following the standard procedures established in the *1987 Army Corps of Engineers Wetland Delineation Manual*. The California Code of Regulations, Section 13577, provides that wetlands do not include habitat created by the presence of and associated with agricultural ponds and reservoirs where the pond or reservoir was constructed for agricultural purposes. The LCPA definition of wetland (Development Code Amendments) would incorporate the state's definition and additionally exclude narrow drainage ditches. However, the agricultural community has suggested that consideration should also be given to wet areas created incidental to normal agricultural activities (e.g., cow wallowing, tire track, etc.). Policy C-BIO-14 (Wetlands) may be modified to allow for continued use of wetlands that have emerged due to agricultural activities, where such areas remain in agricultural use and do otherwise constitute ESHA (i.e., don't provide habitat for species listed under the federal or state endangered species acts or listed as 1B or 2 by the California Native Plant Society) .

The LCPA would carry over an existing buffer of 100' for wetlands, a distance that has been shown to ensure high water quality and supports good habitat for native aquatic organisms. The 100' wetland buffer has been in place within Marin's Coastal Zone for over 30 years and is a standard widely adopted throughout the state¹¹. In some instances, adjustments to buffers are warranted to due unique site conditions.

The wetland buffer policies in existing LCP Units I and II are excerpted below¹²:

LCP Unit I: Wetlands

To the maximum extent feasible, a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands as delineated by the Department of Fish and Game and in accordance with Section 30121 of the Coastal Act and with the criteria developed by the U.S. Fish and Wildlife Service. No uses other than those dependent upon the resources shall be allowed within the buffer strip.

LCP Unit II: Wetlands

A buffer strip 100 feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands. Where appropriate, the required buffer strip may be wider based upon the findings of the supplemental report required in (e) [Tomaes Bay]. Development activities and uses in the wetland buffer shall be limited to those uses specified in (a) and (b) above [refers to diking/filling/dredging and resource-dependent uses].

While existing LCP Units I and II establish a minimum 100' buffer, there are slight differences in wording that would be resolved in the LCPA. The following buffer characteristics of existing policies would be carried over:

¹⁰ The Coastal Act definition of wetlands is a "single parameter definition" requiring the presence of one or more wetland characteristics -- hydrology, hydrophytic plants or hydric soils. In contrast, the US EPA and Army Corps of Engineer require that all three parameters be present for identification of a wetland. Section 30121 of the Coastal Act defines wetland as follows: "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."

¹¹ Wetland buffers of 100' and Riparian, Stream buffers ranging from 50' to 100' are established in the following counties: San Luis Obispo, Santa Barbara, Santa Cruz, San Mateo, Sonoma, Ventura

¹² LCP Unit I, Policies on Lagoon protection Policy 18; LCP Unit II Natural Resources Policy 4.d.

VIII. Wetlands

- Consideration of “feasibility” relating to 100’ buffer area (C-BIO-20 Wetland Buffer Adjustment and Exceptions)
- Possibility that buffer could be wider than 100’ based upon a site assessment (C-BIO-19)
- Supplemental biological report for parcels adjacent to Tomales Bay that also contain wetlands (C-BIO-22)

There is little need to further revisit the 100’ standard established in Policy C-BIO-19; however, correspondence from both the agricultural and environmental communities have commented on the application of buffers and/or adjustments to buffers adjoining artificial wetlands. Specifically, environmental proponents have suggested that water storage and flood control ponds are often placed upon historic wetlands and should be subject to environmental review prior to granting an adjustment, while the agricultural community has noted that wet areas created due to agricultural processes and activities should be considered at the same level of review as wastewater and domestic water ponds.

The current wetland definition exempts wetlands created by agricultural ponds, reservoirs and drainage ditches. However, wet areas associated with agricultural activities (e.g., tire ruts, animal activity, etc.) may be considered wetlands under the Coastal Commission’s single parameter definition¹³. As such, these areas may become subject to the ESHA protection policies and 100’ wetland buffer. Policy C-BIO-14 may be modified to allow continued agricultural use of wetlands that have emerged due to agricultural activities and exempt them from buffer requirements that would otherwise be applicable to wetlands, so long as they remain in continuous agricultural use and do not provide habitat for species that meet the definition of ESHA.

F. ALTERNATIVE FOR BOARD CONSIDERATION:

C-BIO-14 Wetlands. (excerpt)

...

4. Where there is evidence that a wetland emerged primarily from agricultural activities (e.g., livestock management, row cropping) and does not provide habitat for any status species that meet the definition of ESHA, such wetland may be used and maintained for agricultural purposes and shall not be subject to the buffer requirements of C-BIO-19 (Wetland Buffers).

...

¹³ The Coastal Act definition of wetlands is a “single parameter definition” requiring the presence of one or more wetland characteristics -- hydrology, hydrophytic plants or hydric soils.

IX. Streams

- A. ISSUE:** Streams and riparian areas are distinct yet interrelated habitat areas. The LCPA would carry over existing policies in LCP Units I and II that establish buffers as a means to protect streams and riparian areas. Coastal Commission staff and some environmental proponents wish to see stream buffers and riparian areas considered one and the same. Conversely, the agricultural community has expressed concern about application of stream buffer policies. The LCPA would expand application of stream protection policies, including the 100' standard buffer, to include those intermittent and ephemeral streams not mapped by the USGS (U.S. Geological Survey).
- B. INTENT:** Carry over and adapt policies contained in existing LCP Units I and II.
- C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:**

- **LCPA Land Use Plan: Policies C-BIO-24, C-BIO-25 (pp. 28-29)**

C-BIO-24 Coastal Streams and Riparian Vegetation. (excerpt)

...

3. Stream Buffers. Establish buffers to protect streams from the impacts of adjacent uses for each stream in the Coastal Zone. The stream buffer shall include the area 50 feet landward from the outer edge of the riparian vegetation. In no case shall the stream buffer be less than 100 feet in width, on either side of the stream, as measured from the top of the stream banks.

...

C-BIO-25 Stream Buffer Adjustments and Exceptions. (excerpt)

Consider granting adjustments and exceptions to the coastal stream buffer standards in policy C-BIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. An adjustment or exception may be granted in any of the following circumstances:

...

2. Where a finding based upon factual evidence is made that development outside a stream buffer area either is infeasible or would be more environmentally damaging to the riparian habitat than development within the riparian protection or stream buffer area, limited development of principal permitted uses may occur within such area subject to appropriate mitigation measures to protect water quality, riparian vegetation, and the rate and volume of stream flows.
3. Exceptions to the stream buffer policy may be granted for access and utility crossings when it has been demonstrated that developing alternative routes that provide a stream buffer would be infeasible or more environmentally damaging. Wherever possible, shared bridges or other crossings shall be used to provide access and utilities to groups of lots covered by this policy. Access and utility crossings shall be accomplished by bridging, unless other methods are determined to be less damaging, and bridge columns shall be located outside stream channels where feasible.

...

Section 22.130.030 (Definitions):

Coastal Stream (coastal). Streams in the Coastal Zone, perennial or intermittent, which

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are mapped by the United States Geological Survey (USGS). In addition, those ephemeral streams that are not mapped by the United States Geological Survey if the stream: (a) supports riparian vegetation for a length of 100 feet or more, or (b) supports special-status species or another type of ESHA, regardless of the extent of riparian vegetation associated with the stream.

D. CCC ISSUE: In Policy C-BIO-25, define the stream buffer to include riparian areas. (10/4/2011)

E. OTHER INPUT:

Agriculture:

- The rigid buffers referenced in C-BIO-24 Coastal Streams and Riparian Vegetation should be removed. (Marin County Farm Bureau, 11/25/11).
- Stream buffers eliminate some of the best, most fertile farm ground in the county. (Marin County Farm Bureau, 11/25/11)
- The regulation of riparian areas is currently found in Federal law; it should not be the purview of the LCP. (Marin County Farm Bureau, 1/22/11)
- Many ranches already have streams fenced off but they may not be 50 feet from the riparian area, creating an impossible task to try and force the relocation of all these fences. (Marin County Farm Bureau, 1/22/11)

Environment:

- The stream buffer is a riparian area that requires protection as an ESHA. A reference should be provided to C-BIO-1 to ensure ESHA protections apply. (EAC, 11/28/11)
- C-BIO-25.3 grants exceptions for access; this term should be defined to include only roads where there is no other feasible location, and to not include public access paths/trails. It is unnecessary and environmentally damaging to locate paths in buffer habitats. (Marin Audubon, 3/27/12)

STAFF ANALYSIS:

The terms “buffer” and “stream buffer” are often used as synonyms for riparian areas; however, a buffer is typically applied as a set aside to protect a stream from the effects of surrounding land use (for example, by providing a water filtration area), whereas a riparian area is an ecosystem unto itself and integral to the function of the adjoining stream. Characterized by water-loving vegetation and recognized as ESHA in Article VIII, Chapter 22.130 of the LCPA Development Code amendments, riparian vegetation provides several important ecological functions such as groundwater recharge, filtering runoff water, trapping and storing sediments, protecting banks from shoreline erosion, and providing habitat for fish, wildlife and plants. Riparian areas can vary naturally in width among and within systems.

The Coastal Commission staff has requested that the stream buffer be defined to include riparian areas. Environmental interests have stated that stream buffers should be considered ESHA. As noted above, streams and riparian areas themselves are considered ESHA; however, the buffers for these areas (i.e., 100’ for streams and 50’ for riparian) are not sensitive or rare habitat unto themselves but rather are established as a means to protect the resources. By definition, the riparian buffer would be located outside the area of riparian vegetation, and thus the buffer is different from the riparian area it is intended to protect. Nonetheless, LCPA Policies C-BIO-19 and C-BIO-24 would require stream and wetland buffers to be maintained in a natural condition.

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LCPA Policy C-BIO-24 (Coastal Streams and Riparian Vegetation) would reflect the current minimum buffers of 50' from the outer edge of riparian areas or 100' from the outside edge of streams¹⁴. Stream and riparian buffer policies of the existing LCP are provided below:

LCP Unit I: Streams/Riparian

A riparian protection area and a stream buffer area shall be established for all streams within Unit I. The riparian protection area shall include all existing riparian vegetation on both sides of the stream. The stream buffer area shall extend a minimum of 50' from the outer edge of the riparian vegetation, but in no case shall be less than 100 feet from the banks of the stream.

LCP Unit II: Streams/Riparian

3c. Buffers to protect streams from the impacts of adjacent uses shall be established for each stream in Unit II. The stream buffer shall include the area covered by riparian vegetation on both sides of the stream and the area 50 feet landward from the edge of the riparian vegetation. In no case shall the stream buffer be less than 100 feet in width, on either side of the stream, as measured from the top of the stream bank.

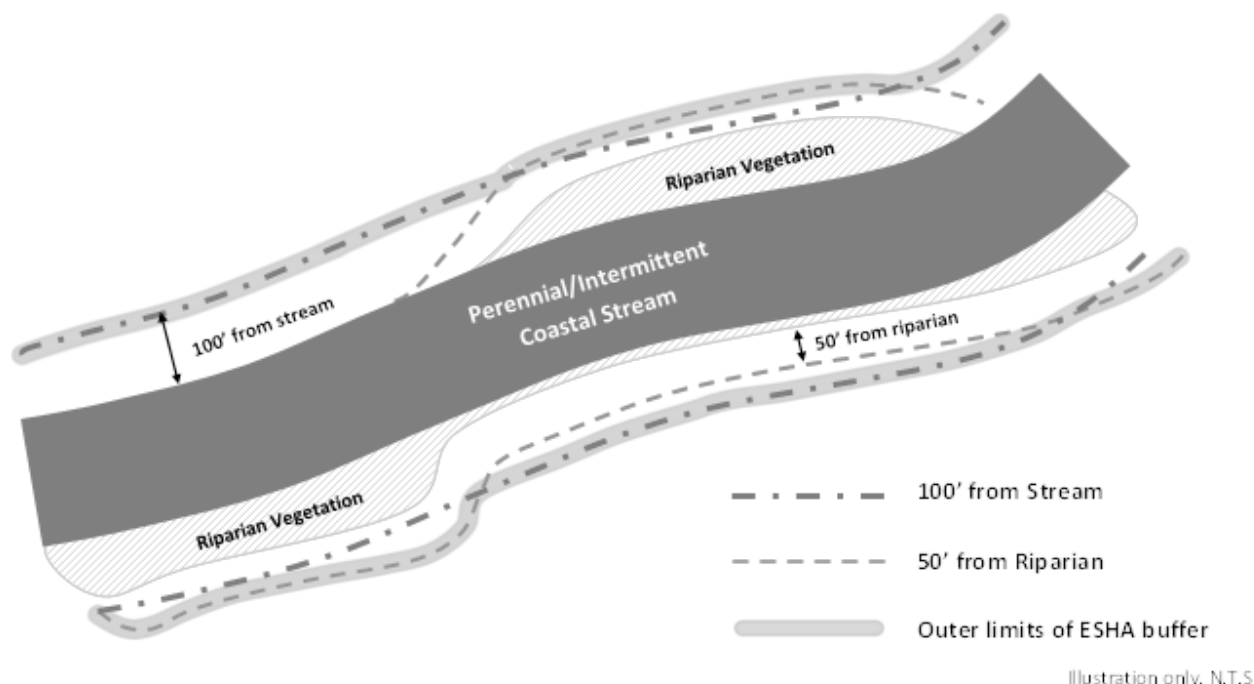
Existing LCP Units I and II are worded slightly differently with respect to riparian vegetation (Unit II includes riparian areas within the buffer, while Unit I is clear that the buffer exists outside of riparian vegetation), but both establish a buffer that extends a minimum of 100' from the stream bank with an additional 50' buffer from the outer edge of riparian areas.

Policy C-BIO-24.3 of the LCPA would establish a two-part buffer calculation that provides maximum protection for both the stream and the riparian area (see illustration below):

1. Include the area 50 feet landward from the outer edge of riparian vegetation (i.e., the extent of existing riparian vegetation plus 50 feet); and
2. In no case provide a stream buffer of less than 100 feet in width, on either side of the stream, as measured from the top of the stream banks (i.e., if the buffer established in criterion 1 above is less than 100', the buffer shall automatically be increased to 100' *at minimum*).

¹⁴ LCP Unit I, Stream Protection Policy 3; LCP Unit II Natural Resources Policy 3.c.

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Comments from the agricultural community have asserted that the County's purview in establishing riparian buffers overlaps with current federal standards. Nothing in these federal provisions pre-empts the state from carrying out the requirements of the Coastal Act, a state law. Moreover, the stream/riparian buffer standards are consistent with the existing LCP Units I and II which have been in place for 30 years. Establishment of stream and riparian buffers is anticipated within the Coastal Act and a common practice for other jurisdictions within the Coastal Zone. While federal objectives for water quality protection may be related to the local habitat and aquatic protection goals of the LCP, it is clear that the County is acting within its jurisdiction to establish appropriate buffers for resource protection.

The existing LCP Units I and II apply to only streams in the "coastal zone, perennial or intermittent, which are mapped by the United States Geological Survey (USGS) on the 7.5 minute quadrangle series." The USGS maps are now contained in the "National Hydrographic Dataset" (NHD). Section 13577 of the California Coastal Commission Administrative Regulations describes streams as follows:

§ 13577. Criteria for Permit and Appeal Jurisdiction Boundary Determinations.

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

- (a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered.

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The Coastal Commission's "Statewide Interpretive Guidelines" describe a stream or river as follows:

A "stream" or a "river" is a natural watercourse as designated by a solid line or dash and three dots symbol shown on the United States Geological Survey map most recently published, or any well-defined channel with distinguishable bed and bank that shows evidence of having contained flowing water as indicated by scour or deposit of rock, sand, gravel, soil, or debris."

From these three descriptions, it is clear that perennial and intermittent streams most closely meet the Coastal Act and Coastal Commission definitions of "stream", particularly given the description of bed, bank and riparian vegetation as stream identifiers. In addition, the National Hydrographic Dataset now functions on a stewardship basis in which local and regional stream mapping may be added to the NHD to increase accuracy of mapping.

The LCPA is more broadly worded than the current policies of the Marin LCP and the Coastal Commission regulations, as it would also apply stream buffers to ephemeral streams that support riparian habitat (for a distance of 100' or more) or other ESHA. However, the suggested modification to establish buffers for terrestrial ESHA overlaps with the LCPA definition for coastal stream, as riparian vegetation and non-aquatic special-status species would be subject to a minimum 50' buffer (see V. Types of ESHA and ESHA Definition and VII. ESHA Buffers). Therefore, the Board should consider an alternative that would retain the existing stream definition of the LCP (i.e., applicable to perennial or intermittent streams mapped by the USGS). Those ephemeral streams that otherwise support ESHA (as determined by the presence of special-status species or their habitat) would be subject to the buffer protections of the Policy C-BIO-3.3.

F. ALTERNATIVE FOR BOARD CONSIDERATION:

Definitions, Development Code Section 22.130.30

Coastal Stream (coastal). Streams in the Coastal Zone, perennial or intermittent, which are mapped by the United States Geological Survey (USGS) in the National Hydrographic Dataset. ~~In addition, those ephemeral streams that are not mapped by the United States Geological Survey if the stream: (a) supports riparian vegetation for a length of 100 feet or more, or (b) supports special status species or another type of ESHA, regardless of the extent of riparian vegetation associated with the stream.~~

X. Buffer Adjustments

- A. ISSUE:** The LCPA would carry over policies from the existing LCP Units I and II requiring a 100' buffer for wetlands and streams, and would allow for adjustments on the basis of a biological assessment. The Coastal Commission suggests establishing a 50' absolute minimum buffer for these resources; others have commented that the buffer policy is either too rigid or too lax. The LCPA as written would provide stricter limitations on uses within buffers than within the wetlands or streams themselves, while also failing to account for instances in which application of buffers could result in a taking.
- B. INTENT:** Carry over and adapt standard buffers for streams and wetlands from the LCP Units I and II.
- C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:**

- **LCPA Land Use Plan:** Policies C-BIO-20, C-BIO-25 (pp. 27 and 29)

C-BIO-20 Wetland Buffer Adjustments and Exceptions. (excerpt)

Consider granting adjustments and exceptions to the wetland buffer width standard identified in policy C-BIO-19 in certain limited circumstances for projects that are implemented in the least environmentally damaging manner, as follows:

1. The County determines that the applicant has demonstrated that a 100-foot buffer is unnecessary to protect the resource because any disruption of the habitat values of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. An adjustment to the wetland buffer may be granted only where:
 - a. There is no feasible less environmentally damaging alternative;
 - b. Measures are provided that will eliminate adverse environmental effects when possible, or when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels; and
 - c. Any significant disruption of the habitat value of the resource is avoided.
2. The wetland was artificially created for the treatment and/or storage of wastewater, or domestic water.
3. The wetland was created as a flood control facility as an element of a stormwater control plan, or as a requirement of a National Pollutant Discharge Elimination System (NPDES) Permit, and the Coastal Permit for the development incorporated an ongoing repair and maintenance plan to assure the continuing effectiveness of the facility or stormwater control plan.

C-BIO-25 Stream Buffer Adjustments and Exceptions. (excerpt)

Consider granting adjustments and exceptions to the coastal stream buffer standards in policy C-BIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. An adjustment or exception may be granted in any of the following circumstances:

1. The County determines that the applicant has demonstrated that a 100/50-foot buffer (see Policy C-BIO-24.3) is unnecessary to protect the resource because any disruption of the habitat value of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. An adjustment to the stream buffer may be granted only where:
 - a. There is no feasible less environmentally damaging alternative;

X. Buffer Adjustments

- b.** Measures are provided that will eliminate adverse environmental effects when possible, or, when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels; and
 - c.** Any significant disruption of the habitat values of the resource is avoided.
- 2.** Where a finding based upon factual evidence is made that development outside a stream buffer area either is infeasible or would be more environmentally damaging to the riparian habitat than development within the riparian protection or stream buffer area, limited development of principal permitted uses may occur within such area subject to appropriate mitigation measures to protect water quality, riparian vegetation, and the rate and volume of stream flows.
- 3.** Exceptions to the stream buffer policy may be granted for access and utility crossings when it has been demonstrated that developing alternative routes that provide a stream buffer would be infeasible or more environmentally damaging. Wherever possible, shared bridges or other crossings shall be used to provide access and utilities to groups of lots covered by this policy. Access and utility crossings shall be accomplished by bridging, unless other methods are determined to be less damaging, and bridge columns shall be located outside stream channels where feasible.
- ...

- D. CCC ISSUE:** Consider including a requirement of a minimum buffer width for both wetland and stream areas, beyond which the exception and adjustment would not apply (i.e., 50'). (Commission staff, 11/30/2011, 10/4/2011)

E. OTHER INPUT

Agriculture:

- Environmental enhancements must not become a matter of rigid policy that impose arbitrary setbacks on ESHAs and farmland. Restrictive LCP policies should be avoided in consideration of the ongoing environmental improvements that are made on Marin ranches without such policies. (Marin County Farm Bureau, 11/25/11)

Environment:

- The 100' buffer for streams is appropriate. (Community Marin, 3/27/12)
- One can always find a consultant to say that the 100-foot buffer is not needed. (Marin Audubon, 3/27/12, 11/30/11)
- The Coastal Commission's recommended 50' absolute minimum buffer is contradictory to the 100' width and appears to allow for a reduced buffer width. (Marin Audubon, 11/30/11)
- The only circumstance that might warrant a buffer exception should be the absence of any feasible less environmentally damaging alternative. (Community Marin, 3/27/12, 11/30/11)
- C-BIO-20 sets a low bar for acceptance of a reduced buffer in comparison with LCP Unit 2, Natural Resources Policy 4.d. (Community Marin, 3/27/12)
- C-BIO-25.1 which grants discretion to determine that the full buffer width is "unnecessary to protect the resource" is wholly unacceptable and unjustified. (EAC, 11/28/11)

STAFF ANALYSIS:

Coastal Act Section 30240(b) establishes the basis for buffers by requiring that development adjacent to environmentally sensitive habitats be "designed to prevent impacts which would significantly degrade those areas" and be compatible with their continuance. Natural buffers are also referenced in Coastal Act Section 30231 which provides that "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,

X. Buffer Adjustments

restored” through a variety of means including “maintaining natural vegetation buffer areas that protect riparian habitats”.

Wetlands, streams and riparian areas would be defined as ESHA under the LPCA Development Code amendments (Article VIII, Chapter 22.130, p.127). As noted in VII. ESHA Buffers, buffers are distinct from the rare or valuable habitat they protect. Environmental advocates have expressed concerns regarding the appropriate size of buffers and agricultural interests have stated that rigid application of buffers should be avoided. While it is true that the appropriate buffer for a given resource can vary depending on unique site conditions, species and other factors, the 100’ buffer areas contained in the LPCA would be unchanged from three decades of coastal planning in Marin County, consistent with standard buffer widths adopted in other certified LCP’s¹⁵, and supported by the Coastal Commission’s guidance documents¹⁶.

Occasions may arise when the conditions of a site or nature of development merit consideration of adjustments to the standard buffers for wetlands, streams and riparian areas. In past implementation, encroachments into buffers have been considered on a case-specific basis where such activity is unavoidable, would be mitigated, or would not present significant detrimental impacts. Recent examples include:

- Enclosure of an existing outdoor dining patio located approximately 75’ from Olema Creek (Olema Farm House, 2006).
- Construction of a new 864 square-foot residence approximately 73’ from Fish Hatchery Creek on a 32,212 square foot parcel separated from the stream by an existing paved roadway. Development was sited to minimize susceptibility to geologic hazards and reduce water quality impacts while providing minimal site disturbance (O’Hanrahan, 240 Vallejo Avenue, Inverness 2006).
- Restoration/remodeling and 400 square-foot addition to a historic commercial building where 75% of the site is located within the 100-foot stream buffer area. Development resulted in no additional disturbance within the SCA and establishment of a 20-foot buffer planted with riparian vegetation to support habitat and enhance stream protection (Hog Island Oyster Company, 2006).

Environmental proponents have expressed concern that proposed policies for buffer adjustments will be broadly interpreted to undermine the 100’ standard, resulting in damage to wetlands and streams. They have requested that the language for buffer adjustments be substantially modified to narrow the conditions under which buffer adjustments would be considered. Environmental review prior to granting buffer adjustments adjoining artificial wetlands and flood control facilities was also requested. The LPCA provides that a buffer adjustment would require a site assessment from a qualified professional and can only be granted subject to the standards of Policy C-BIO-20 (Wetland Buffer Adjustments) or Policy C-BIO-25 (Stream Buffer Adjustments). The standards for buffer adjustment (Policy C-BIO-20.1.a through c) are redundant with Policy C-BIO-2, and the addition of Coastal Commission staff’s recommended 50’ minimum buffer has further obviated the need for these standards.

In reviewing the LPCA, the Coastal Commission recommended an absolute minimum buffer for of 50’ for both streams and wetlands¹⁷. While the 100’ standard buffer typically ensures high water quality and supports good habitat for native aquatic organisms, a 50’ absolute minimum buffer is supported by a scientific review of wetland standards, which finds that this distance should, under most

¹⁵ Wetland buffers of 100’ and Riparian, Stream buffers ranging from 50’ to 100’ are established in the following counties: San Luis Obispo, Santa Barbara, Santa Cruz, San Mateo, Sonoma, Ventura

¹⁶ Chapter 1, Section V of *Procedural Guidance for Review of Wetland Projects in California’s Coastal Zone*, “Establishing Buffer Areas” of Coastal Commission document entitled “”, California Coastal Commission 1994

¹⁷ The absolute minimum buffer of 50’ is consistent with the Coastal Commission’s comments as well as the precedent established by certified LCP’s for Mendocino County, San Mateo County, City of Del Mar and Oxnard City.

X. Buffer Adjustments

conditions, provide good water quality and habitat protection¹⁸. As such, the Board may wish to consider alternative language in LCPA Policies C-BIO-20 and C-BIO-25 that would establish an absolute minimum buffer of 50' for wetlands, riparian areas and blue-line streams (i.e., those perennial and intermittent streams mapped by the U.S. Geological Survey).

The agricultural community's overarching concerns about taking of land for ESHA protection in its public comments and correspondence (see Marin Farm Bureau letter dated March 25, 2012). This concern is addressed in suggested Policy C-INT-1 "Consistency with Other Law", which is adapted from the text of the LUP Introduction. The proposed policy would apply to buffers as well as other cases which would otherwise result in a taking.

F. ALTERNATIVE FOR BOARD CONSIDERATION:

C-BIO-20 Wetland Buffer Adjustments and Exceptions. *(excerpt)*

Consider granting adjustments ~~and exceptions~~ to the wetland buffer width standard identified in Policy C-BIO-19 in certain limited circumstances for projects that are ~~implemented~~ undertaken in the least environmentally damaging manner, ~~as follows~~. An adjustment may be granted in any of the following circumstances:

1. The County determines that the applicant has demonstrated that a 100-foot buffer is unnecessary to protect the resource because any significant disruption of the habitat values of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. A wetland buffer may be adjusted to a distance of not less than 50 feet if such reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with incorporated siting and design measures, will prevent impacts which would significantly degrade those areas, and will be compatible with the continuance of those habitat areas. An adjustment to the wetland buffer may be granted only where:
 - a. ~~There is no feasible less environmentally damaging alternative;~~
 - b. ~~Measures are provided that will eliminate adverse environmental effects when possible, or when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels; and~~
 - c. ~~Any significant disruption of the habitat value of the resource is avoided.~~

...

C-BIO-25 Stream and Riparian Buffer Adjustments and Exceptions. *(excerpt)*

Consider granting adjustments ~~and exceptions~~ to the ~~coastal~~ stream buffer standards in policy C-BIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. An adjustment ~~or exception~~ may be granted in any of the following circumstances:

1. The County determines that the applicant has demonstrated that ~~a 100/50-foot a~~ stream buffer (see Policy C-BIO-24.3) is unnecessary to protect the resource because any significant disruption of the habitat value of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. A stream buffer may be adjusted to a distance of not less than 50 feet from the top of the stream bank if such reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with incorporated siting and design measures, will prevent impacts which would significantly degrade those areas, and will be compatible with the

¹⁸ Wenger, S. 1999. A review of the scientific literature on riparian buffer width, extent and vegetation. Office of Public Service and Outreach, Institute of Ecology, University of Georgia, Athens, GA.

X. Buffer Adjustments

continuance of those habitat areas. ~~An adjustment to the stream buffer may be granted only where:~~

- ~~a. There is no feasible less environmentally damaging alternative;~~
- ~~b. Measures are provided that will eliminate adverse environmental effects when possible, or, when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels; and~~
- ~~c. Any significant disruption of the habitat values of the resource is avoided.~~

...

ATTACHMENT #3
Local Coastal Program Amendments (LCPA)

SUMMARY OF OTHER ISSUES

The following is a summary of other LCPA issues related to Agriculture and Biological Resources which staff suggests do not require extensive discussion by the Board. A detailed analysis of these issues can be found in Attachment #4 of this staff report. Issues related to other LCPA topics will be addressed at the Board of Supervisors hearing on November 13, 2012.

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I. Categorical Exclusions

SUMMARY:

- **Land Use Plan:** *Program C-AG-2.a*
- **Categorical Exclusion Orders** *E-81-2 and E-81-6*

Many agricultural activities such as barns, fences, tilling the soil, raising crops and livestock, animal husbandry, etc. do not require a coastal permit under the existing Categorical Exclusions (Cat. Ex.) for Marin County. *Program C-AG-2.a* was included in the LCPA to set out future work to better inform the agricultural community of the Cat. Ex. Provisions, and to work with the Coastal Commission to possibly extend the Exclusions by type and area.

RECOMMENDED CHANGE:

Staff should work with CCC staff to determine what opportunities may exist for defining projects for which no permit is needed consistent with the language suggested below.

Program C-AG-2.a Allowed Uses: Use allowed by right. No permit required. Seek to clarify for the agricultural community those agricultural uses that are allowed by right and for which no permit is required. These include the Agricultural Exclusions from the existing Categorical Exclusion Orders. Clarify or add to these orders to specifically incorporate agricultural uses as defined in the LCP, including commercial gardening, crop production, dairy operations, beekeeping, livestock operations (grazing), livestock operations (large animals), and livestock operations (small animals). Review aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that do not cause adverse environmental impacts and, hence, could be eligible additions to the categorical exclusion.

II. Structures on Agricultural Land and Clustering

SUMMARY:

- *LCPA Land Use Plan: **Policy C-AG-7** Development Standards for C-APZ Lands;*
- *LCPA Dev. Code: Secs. **22.32.020; 22.62.060; 22.65.040***

Structures and activities necessary to a successful agricultural operation may sometimes require sites on land with agricultural soils in order for a farm or ranch to operate. CCC Staff is concerned that such structures should not adversely affect long-term productivity: “Barns, greenhouses, farmer workers quarters, etc., even though supportive of agricultural operations, still need to be designed and sited in a manner that is protective of the soil’s productivity. ... §22.32.022...is a start, but is not directive enough...”

RECOMMENDED CHANGE:

The LCPA has several provisions that ensure that agricultural structures would maintain long-term soil and agricultural productivity aside from Section 22.32.22. Policy C-AG-2 and C-AG-7 and Code Sections 22.62.060.A, 22.65.040.A, and 22.65.040.C.1.a all state in various ways that permitted development shall protect and maintain continued agricultural use, and contribute to agricultural viability.

If the Board determines that additional provisions are desirable to manage the siting of agricultural facilities with regard to agricultural lands, and to clarify related language regarding clustering, the following additional text could be added to Policy AG-7 and related Development Code provisions in Section 22.65.040.C.1 (C-APZ Zoning – Development standards for agricultural uses):

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands

Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP , and in particular the policies of the Natural Systems and Agriculture Element of the LUP

A. Standards for Agricultural Uses in the C-APZ:

All of the following development standards apply:

1. Permitted development shall protect and maintain continued agricultural use and contribute to agricultural viability. Development of agricultural facilities shall be sited to avoid agricultural land whenever possible, consistent with the operational needs of agricultural production. If use of agricultural land is necessary, prime agricultural land shall not be converted if it is possible to utilize other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted.
- ...
4. In order to retain the maximum amount of land in agricultural production or available for future agricultural uses, farmhouses, intergenerational homes, and agricultural homestay facilities shall be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space.
- ...

§22.65.040.C.1 (C-APZ Zoning – Development standards for agricultural uses):

...

C. Development standards. Development permits in the C-APZ district shall also be subject to the following standards and requirements in addition to section 22.65.030:

1. Standards for agricultural uses:

a. Permitted development shall protect and maintain continued agricultural use, and contribute to agricultural viability. Development of agricultural facilities shall be sited to avoid agricultural land whenever possible, consistent with the operational needs of agricultural production. If use of agricultural land it is necessary, prime agricultural land shall not be converted if it is possible to utilize other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted.

...

d. In order to retain the maximum amount of land in agricultural production or available for future agricultural uses, farmhouses, intergenerational homes, and agricultural homestay facilities shall be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space.

(Note: If the text revisions shown above are approved by the Board, staff would also recommend that existing clustering provisions contained in Development Code Section 22.65.030.D.1 be amended as shown below. These provisions apply broadly to all planned zoning districts (not just agricultural zones). Accordingly, the language originally included in this section would become duplicative and could be confusing in light of the above revisions.)

§22.65.030.D (Planned District General Development Standards - Building location)

1. Clustering Requirement. Structures shall be clustered in a geologically stable, accessible location on the site where their visual prominence is minimized, consistent with needs for privacy. Clustering is especially important on open grassy hillsides; however, a greater scattering of buildings may be preferable on wooded hillsides to save trees. The prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography.

~~In the C-APZ and C-ARP agricultural zones, non-agricultural development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use. Non-agricultural development, including division of agricultural lands, shall only be allowed upon demonstration that long-term productivity of agricultural lands would be maintained and enhanced as a result of such development. Non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, and shall not require new road construction or improvements resulting in significant impacts on agriculture, significant vegetation, significant scenic resources, or natural topography of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. Any new parcels created shall have building envelopes outside any designated scenic protection area.~~

III. Development Adjacent to Agricultural Land

SUMMARY:

- *LCPA Land Use Plan: **Policy C-AG-1** Development Standards for C-APZ Lands;*
- *LCPA Dev. Code: Secs. **22.62.060**; **TABLE 5-4-b***

CCC staff has commented that there need to be provisions that address uses and structures adjacent to agricultural lands to ensure that they do not adversely impact the agricultural lands, including buffers or setbacks provisions for potentially incompatible development adjacent to agricultural land. This issue is amply addressed in the LCPA. CCC staff comments also state that Marin Code Chapter 23.03 “Right to Farm” should be included in the LCP and submitted for the Commission’s review.

NO RECOMMENDED CHANGE PROPOSED:

As described in the Detailed Analysis appended to these summaries, the LCPA has extensive provisions to ensure that uses both on the subject property and on adjacent properties will not be “incompatible with long-term agricultural production” (C-AG-1) and “will not conflict with the continuation or initiation of agricultural uses on that portion of the property that is not proposed for development, on adjacent parcels, or on other agricultural parcels within one mile of the perimeter of the proposed development.” (C-AG-7). Code section 22.62.060 implements these policies.

Setbacks in agricultural zones are governed by TABLE 5-4-b, note 3, which specifies that setbacks are determined by the Coastal Permit after being evaluated on a case by case basis to assure compliance with all LCP provisions.

The question of what materials beyond the LCPA itself are required for submittal to the Coastal Commission will be worked out after the Board has determined what Amendments to submit. Nevertheless, a copy of the Right to Farm Ordinance has been included in the Detailed Analysis and provided to the CCC staff.

IV. Master Plans

SUMMARY:

- **LCPA Land Use Plan: C-AG-7, Development Standards, C-APZ (LUP p.14)**
- **LCPA Development Code: 22.60.010 (p.21); 22.62.040.C., Master Plan and Other Non-LCP Permit Requirements (p.25); 22.64.020 – Applicability (p. 51)**

The existing LCP refers to a Master Plan (MP) as the vehicle for carrying out some substantive development requirements of the LCP. Problems have arisen because:

- The existing MP is allowed to be “waived” to a lesser permit (e.g. Design Review (§ 22.47.010 I; 22.56.026 I), sometimes causing confusion and controversy,
- MP approvals may extend for many years, regardless of how conditions change, and
- The land uses approved in a MP cannot be appealed to the Coastal Commission, once a coastal permit to carry out the MP is processed (§ 22.56.026I),

To assure that Coastal Act requirements would be more consistently and effectively carried out, the LCPA integrates the comprehensive set of standards formerly applicable to the MP directly into the Coastal Permit (CP) process rather than relying on a Master Plan document separate and distinct from the CP.

The Board may wish to address the separate questions of continuing the existing requirement that all contiguous properties under the same ownership should be included in the permit (§ 22.56.027 I), and suggestions to provide permit processing subsidies to agricultural development.

RECOMMENDED CHANGE:

A change is needed in non-coastal Development Code §22.44.030 to ensure compliance with the LCP when a Master Plan is prepared under non-coastal Code requirements. This is reinforced by LCPA §22.60.020. An addition to §22.70.030 would carry forward to the Coastal Permit the current requirement, carried out by the Master Plan process, of including contiguous properties under the same ownership.

22.44.030 – Application Filing, Processing, and Review...

- B. Project review procedure.** Each application shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of this Chapter and with the Countywide Plan and Community or Specific Plans. Where a Coastal Permit is also issued for the project, the standards and conditions of the Master Plan shall be consistent with the requirements of the Coastal Permit in accordance with Section 22.60.020.

22.60.020 – Applicability

The requirements of this Article apply to all proposed development and new land uses within the Coastal Zone. These requirements apply in addition to all other applicable provisions of this Development Code. In the event of any perceived conflict between the requirements of this Article and any other provisions of this Development Code, this Article shall control.

22.70.030 – Coastal Permit Filing, Initial Processing

- A. Application and filing.** Coastal Permit application submittals shall include all information and other materials required by the Coastal Permit application forms, provided by the Agency. The application and accompanying materials shall be filed with the Agency before or concurrent with an application for any land use permit required by this Article. The Coastal Permit application shall include:...
2. Documentation of the applicant’s legal interest in all the property upon which work is proposed to be performed. The area of the subject Coastal Permit shall include at least all contiguous properties under the same ownership. The area covered by a proposed project may also include multiple ownerships.

V. Stream Improvements

SUMMARY:

- ***LCPA Land Use Plan: Policy C-BIO-24***

The Coastal Commission staff has commented that C-BIO-24.1 (stream alterations, carried over from current LCP) should be modified to limit water supply projects to those instances “where no other less environmentally damaging method of water supply is feasible”.

RECOMMENDED CHANGE:

- Limit water supply projects in-stream as requested by Coastal Commission staff.

C-BIO-24 Coastal Streams and Riparian Vegetation (excerpt)

1. Stream alterations. Limit river and stream dams, channelizations, or other substantial alterations to coastal streams or the riparian vegetation surrounding them to the following purposes:
 - a. Necessary water supply projects where no other less environmentally damaging method of water supply is feasible;
 - b. Flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development; or
 - c. Developments where the primary function is the improvement of fish and wildlife habitat.

VI. Grazing in Wetlands

SUMMARY:

- ***LCPA Land Use Plan: Policy C-BIO-14***

The LCPA policy for grazing in wetlands is adapted from existing LCP Unit II but was been modified to reference management programs developed in partnership with other agencies where grazing would not present an adverse impact to wetland functions and resources. While the Coastal Commission staff has not commented on this policy, constituents representing both environmental and agricultural interests have raised issue with the proposed language of the LCPA, citing concerns about impacts to historical use, expansion or restriction of grazing activities, and regulatory burdens. Comments on both sides of the issue have suggested a return to the existing policy of LCP Unit II. The Board may wish to consider carrying forward the existing policy in a modified form that clarifies the language and defines how the word “presently” is to be interpreted.

RECOMMENDED CHANGE:

- Return to policy for wetland grazing contained in existing LCP Unit II

C-BIO-14 Wetlands. (excerpt)

3. Prohibit grazing or other agricultural uses in a wetland, except in those ~~reclaimed~~ areas presently ~~(prior to the certification of this amended policy on [DATE]) used for such activities (i.e., grazing was established prior to April 1, 1981, the date on which Marin's first LCP was certified).~~ or in new areas where a Ranch Water Quality Plan has been approved by the California Regional Water Quality Control Board, or where the landowner demonstrates to the CDA's satisfaction that he/she has developed and implemented management measures in partnership with Marin Resource Conservation District, Natural Resource Conservation Service, or comparable agency to prevent adverse impacts to wetland functions and resources.

VII. Allowed Development in an ESHA

SUMMARY:

ALLOWED DEVELOPMENT IN AN ESHA:

- ***LCPA Land Use Plan: Program C-BIO-5.b***

Program C-BIO-5.b is derived from Policy C-BIO-5, which encourages “the restoration and enhancement of degraded ESHAs and the creation of new ESHAs.” It is intended as a specific implementation measure to carry out the policy of C-BIO-5 by establishing “safe harbor” policies that avoid penalizing property owners who agree to a restoration program that would expand an ESHA, an action that would otherwise expand its corresponding restricted buffer area. The Coastal Commission staff and members of the public have commented about the particulars of Program C-BIO-5.b; thus, it should be clarified to reflect its nature as a future work item, rather than a policy unto itself.

RECOMMENDED CHANGE:

- Clarify the intent of Program C-BIO-5.b by changing the title;
- Expand upon the intent and application of Program C-BIO-5.b to provide “safe harbor” provisions for landowners who choose to participate in restoration projects expanding the ESHA.

Program C-BIO-5.b ~~Allowed Development in an~~ “Safe Harbor” for expansion of ESHA.

Consider a future work item to encourage expansion of ESHAs by establishing policies, procedures and criteria that would allow such enhancements and protect sensitive resources while maintaining affected properties to remain subject to preexisting buffers. The size of any buffer designated as a result of this program would not be a precedent for the size of any buffer on any other development site. This program would lead to policies and implementing measures that would be subject to review and certification as an amendment to the LCP.

VIII. Wetland Buffers

- ***LCPA Land Use Plan: Policy C-BIO-20***

The achievement of water quality improvements for potential non-point pollution sources often relies and the construction of water catchments such as drainage channels, sediment basins and detention ponds that will necessarily contain water and potentially even hydric soils and aquatic vegetation. The proper functioning and maintenance of such water quality improvement facilities requires periodic, timely disturbance or removal of accumulated materials. Due to the broad nature of the Coastal Commission's "single parameter" wetland definition such constructed wet areas could be considered subject to ESHA policies and buffer requirements. While Policy C-BIO-20.2 acknowledges this distinction, comments from environmental advocates have requested that consideration be given in application of buffer requirements as to whether an artificial wetland drains a naturally-occurring wetland.

RECOMMENDED CHANGE:

- Add clarifying language to C-BIO-20.2 with regards to wetlands artificially created for treatment and/or storage of wastewater or domestic water.

C-BIO-20 Wetland Buffer Adjustments and Exceptions (excerpt)

2. The wetland was artificially created for the treatment and/or storage of wastewater or domestic water (e.g., detention pond or urban drain). However, facilities that drain a naturally-occurring wetland shall be subject to the provisions of C-BIO-20.1.

ATTACHMENT #4
Local Coastal Program Amendments (LCPA)

DETAILED ANALYSIS OF OTHER ISSUES

The following is a detailed analysis of other LCPA issues related to Agriculture and Biological Resources which staff suggests do not require extensive discussion by the Board. These issues are summarized in Attachment #3 of this staff report. Issues related to other LCPA topics will be addressed at the Board of Supervisors hearing on November 13, 2012.

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I. Categorical Exclusions

DETAILED ANALYSIS:

- A. ISSUE:** Many agricultural activities such as barns, fences, tilling the soil, raising crops and livestock, animal husbandry, etc. do not require a coastal permit under the existing Categorical Exclusions (Cat. Ex.) for Marin County. *Program C-AG-2.a* was included in the LCPA to set out future work to better inform the agricultural community of the Cat. Ex. provisions, and to work with the Coastal Commission to possibly extend the Exclusions by type and area.
- B. INTENT:** To reduce unnecessary permit processing for ongoing agricultural activities that do not cause adverse environmental impacts.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **Categorical Exclusion Orders E-81-2 and E-81-6**
- **Land Use Plan: Program C-AG-2.a (p. 12)**

Categorical Exclusion Orders E-81-2 and E-81-6:

I. AGRICULTURAL EXCLUSIONS

The following agricultural projects are categorically excluded when located: 1) on property zoned agricultural (C-ARP or C-APZ); 2) outside the area bounded by the mean high tide line and the first public road paralleling the sea or ½ mile inland, whichever is less; and 3) outside tidelands, submerged lands, public trust lands, wetlands, beaches, or on lots immediately adjacent to the inland extent of any beach (or of the mean high tide line of the sea where there is no beach). (See Categorical Exclusion Maps.)

1. Barns, storage, equipment and other necessary buildings.
2. Dairy pollution project including collection, holding and disposal facilities.
3. Storage tanks and water distribution lines utilized for on-site, agriculturally-related activities.
4. Water impoundment projects not to exceed 10 acre feet, in canyons and drainage areas not identified as blue lime streams on USGS 7 1/2 Minute Quad Sheets.
5. Electric utility lines.
6. New fencing for farm or ranch purposes, provided no solid fence designs are used.

Agriculture means the tilling of the soil, the raising of crops, horticulture, viticulture, livestock, farming, dairying, and animal husbandry, including all uses customarily incidental and necessary thereto.

Program C-AG-2.a Allowed Uses: Use allowed by right. No permit required. Seek to clarify for the agricultural community those agricultural uses that are allowed by right and for which no permit is required. These include the Agricultural Exclusions from the existing Categorical Exclusion Orders. Clarify or add to these orders to specifically incorporate agricultural uses as defined in the LCP, including commercial gardening, crop production, dairy operations, beekeeping, livestock operations (grazing), livestock operations (large animals), and livestock

I. Categorical Exclusions

operations (small animals). (PC app. 10/10/11, 1/24/11)

D. CCC ISSUE: Because some of the developments associated with agricultural operations that are not excluded could have adverse environmental impacts, a broadened exclusion for all aspects of all operations is probably not approvable. For example, approved Commission exclusion orders generally do not encompass developments in or adjacent to water bodies. The burden will be on the County to provide evidence that there will be no adverse environmental impact from additional categories of exclusion. (suggested language provided)

E. OTHER INPUT: None.

RECOMMENDED FINDINGS:

A "Program" indicates future work to be done subject to funding priorities, so no specific change to coastal regulations or new Categorical Exclusion is proposed as part of the proposed LCPA. Staff hopes to work with CCC staff to determine what opportunities may exist consistent with the language suggested by the CCC and incorporated into the Program as shown below.

Staff will also seek clarification on the CCC's Categorical Exclusion map (see below), which appears to allow Cat.Ex's. in only about a third of the agricultural lands in the coastal zone.

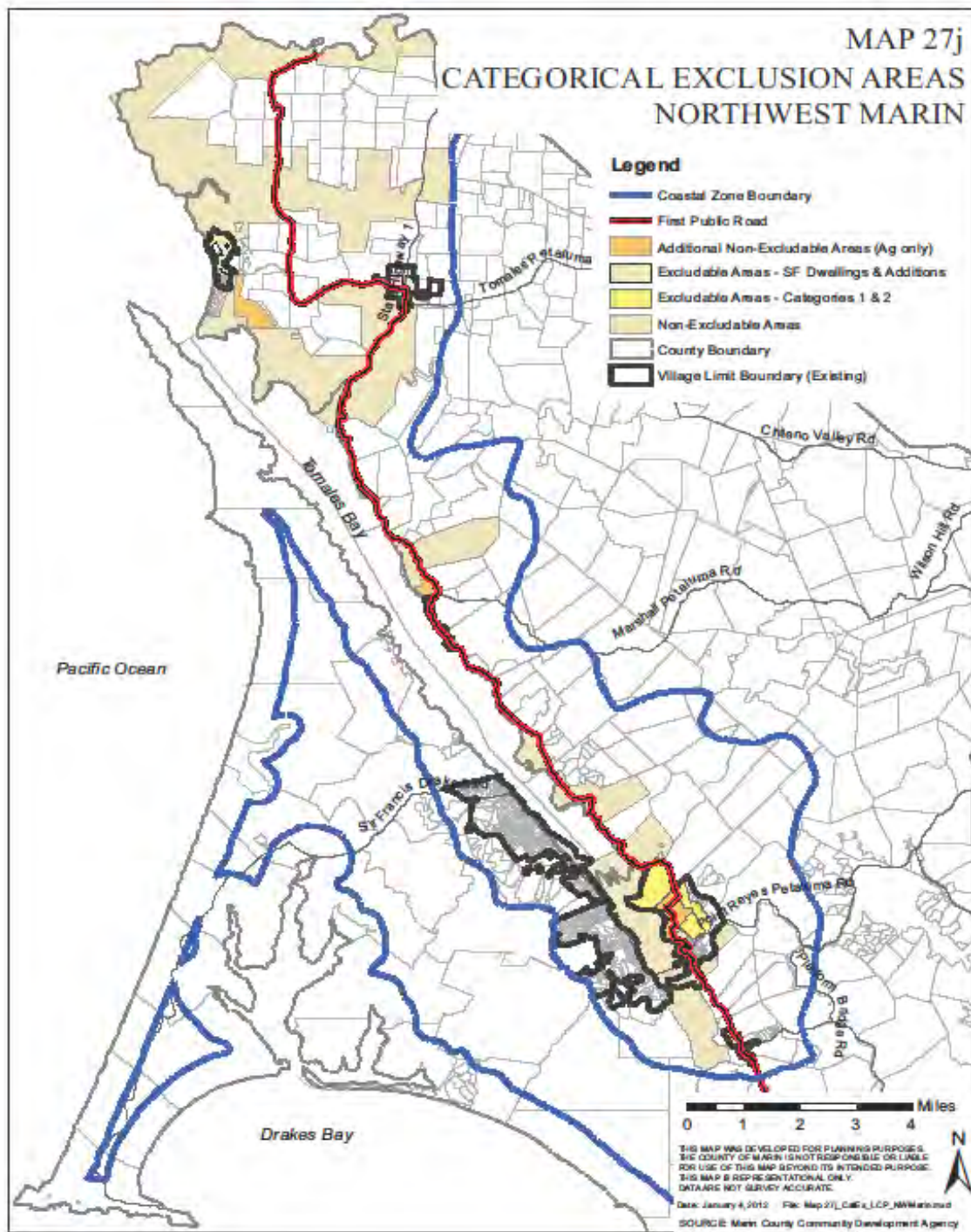
F. RECOMMENDED CHANGE:

Program C-AG-2.a Allowed Uses: Use allowed by right. No permit required.

Seek to clarify for the agricultural community those agricultural uses that are allowed by right ... livestock operations (large animals), and livestock operations (small animals).

Review aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that do not cause adverse environmental impacts and, hence, could be eligible additions to the categorical exclusion.

I. Categorical Exclusions



II. Structures on Agricultural Land and Clustering

DETAILED ANALYSIS:

- A. ISSUE:** Structures and activities necessary to a successful agricultural operation may sometimes require sites on land with agricultural soils.
- B. INTENT:** This definition of agriculture encompasses the essential elements necessary for a viable agricultural operation, and seeks to provide clear, effective standards and efficient regulation to continue the viability of Marin's coastal agriculture while fully protecting its other coastal resources and avoiding building on agricultural soils, or building on non-prime soils in preference to prime soils, wherever possible, taking into account the operational requirements of the agricultural use.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:**
- *Policy C-AG-2 Coastal Agricultural Production Zone (C-APZ) (p. 11, LCPA LUP)*

C-AG-2 Coastal Agricultural Production Zone (C-APZ)

...

For the purposes of the C-APZ, the principal permitted use shall be agriculture,... accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including one farmhouse per legal lot, one intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities.

...

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.

Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP , and in particular the policies of the Natural Systems and Agriculture Element of the LUP.

A. Standards for Agricultural Uses in the C-APZ:

All of the following development standards apply:

1. Permitted development shall protect and maintain continued agricultural use and contribute to agricultural viability.
2. Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies, including Tomales Bay, either individually or cumulatively.
3. Permitted development shall have no significant adverse impacts on environmental quality or natural habitats, and shall meet all other applicable policies, consistent with

the LCP.

§22.65.030.D.1 Building location:

1.... In the C-APZ and C-ARP agricultural zones, development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use...

§22.65.040.C.1 (Standards for agricultural uses)

Development standards. *Development permits in the C-APZ district shall also be subject to the following standards and requirements in addition to section 22.65.030:*

1. Standards for agricultural uses:

- a. *Permitted development shall protect and maintain continued agricultural use, and contribute to agricultural viability...*

- D. CCC ISSUE:** “Missing from the LUP ... are adequate provisions to ensure that structural and extensive agricultural uses -- other than direct production using the ground -- do not adversely affect long-term productivity. Barns, greenhouses, farmer workers quarters, etc., even though supportive of agricultural operations, still need to be designed and sited in a manner that is protective of the soil’s productivity. ... § 22.32.022...is a start, but is not directive enough...”

E. OTHER INPUT

Support for LCPA provision: Ranchers, farmers and others in the agricultural community have historically been concerned with the time and cost involved in obtaining land use permits for essential agricultural facilities. Recognizing these facilities as part of the Principal Permitted Use of “Agriculture” would limit appeals to the Coastal Commission for those located outside the geographic appeals area while clarifying and strengthening standards for permitting.

Concerns with LCPA provision: Some are concerned with the adequacy of the standards, such as clustering these uses, and the lack of recourse to the Coastal Commission for non-appealable projects.

RECOMMENDED FINDINGS:

The LCPA has several provisions that ensure that agricultural structures maintain long-term soil and agricultural productivity aside from Section 22.32.22. Policy C-AG-1 and Code Section Sec. 22.62.060.A both require all development to:

*“... protect agricultural land, continued agricultural uses and the agricultural economy by ... **preventing conversion** to non-agricultural uses, and **prohibiting uses that are incompatible with long-term agricultural production** ... and to **preserve important soils**, ... to allow continued agricultural production on agricultural lands.”*

Sec. 22.65.040.C.1.a” (C-APZ Standards for Ag Use) requires that “*Permitted development shall **protect and maintain continued agricultural use**, and contribute to agricultural viability.*” While structures to support agriculture are Principal Permitted Uses, those that are not Categorically

II. Structures on Agricultural Land and Clustering

Excluded or Exempt still require Coastal Permits and fall under this and other cited LCPA standards and 22.65.040.C.1b and c.

Sec. 22.65.040.A (Purpose) further requires: "... *additional development standards for the C-APZ zoning district that are to **preserve productive lands** for agricultural use, and **ensure that development is accessory and incidental to, in support of, and compatible with agricultural uses.***"

Consistent with this direction, Chap.22.130 (Definitions): provides:

"Agriculture (coastal). *This land use consists of agricultural production, and the facilities that are **accessory and incidental to, in support of, and compatible with the property's agricultural production**, including agricultural accessory structures and activities, one farmhouse per legal lot, up to two intergenerational homes, agricultural worker housing, limited agricultural product sales and processing, non-profit and owner-operator conducted agricultural tours, and agricultural homestay facilities.*"

Almost all the agricultural land in the Coastal Zone is comprised of large tracts of grazing land. The placement of facilities necessary to operate agricultural operations dependent upon that land would likely remove a very small percentage of that land from active grazing. It would be contrary to a rancher's self-interest to invest in agricultural facilities that would undermine the operation and economic viability of their agricultural business.

F. RECOMMENDED CHANGE:

If the Board determines that additional provisions are desirable to manage the siting of agricultural facilities with regard to agricultural lands, and to clarify related language regarding clustering, the following additional text could be added to Policy AG-7 and related Development Code provisions in Section 22.65.040.C.1 (C-APZ Zoning – Development standards for agricultural uses):

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands

Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP , and in particular the policies of the Natural Systems and Agriculture Element of the LUP.

A. Standards for Agricultural Uses in the C-APZ:

All of the following development standards apply:

1. Permitted development shall protect and maintain continued agricultural use and contribute to agricultural viability. Development of agricultural facilities shall be sited to avoid agricultural land whenever possible, consistent with the operational needs of agricultural production. If use of agricultural land is necessary, prime agricultural land shall not be converted if it is possible to utilize other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted.
2. Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies, including Tomales Bay, either individually or cumulatively.

II. Structures on Agricultural Land and Clustering

3. Permitted development shall have no significant adverse impacts on environmental quality or natural habitats, and shall meet all other applicable policies, consistent with the LCP.
4. In order to retain the maximum amount of land in agricultural production or available for future agricultural uses, farmhouses, intergenerational homes, and agricultural homestay facilities shall be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space.

...

§22.65.040.C.1 (C-APZ Zoning – Development standards for agricultural uses):

...

C. Development standards. *Development permits in the C-APZ district shall also be subject to the following standards and requirements in addition to section 22.65.030:*

1. Standards for agricultural uses:

- a. *Permitted development shall protect and maintain continued agricultural use, and contribute to agricultural viability. Development of agricultural facilities shall be sited to avoid agricultural land whenever possible, consistent with the operational needs of agricultural production. If use of agricultural land it is necessary, prime agricultural land shall not be converted if it is possible to utilize other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted.*
- b. *Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other public services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies, including Tomales Bay, either individually or cumulatively.*
- c. *Permitted development shall have no significant adverse impacts on environmental quality or natural habitats, and shall meet all other applicable policies, consistent with the LCP.*
- d. In order to retain the maximum amount of land in agricultural production or available for future agricultural uses, farmhouses, intergenerational homes, and agricultural homestay facilities shall be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space.

If the text revisions shown above are approved by the Board, staff would also recommend that existing clustering provisions contained in Development Code Section 22.65.030.D.1 be amended as shown below. These provisions apply broadly to all planned zoning districts (not just agricultural zones). Accordingly, the language originally included in this section would become duplicative and could be confusing in light of the above revisions.

II. Structures on Agricultural Land and Clustering

§22.65.030.D (Planned District General Development Standards - Building location)

- 1. Clustering Requirement.** Structures shall be clustered in a geologically stable, accessible location on the site where their visual prominence is minimized, consistent with needs for privacy. Clustering is especially important on open grassy hillsides; however, a greater scattering of buildings may be preferable on wooded hillsides to save trees. The prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography.

~~In the C-APZ and C-ARP agricultural zones, non-agricultural development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use. Non-agricultural development, including division of agricultural lands, shall only be allowed upon demonstration that long term productivity of agricultural lands would be maintained and enhanced as a result of such development. Non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, and shall not require new road construction or improvements resulting in significant impacts on agriculture, significant vegetation, significant scenic resources, or natural topography of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. Any new parcels created shall have building envelopes outside any designated scenic protection area.~~

III. Development Adjacent to Agricultural Land

DETAILED ANALYSIS:

- A. **ISSUE:** CCC staff has written that there need to be provisions that address uses and structures adjacent to agricultural lands to ensure that they do not adversely impact the agricultural lands. Typically, there are buffer or setback provisions for potentially incompatible development adjacent to agricultural land.
- B. **INTENT:** To avoid conflicts with and impacts on agricultural operations caused by adjacent development.
- C. **RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:**

- **LCPA Land Use Plan:**
- **LCPA Development Code:**
- *Policy C-AG-1 Agricultural Lands and Resources (p. 11, LCPA LUP)*
- *Policy C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands (p. 14, LCPA LUP)*
- *Section 22.62.060 Coastal Agricultural and Resource-Related Districts (p. 25, LCPA Dev. Code)*
- *Table 5-4-b Coastal Zone Development Standards (p. 54, LCPA Dev. Code)*

C-AG-1 Agricultural Lands and Resources. Protect agricultural land, continued agricultural uses and the agricultural economy by ... prohibiting uses that are incompatible with long-term agricultural production or the rural character of the County's Coastal Zone.

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.

Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP , and in particular the policies of the Natural Systems and Agriculture Element of the LUP

...

B. Standards for Non-Agricultural Uses:

In addition to the standards of Section A. above, all of the following development standards apply to non-agricultural uses ...

4. Proposed development shall only be approved after making the following findings:

...

- b.** The proposed development will not conflict with the continuation or initiation of agricultural uses on that portion of the property that is not proposed for development, on adjacent parcels, or on other agricultural parcels within one mile of the perimeter of the proposed development.

...

22.62.060 – Coastal Agricultural and Resource-Related Districts

- A. Purpose of Section.** This Section provides regulations for development and new land uses proposed within the coastal agricultural and resource-related zoning districts established consistent with Local Coastal Program policies by Section 22.62.030 (Coastal

III. Development Adjacent to Agricultural Land

Zoning Districts Established). The purpose of these zoning districts is to protect agricultural land, continued agricultural uses and the agricultural economy by maintaining parcels large enough to sustain agricultural production, preventing conversion to non-agricultural uses, and prohibiting uses that are incompatible with long-term agricultural production or the rural character of the County's Coastal Zone ...

...

D. Development standards for agricultural- and resource-related districts. Proposed development and new land uses consistent with the definitions in Article VIII shall comply with the provisions of Chapters 22.32 as applicable (Standards for Specific Land Uses), this Chapter, Chapter 22.64 (Coastal Zone Development and Resource Management Standards), 22.65 (Coastal Zone Planned District Development Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal Permit Requirements),

E. Residential Development Impacts and Agricultural Use. Ensure that lands designated for agricultural use are not de facto converted to residential use, thereby losing the long-term productivity of such lands.

1. Residential development shall not be allowed to diminish current or future agricultural use of the property or convert it to primarily residential use.

...

TABLE 5-4-b – COASTAL ZONE DEVELOPMENT STANDARDS (Notes):

...

(2) Where dwellings are permitted, the following standards apply:

...

c. C-APZ districts shall have a maximum residential density of one unit per 60 acres.

...

(3) Setbacks are determined through the Coastal Permit.

...

D. CCC ISSUE: In addition the question regarding provisions ensuring uses and structures adjacent to agricultural land will not adversely affect such lands, CCC staff requested Code Chapter 23.03 Right to Farm be included in the LCP and submitted for the Commission's review.

E. OTHER INPUT: none.

RECOMMENDED FINDINGS:

Uses in and adjacent to agricultural operations are determined by the applicable land use designation and zoning, LCP policies including C-AG-1 and C-AG-7 (including section "B" and particularly "B.4.b" shown above. Setbacks in agricultural are governed by TABLE 5-4-b – COASTAL ZONE DEVELOPMENT STANDARDS, footnote 3, which specifies that setbacks are determined by the Coastal Permit after being evaluated on a case by case basis to assure compliance with all LCP provisions. These measures assure that agricultural land and uses will be protected

A copy of the Right to Farm Ordinance follows.

F. RECOMMENDED CHANGE: None.

Chapter 23.03 - RIGHT TO FARM

Sections:

[23.03.010 - Purpose.](#)

[23.03.020 - Definitions.](#)

[23.03.030 - Policy.](#)

[23.03.040 - Nuisance.](#)

[23.03.050 - Disclosure.](#)

23.03.010 - Purpose.

It is the purpose and intent of this chapter to reduce the loss to the county of its agricultural resources by limiting the circumstances under which agricultural operations may be considered a nuisance. This chapter is not to be construed as in any way modifying or abridging state law as set out in the California Civil Code, Health and Safety Code, Fish and Game Code, Good and Agricultural Code, Division 7 of the Water Code, or any other applicable provision of state law relative to nuisances; rather it is only to be utilized in the interpretation and enforcement of the provisions of this code and county regulations.

(Ord. 3216 § 2 (part), 1995)

23.03.020 - Definitions.

As used in this chapter the following words have the designated meanings:

"Agricultural land" means land areas of the county designated in the Marin countywide plan as Agriculture 1, 2 and 3 and Agriculture and Conservation 1, 2 and 3 and/or included in agricultural zoning districts A, APZ and ARP.

"Agricultural operation" means a condition or activity that occurs in connection with the commercial production of food or fiber and includes cultivation and tillage of the soil; dairying; the production, irrigation, cultivation, growing, harvesting and processing of any agricultural commodity, including viticulture, horticulture, apiculture, the raising of livestock, fish, shellfish or poultry; and any commercial agricultural practices performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or to carriers for transpiration to market.

(Ord. 3216 § 2 (part), 1995)

23.03.030 - Policy.

It is the declared policy of the county to conserve, protect, enhance and encourage agricultural operations within the county. Where nonagricultural land uses extend into agricultural areas or exist side by side, agricultural operations may become the subject of nuisance complaints. As a result, agricultural operations may be forced to cease or curtail operations and agricultural operators may be discouraged from making investments in farm improvements.

(Ord. 3216 § 2 (part), 1995)

23.03.040 - Nuisance.

No agricultural activity, operation or facility or appurtenances thereof, on agricultural land, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards and with all chapters of this code as established and followed by similar agricultural operations, shall be or become a nuisance, pursuant to this code, if it was not a nuisance when it began.

(Ord. 3216 § 2 (part), 1995)

23.03.050 - Disclosure.

(a) The following notice shall be used for disclosure concerning agricultural operations:

The County of Marin has established a policy to protect and encourage Agricultural

III. Development Adjacent to Agricultural Land

Operations on Agricultural Land. If your real property is located near an Agricultural Operation on Agricultural Land, you may at some time be subject to inconvenience or discomfort arising from Agricultural Operations, including but not limited to, noise, odors, fumes, dust, the operation of machinery, the storage and disposal of manure, and the application of chemical fertilizers, soil amendments, herbicides and pesticides. If conducted in a manner consistent with proper and accepted standards, these inconveniences or discomforts are hereby deemed not to constitute a nuisance for purposes of the Marin County Code.

(b) The disclosure statement set forth in subsection (a) of this section shall be used under the following circumstances and in the following manner:

- (1) The county shall mail a copy of the disclosure statement to all owners of real property in the unincorporated areas of the county, which is designated as agricultural land or which is adjacent to agricultural land. Failure by the county to mail such a disclosure shall not operate to invalidate this section.
- (2) Upon any transfer of real property on or adjacent to agricultural land, as defined in Section [23.03.020](#), by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, or transfer of residential stock cooperative, the transferor shall require that the disclosure statement set forth in subsection (a) of this section shall be signed by the purchaser, transferee or lessee acknowledging receipt of the disclosure statement.
- (3) Upon the issuance of a discretionary development permit, including but not limited to subdivision and land use permits for use on or adjacent to agricultural land, the discretionary development permit shall include a condition that the owners of the property shall be required to sign a statement of acknowledgment containing the disclosure statement in subsection (a) of this section on forms provided by the planning division, community development agency, which form shall then be recorded in the county recorder's office.

(Ord. 3216 § 2 (part), 1995)

IV. Master Plans

DETAILED ANALYSIS:

- A. ISSUE:** Integration of Master Plan (MP) requirements into the coastal permit process: The existing LCP refers to a MP as the vehicle for carrying out some substantive development requirements of the LCP. Problems have arisen because:

- The existing MP is allowed to be “waived” to a lesser permit (e.g. Design Review (§ 22.47.010 I; 22.56.026 I), sometimes causing confusion and controversy,
- MP approvals may extend for many years, regardless of how conditions change, and
- The land uses approved in a MP cannot be appealed to the Coastal Commission when coastal permits to carry out the MP are processed (§ 22.56.026I)

To assure that Coastal Act requirements would be more consistently and effectively carried out, the LCPA integrates a comprehensive set of policies and standards that more than meet existing master planning objectives directly into the Coastal Permit process rather than relying on a separate Master Plan document.

The Board may wish to address the separate question of continuing the existing requirement that all contiguous properties under the same ownership should be included in the permit (§ 22.56.027I), and the suggestion to provide permit processing subsidies to agricultural development.

- B. INTENT:** Integrate the objectives of the Master Plan process directly into the Coastal Permit to increase effectiveness, consistency and conformity with the Coastal Act, while reducing regulatory complexity.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** Policy C-AG-7 (p. 14)
- **LCPA Development Code:** 22.60.010 (p. 21); 22.62.040.C (p. 25); 22.64.020 (p. 51)

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.

Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP, and in particular the policies of the Natural Systems and Agriculture Element of the LUP.

A. Standards for Agricultural Uses in the C-APZ:

All of the following development standards apply:

1. Permitted development shall protect and maintain continued agricultural use and contribute to agricultural viability.
2. Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies, including Tomales Bay, either individually or cumulatively.
3. Permitted development shall have no significant adverse impacts on environmental quality or natural habitats, and shall meet all other applicable policies, consistent with the LCP.

B. Standards for Non-Agricultural Uses:

In addition to the standards of Section A. above, all of the following development standards apply to non-agricultural uses, including division of agricultural lands or construction of two or more dwelling units (excluding agricultural worker or intergenerational housing)...

§22.44.030 – Application Filing, Processing, and Review

A.1. Area covered by plan. The area of the Master Plan and Precise Development Plan shall include at least all contiguous properties under the same ownership. The area covered by a proposed plan may also include multiple ownerships.

§22.60.010 – Purpose of Article

This Article provides permit requirements and development standards for proposed development and new land uses ... within the Coastal Zone....[and] implements applicable policies of the Marin County Local Coastal Program (LCP)...

§22.62.040.C. Master Plan and Other Non-Local Coastal Program Permit Requirements.

In addition to permits required for conformance with the Marin County Local Coastal Program, a Master may be required...Please refer to Articles II-IV, VI, and VII for development standards that govern these uses. A Master Plan is required only for the following uses:

1. A subdivision which does not exhaust the potential for residential development ...

§22.64.020 – Applicability

The provisions of this Chapter apply in all coastal zoning districts to proposed development and new land uses which require Coastal Permit approval in addition to the requirements of Chapters 22.62 (Coastal Zoning Districts and Allowable Land Uses), 22.66 (Coastal Zone Community Standards), and all other applicable provisions of this Development Code...

- D. CCC ISSUE:** In reviewing an earlier draft of the LCPA, the CCC had raised concerns about use of Master Plans in the C-APZ zone, concluding that “provisions for Master and Stewardship plans could be better integrated into the coastal permit process, ... All Master Plan and Stewardship Plan standards and conditions need to be incorporated into the coastal permit approval...” Staff subsequently revised the relevant sections accordingly, and included that language in the LCPA approved by the Planning Commission.

*[*Note: see attached memo regarding clarification and response to CCC staff questions to be addressed in meetings prior to final staff report- see attached.]*

- E. OTHER INPUT:** The West Marin Environmental Action Committee (EAC) previously stated that it “does not support what amounts to the wholesale deletion of the Master Plan (MP) requirement for development on agriculturally-zoned parcels, that the Master Plan “requires an applicant for development in the coastal zone to take a comprehensive approach to planning,... and... strongly objects to the idea that the non-coastal Design Review requirements or a coastal permit are an adequate substitute ... for ... a MP.” It urged creating a modified version of the MP that does not carry the large application fees and costs of a MP yet retains the important planning benefits of pro-active planning for development on multi-parcel properties.

RECOMMENDED FINDINGS:

Concerns about the Master Plan process have arisen over the years, including those recently expressed by the CCC staff on the relationship between Master Plans and coastal permits. Both in a coastal and non-coastal context the complexity of rules that require a Master Plan for a wide variety of development, but then allow “waiving” those requirements to a lesser level of review has sometimes led to misunderstanding and needless controversy. Other controversies occurred when Master Plan approvals extend years into the future regardless of how conditions around the project

IV. Master Plans

may have changed. In the coastal zone, concerns are raised because the MP locks in the approved land uses, and when the time comes for actual development, the coastal permits for those land uses are not subject to appeal to the Coastal Commission.

The Planning Commission-approved LCPA reflects changes that respond to the CCC staff's request to incorporate Master Plan and Stewardship Plan standards and conditions into the coastal Permit. This was readily done because the Master Plan requirements specified in Chapter 22.45I did not actually specify development standards. Instead, a major part of Chapter 22.45I is the recitation of information required for, and processing of, a Master Plan. The LCPA covers these requirements in §22.70.030 *et seq.*

In terms of providing a comprehensive approach to coastal permitting, the LCPA establishes a thoroughgoing and complete system of effective procedures and exacting standards to protect coastal resources and foster access to the shoreline.

It must also be noted that the Master Plan Chapter has been substantively amended, and renumbered to Chapter 22.44 since the version that accompanied the certification of the Coastal Zoning Ordinance. These revisions do not appear to have been certified for application in the coastal zone. The most recent amendment to the Master Plan Chapter 22.44 in fact was made by the Board as part of your action on the non-coastal portions of the Development Code on January 24, 2012, right in the midst of the Planning Commission's hearings on the LCPA. As a result of this two-track process some inconsistencies arose. Staff recommends the Alternative text in §22.44.030.B. below to bring the two parts of the Code into alignment.

There is one aspect of the current LCP requirements that has not been carried forward as part of the LCPA: the requirement that contiguous properties under the same ownership all be included in the permit process:

22.44.030 – Application Filing, Processing, and Review

A.1. Area covered by plan. The area of the Master Plan and Precise Development Plan shall include at least all contiguous properties under the same ownership. The area covered by a proposed plan may also include multiple ownerships.

This provision was not carried forward because in practice it was rarely applicable, both because of the extremely small number of Master Plan projects coming forward, and because it was easily avoided by a simple change in land title. Should the Board wish to include such a requirement, it would be most appropriate where a major development, such as a large subdivision or mixed-use project, is being proposed. The new requirements for a Master Plan established in Chapter 22.44 provide useful thresholds for determining which projects should require the inclusion of contiguous properties in the same ownership. (see Alternative text shown below for §22.70.030.A.2)

F. RECOMMENDED CHANGE:

22.44.030 – Application Filing, Processing, and Review

...

B. Project review procedure. Each application shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of this Chapter and with the Countywide Plan and Community or Specific Plans. Where a Coastal Permit is also issued for the project, the standards and conditions of the Master Plan shall be consistent with the requirements of the Coastal Permit in accordance with Section 22.60.020.

22.60.020 – Applicability

IV. Master Plans

The requirements of this Article apply to all proposed development and new land uses within the Coastal Zone. These requirements apply in addition to all other applicable provisions of this Development Code. In the event of any perceived conflict between the requirements of this Article and any other provisions of this Development Code, this Article shall control.

22.70.030 – Coastal Permit Filing, Initial Processing

A. Application and filing. Coastal Permit application submittals shall include all information and other materials required by the Coastal Permit application forms, provided by the Agency. The application and accompanying materials shall be filed with the Agency before or concurrent with an application for any land use permit required by this Article. The Coastal Permit application shall include:

1. Project plans and supporting materials sufficient to determine whether the project complies with all relevant policies of the Local Coastal Program;
2. Documentation of the applicant's legal interest in all the property upon which work is proposed to be performed. The area of the subject Coastal Permit shall include at least all contiguous properties under the same ownership. The area covered by a proposed project may also include multiple ownerships
3. A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application: and
4. Any additional information deemed by the Director to be required for specific categories of development or for development proposed from specific geographic areas...

V. Stream Improvements

DETAILED ANALYSIS:

A. ISSUE: The Coastal Commission has requested modifications to C-BIO-24.1 (stream alterations, carried over from current LCP) to limit water supply projects to those instances “where no other less environmentally damaging method of water supply is feasible”.

B. INTENT: Carry over policy from existing LCP Units I and II.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** Policy C-BIO-24 (p. 28)

C-BIO-24 Coastal Streams and Riparian Vegetation. (excerpt)

1. Stream alterations. Limit river and stream dams, channelizations, or other substantial alterations to coastal streams or the riparian vegetation surrounding them to the following purposes:

- a. Necessary water supply projects;
- b. Flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development; or
- c. Development where the primary function is the improvement of fish and wildlife habitat.

D. CCC ISSUE: In C-BIO-24(1.a) add the clause, “where no other less environmentally damaging method of water supply is feasible”. (Commission staff, 10/4/11)

E. OTHER INPUT:

Environment:

- Policy C-BIO-24 may allow for dams and channelization for water supply and flood control projects to be constructed in-streams. Such facilities may not only disrupt and diminish water flows, but to destroy significant amounts of riparian vegetation. Water supply and flood control projects should be constructed off stream wherever they would result in fewer impacts. (Marin Audubon, 3/27/12)

RECOMMENDED FINDINGS:

Proposed LCPA Policy C-BIO-24.1 is adapted from existing LCP Units I and II¹ and reflects Section 30236 of the Coastal Act, which provides, “Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.” The policy does not expand authority for stream alterations to agricultural stream impoundments or related agricultural purposes.

Coastal Commission staff has requested the addition of a clause to C-BIO-24.1. that would limit installation of necessary water supply projects within streams to only those cases “where no other

¹ LCP Unit I, Stream Protection Policies 1 and 2 (p.19); LCP Unit II Natural Resources Policies 3.a and 3.b (p.72)

V. Stream Improvements

less environmentally damaging method of water supply is feasible". The requested language of the Commission staff goes above and beyond the allowances of the Coastal Act. However, as streams are considered ESHA, any development within the stream is likely to entail a biological assessment and must pass the test established in Policy C-BIO-2 which requires consideration of feasible less environmentally damaging alternatives as well as mitigation measures. Policy C-BIO-24.1 further expands upon the framework established by the Coastal Act to provide that substantial stream alterations shall be evaluated by the Department of Fish and Game and State Water Resources Control Board in light of the impact on fish habitat and water quality, protection of downstream users and downstream resources. The Coastal Commission's requested modification is compatible with other provisions of the LCPA; and thus it is reflected in the alternative provided below.

F. RECOMMENDED CHANGE:

C-BIO-24 Coastal Streams and Riparian Vegetation. (excerpt)

1. Stream alterations. Limit river and stream dams, channelizations, or other substantial alterations to coastal streams or the riparian vegetation surrounding them to the following purposes:
 - a. Necessary water supply projects where no other less environmentally damaging method of water supply is feasible;
 - b. Flood control projects where no other method for protecting existing structures in the flood plan is feasible and where such protection is necessary for public safety or to protect existing development; or
 - c. Development where the primary function is the improvement of fish and wildlife habitat.

...

VI. Grazing in Wetlands

DETAILED ANALYSIS:

- A. ISSUE:** The current policy for grazing in wetlands is contained in the existing LCP Unit II. While the Coastal Commission has no outstanding concerns regarding this topic, constituents representing both environmental and agricultural interests have raised issue with the language of the LCPA, citing concerns about impacts to historical use, expansion or restriction of grazing activities, and regulatory burdens. Comments on both sides of the issue have suggested a return to the certified policy of LCP Unit II. The Board may wish to consider carrying forward the existing policy in a modified form that clarifies the language and defines how the word “presently” is to be interpreted.
- B. INTENT:** Land Use Policy C-BIO-14 would establish the objective to “Preserve and maintain wetlands in the Coastal Zone as productive wildlife habitats, water filtering and storage areas, and, as appropriate, recreational open space”. In support of this, C-BIO-14.3 would carry over language from existing LCP Unit II Natural Resources Policy 4(c), and would provide further opportunities to consider new grazing in wetlands through management programs developed in partnership with other agencies where such use would not present an adverse impact to wetland functions and resources.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan:** *Policy C-BIO-14 (p. 25)*

C-BIO-14 Wetlands. (excerpt)

...

3. Prohibit grazing or other agricultural uses in a wetland, except in those reclaimed areas presently (prior to the certification of this amended policy on [DATE]) used for such activities, or in new areas where a Ranch Water Quality Plan has been approved by the California Regional Water Quality Control Board, or where the landowner demonstrates to the CDA's satisfaction that he/she has developed and implemented management measures in partnership with Marin Resource Conservation District, Natural Resource Conservation Service, or comparable agency to prevent adverse impacts to wetland functions and resources.

(PC app. 2/13/12, 1/23/12, 6/28/10)

[Adapted from Unit II Natural Resources Policy 4 (a – c), p. 74]

- D. CCC ISSUE:** The California Coastal Commission (CCC) staff does not have any outstanding concerns with respect to this policy.

E. OTHER INPUT:

Agriculture:

- C-BIO-14.3 should simply allow for historical agricultural uses to be reinstated as the current LCP allows. (Marin County Farm Bureau, 3/25/12)
- The ability to graze in a wetland should be extended to those reclaimed areas that have historically been used for such activities. (Marin County Farm Bureau, 3/25/12)
- The prohibition on grazing and other agricultural uses in wetlands should be removed from the LCPA. (UCCE, 11/28/11)

VI. Grazing in Wetlands

- Voluntary implementation of management measures has resulted in wetland and riparian improvements by providing funding, technical support and permits to support beneficial management. (UCCE, 11/28/11)
- Wetland and riparian management is already highly regulated by the Army Corps of Engineers, California Department of Fish and Game, and State and Regional Water Quality Control Boards. The County of Marin is not equipped to effectively monitor and enforce prohibitive policies on wetland grazing. (UCCE, 11/28/11)
- Satisfying the County with proper management measures to prevent adverse impacts to wetlands adds a layer of costly and burdensome regulation. (Marin County Farm Bureau, 2/8/2012)
- Preventing agricultural uses unless they are “presently” used will slowly eliminate agriculture. Land may lie fallow for a period of time to allow nutrients to replenish the soil or may go unfarmed during periods of intergenerational transfer, change in ownership or permitting. (Ione Conlan, 1/22/12)

Environment:

- The existing policy has not received complaints or posed an enforcement issue for the county for the past 30 years. The certified LCP policy should be restored. (Community Marin 3/27/12)
- The policy would apply to reclaimed areas presently used for grazing or new areas. It is not clear where or what areas are presently grazed and what areas would be opened up to grazing. (Community Marin 3/27/12, Marin Audubon 3/27/12)
- This policy would represent a significant weakening of the current language and is inconsistent with the purpose of the policy. If there is a it should only be to allow grazing that is part of a Wetland Protection Plan. (Marin Audubon 3/27/12)
- Coastal wetlands help filter nutrient run-off to Tomales Bay. At what point will the county preclude grazing in wetlands if documented water quality testing shows that such grazing is significantly contributing to the impaired state of Tomales Bay? (EAC, 2/9/12)
- The County should work with voluntary incentive programs to protect water quality and wetlands in the Coastal Zone, but it cannot transfer its regulatory responsibilities to these entities. (EAC, 1/22/12)
- This policy is based on measures/provisions that are not relevant to protecting wetlands, are unenforceable. (Marin Audubon 3/27/12)
- The purpose of a Ranch Water Quality Plan is to protect water quality, not protect wetlands. These are not the same. The alternative is to develop and implement management measures with one of several named entities which also do not have as their purpose protecting wetlands. (Marin Audubon 3/27/12)

RECOMMENDED FINDINGS:

The language proposed in Land Use Policy C-BIO-14.3 is adapted from the existing LCP Unit II Natural Resources Policy 4.c, which states: “No grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently² used for such activities.” Recognizing that grazing can enhance wetland quality under certain conditions by controlling non-native plant species, the amended policy would provide additional exceptions to allow a new grazing or agricultural use where appropriate management measures are in place. Thus, the LCPA would allow for grazing in wetlands under any of three conditions:

- Grazing occurs on reclaimed areas “presently” used for such activities (i.e., prior to certification of the amended LCPA)³; or
- Grazing occurs in areas where a Ranch Water Quality Plan has been approved by the CRWQCB; or

² The term “presently” within the Unit II policy refers to reclaimed areas established in or prior to 1981 (the year of LCP certification).

³ The extent of historic grazing activities can be deduced from analysis of aerial images illustrating, for example, fence lines or the presence of livestock.

VI. Grazing in Wetlands

- Grazing occurs subject to County approval, where the landowner applies management measures to prevent adverse impacts to wetland functions and resources.

"Present" agricultural use of the land as provided in Policy C-BIO-14.3 would not require ongoing use but would be contingent on the use having been established prior to a date certain.

Public comments related to Policy C-BIO-14.3 have touched upon the separate and beneficial roles of non-regulatory entities and outside agencies in addressing water quality, wetland and riparian management. Groups representing both agricultural and environmental interests have rightly pointed out that water quality is separately addressed by both federal and state agencies, as well as through voluntary land management agreements. The proposed language of the LCPA acknowledges the critical balance between land use and ecologic function and draws upon the separate resources these outside organizations that may be leveraged by landowners for the purposes of regulatory compliance, implementation of best management practices, and compliance with the requirements of the Local Coastal Program. In this way, the policy would reflect the objectives of the LCPA to encourage partnerships with non-governmental organizations and other agencies to promote developing and sharing compatible data resources.

While the Coastal Permit plays an important role in resource and habitat protection (i.e., through strict limitations on uses in and around wetlands) it is perhaps best suited as a complement to the regulatory framework of state and federal water quality protections, rather than as an additional layer of review. While ongoing grazing and agricultural activities do not require coastal permits and are not monitored through a regulatory program at the County level, agricultural development that does trigger coastal permit review can be evaluated in light of its specific habitat and water quality impact through the site assessment and permit review process. It is clear that the final sentence of Policy C-BIO-14.3 is unnecessary to achieve the primary objective of the policy, and results in greater confusion on the part of the community.

There is a shared preference from the agriculture community and environmental proponents to retain the grazing policy contained in the existing LCP Unit II. General agricultural activities, including grazing, do not constitute development and are not subject to coastal permit review⁴. An alternative that returns C-BIO-14 to a modified form of the original policy of LCP Unit II is provided below.

F. RECOMMENDED CHANGE:

C-BIO-14 Wetlands. (excerpt)

...

3. Prohibit grazing or other agricultural uses in a wetland, except in those ~~reclaimed~~ areas presently ~~(prior to the certification of this amended policy on [DATE]) used for such activities (i.e., grazing was established prior to April 1, 1981, the date on which Marin's first LCP was certified).~~ or in new areas where a Ranch Water Quality Plan has been approved by the California Regional Water Quality Control Board, or where the landowner demonstrates to the CDA's satisfaction that he/she has developed and implemented management measures in partnership with Marin Resource Conservation District, Natural Resource Conservation Service, or comparable agency to prevent adverse impacts to wetland functions and resources.

⁴ See Coastal Commission correspondence dated 9/15/2011: "...general, routine, ongoing agricultural operations would not require coastal permits. What require permits are the grading, intensification, and structures associated with these operations."

VII. Allowed Development in an ESHA

DETAILED ANALYSIS:

- A. ISSUE:** LCPA LUP Program C-BIO-5.b. is derived from Policy C-BIO-5, which would encourage “the restoration and enhancement of degraded ESHAs and the creation of new ESHAs.” It is intended as a specific implementation measure to carry out the policy of C-BIO-5 by establishing “safe harbor” policies that avoid penalizing property owners who agree to a restoration program that would expand an ESHA, an action that would otherwise expand its corresponding protected buffer area. Coastal Commission staff and members of the public have raised questions about the particulars of Program C-BIO-5.b; thus, it should be clarified to reflect its nature as a future work item, rather than a policy unto itself.
- B. INTENT:** Facilitate enhanced protection and restoration of ESHAs by establishing a policy to encourage such activity on a voluntary basis. Program C-BIO-5.b would identify a future work item to establish “safe harbor” policies that would encourage expansion of ESHA without a corresponding increase in the buffer.

C. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

<ul style="list-style-type: none">• LCPA Land Use Plan: Program C-BIO-5.b (p. 23)
<p>Program C-BIO-5.b Allowed Development in an ESHA. Encourage the expansion of ESHAs by establishing criteria that would allow affected properties to remain subject to preexisting buffers. (PC app. 1/23/12, 12/1/11, 6/28/10) [New program, not in Unit I or II]</p>

D. CCC ISSUE:

- Implementation of this policy may prove difficult (e.g., inadequate records of original buffer locations may result in difficulties differentiating between development that was not properly set-back and buffer areas into which ESHA has expanded). As a result, buffer enforcement and compliance may decline. (Commission staff, 10/4/2011)
- Please consider these concerns during the development of the ‘criteria that would allow property owners to remain subject to the buffers from the pre-existing edge of the habitat area...’ and consider adopting these criteria in Title 22 Development Code section dedicated to Biological Resources. (Commission staff, 10/4/2011)

E. OTHER INPUT

Environment:

- Program C-BIO-5.b: This policy [program] is not clear. It seems to mean that there may be ESHAs with an adequate buffer and others with inadequate buffers. Would this be defeating the purpose of ESHAs? How would you keep track of different buffer requirements? (Marin Audubon, 3/27/12)

RECOMMENDED FINDINGS:

The term “program” is derived from the Marin Countywide Plan and refers to a specific implementation measure to carry out the goals and policies of the plan. Thus, the language of LCPA Program C-BIO-5.b would not be tantamount to a policy, but rather would set a course for further work, which must be reviewed through the LCP amendment process and incorporated into the County’s governing documents accordingly.

As noted, Program C-BIO-5.b would establish “safe harbor” policies that avoid penalizing property owners who agree to a restoration program that would expand an ESHA, an action that would otherwise expand its corresponding protected buffer area and place new restrictions on the property of adjacent land-owners. As an example, a flood control project might be designed to incorporate environmental restoration by laying back the stream banks and re-connecting the stream with its flood plain and riparian area, thus widening the ESHA. This would also result in a corresponding expansion of the buffer, which would put more of the adjacent landowners property under “off-limits” buffer restrictions, creating a disincentive for that property owner to give permission and support for the project. Providing a mechanism to establish a set of “safe-harbor” rules for the expanded buffer area would promote the viability of the environmental restoration components of such projects.

It is clear from the comments received that both the term “program” and the language of Program C-BIO-5.b as currently drafted result in confusion regarding its intent and application. Furthermore, the title of the program is confusing. The intent of the program is not to “allow development in an ESHA” but rather to encourage enhancement or creation of ESHA by avoiding associated disincentives.

While some of the particulars of this program (e.g., developing record standards and criteria that allow properties to retain pre-existing buffers) are reserved for a future work plan, other concerns (e.g., consistency with the intent of the ESHA buffer policy) are resolved in the body of the alternative text and the revised program title below.

F. RECOMMENDED CHANGE:

Program C-BIO-5.b ~~Allowed Development in an~~ “Safe Harbor” for expansion of ESHA.
Consider a future work item to encourage expansion of ESHAs by establishing policies, procedures and criteria that would allow such enhancements and protect sensitive resources while maintaining affected properties to remain subject to preexisting buffers. The size of any buffer designated as a result of this program would not be a precedent for the size of any buffer on any other development site. This program would lead to policies and implementing measures that would be subject to review and certification as an amendment to the LCP.

VIII. Wetland Buffers

DETAILED ANALYSIS:

- A. ISSUE:** Wetland policies are carried over from the existing LCP Units I and II. While the Coastal Commission does not have any outstanding concerns specific to wetland and buffer policies, public comments have touched upon the use and buffer requirements for artificial wetlands. Comments from environmental advocates have requested that consideration be given to whether an artificial wetland drains a naturally-occurring wetland.
- D. INTENT:** Provide policy guidance for adjustments to buffers for artificial wetlands that were created for the treatment and/or storage of wastewater or domestic water.

E. RELEVANT LCPA POLICIES AND DEVELOPMENT CODE SECTIONS:

- **LCPA Land Use Plan: Policy C-BIO-20.2 (p.27)**

BIO-20 Wetland Buffer Adjustments and Exceptions. (excerpt)

Consider granting adjustments and exceptions to the wetland buffer width standard identified in policy C-BIO-19 in certain limited circumstances for projects that are implemented in the least environmentally damaging manner, as follows:

...

2. The wetland was artificially created for the treatment and/or storage of wastewater, or domestic water.

- D. CCC ISSUE:** The California Coastal Commission (CCC) staff does not have any outstanding concerns at this time.

E. OTHER INPUT:

- There should be an environmental review to determine impact on habitat prior to granting exceptions for wetland buffers addressed in C-BIO-20.2 and C-BIO-20.3, as these types of facilities are sometimes constructed in wetlands or historic wetlands. (Marin Audubon, 3/27/12).
- There should not be a buffer exception for a wetland that is drained by a drainage ditch or for a wetland created as mitigation. (EAC, 11/28/11)

RECOMMENDED FINDINGS:

As written, LCPA Policy C-BIO-20 would require approval of an adjustment for any wetland buffer, although buffers for artificial wetlands are subject to a lesser standard of review (i.e., not subject to the standards of C-BIO-20.1). While there is general acceptance of the 100' buffer policy established in C-BIO-19, comments from environmental proponents have suggested that water storage and flood control ponds are often placed upon historic wetlands and should be subject to environmental review prior to granting an adjustment.

VIII. Wetland Buffers

In recognition of the habitat quality and function typically associated with artificial wetlands, County staff concludes that Policy C-BIO-20.2 appropriately addresses the question of buffer application for such facilities; however, it can be modified for clarification.

F. RECOMMENDED CHANGE:

C-BIO-20 Wetland Buffer Adjustments and ~~Exceptions~~ (excerpt)

...

2. The wetland was artificially created for the treatment and/or storage of wastewater or domestic water (e.g., detention pond or urban drain). However, facilities that drain a naturally-occurring wetland shall be subject to the provisions of C-BIO-20.1.

ATTACHMENT #5

Local Coastal Program Amendments (LCPA)

Staff recommended changes and corrections to Planning Commission Approved Draft

AGRICULTURE AND BIOLOGICAL RESOURCES

The items in **highlighted strike-out and underline** format indicate minor corrections and clarifications proposed by staff to the February 2012 PC-Approved Local Coastal Program Amendment (LCPA) for the Board of Supervisors consideration. The proposed revisions are primarily intended to correct errors, clarify text, and improve internal consistency between the LCPA Land Use Plan and Development Code, or between Development Code provisions that apply within and outside of the Coastal Zone. The revisions noted below are related to the Introduction and Agriculture and Biological Resources only. Land Use Plan policies are listed in the order that they appear in the LCPA. Corrections and clarifications related to other topics will be included in a similar attachment for the Board of Supervisors hearing of November 13, 2012.

Introduction – Land Use Plan
<p>Introduction (p. 1 through 5)</p> <p><i>Please Note: A number of revisions are proposed by staff to update the Introduction, clarify the contents of the LCPA, and delete duplicative text which is being moved to a new chapter related to policy interpretation. However, due to the length of this section of the document, the modifications to the Introduction are provided at the end of this Attachment (see pages 9 through 14).</i></p>
Agriculture (AG)
<p><i>Revision to clarify amnesty would not be needed for legal units.</i></p> <p>Program C-AG-2.d Amnesty Program for Unpermitted and Legal Non-conforming Agricultural Worker Housing Units. Support the establishment of an amnesty program for unpermitted and legal non-conforming agricultural worker housing units in order to increase the legal agricultural worker housing stock and guarantee the health and safety of agricultural worker housing units.</p> <p>...</p>
<p><i>Revision proposed to eliminate a confusing reference as there are currently no “designated scenic protection areas” in the coastal zone. A corresponding modification is proposed to Development Code Section 22.65.030.D.1.</i></p> <p>C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.</p> <p>...</p> <p>B. <u>Standards for Non-Agricultural Uses:</u></p> <ol style="list-style-type: none">1. In order to retain the maximum amount of land in agricultural production or available for future agricultural use, homes, roads, residential support facilities, and other non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, or shall not require new road construction or improvements resulting in significant impacts on agriculture, natural topography, major vegetation, or significant natural visual

<p>qualities of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations and shall be designed and sited to avoid hazardous areas. <u>Any new parcels created shall have building envelopes outside any designated scenic protection area.</u></p>
<p><i>Revision proposed to eliminate incorrect reference to “Master Plan” process.</i></p> <p>C-AG-8 Agricultural Production and Stewardship Plans.</p> <p>...</p> <p>1. <u>A Master Plan may require s</u>Submission of an Agricultural Production and Stewardship Plan (APSP). <u>An APSP shall also</u> be required for approval of land division or non-agricultural development of Agricultural Production Zone (C-APZ) lands <u>when the master plan requirements has been waived</u>, except as provided for in (3) below.</p> <p>...</p>
<p style="text-align: center;">Biological Resources (BIO)</p>
<p><i>Revision proposed to correct reference to corresponding Policy.</i></p> <p>C-BIO-4 Protect Major Vegetation.</p> <p>...</p> <p>...and shall not conflict with prior conditions of approval, consistent with Policy C-EH-<u>2425</u> (Vegetation Management in an ESHA)</p> <p>...</p>
<p><i>Revision proposed to also prohibit new planting of invasive plant species, consistent with countywide Single Family Residential Design Guidelines.</i></p> <p>C-BIO-6 Invasive Plants. Where feasible, require the removal of non-native, invasive plant species such as pampas grass, brooms, iceplant, thistles and other invasive plant species on the list maintained by the California Invasive Plant Council in <u>the</u> areas of development and revegetate those areas with native plants as specified in Coastal Permit approvals. <u>Ensure that required landscaping avoids use of non-native, invasive trees and plants in accordance with Policy C-DES-9 Landscaping.</u> This policy does not apply to agricultural crops and pastures.</p>
<p><i>Revise policy for clarification regarding previously permitted uses.</i></p> <p>C-BIO-7 Coastal Dunes. Prohibit development in coastal dunes to preserve dune formations, vegetation, and wildlife habitats. Prevent overuse in dune areas by mechanisms such as restricting parking, directing pedestrian traffic to areas capable of sustaining increased use, and fencing. Prohibit motor vehicles in dune areas except for emergency purposes; prohibit motor vehicles in non-dune beach areas except for emergency and essential maintenance purposes <u>and where previously permitted.</u></p>

Clarify that neither entirely new structures nor additions can extend beyond the stringline.

C-BIO-8 Stringline Method of Preventing Beach Encroachment. In a developed area where most lots are developed and where there are relatively few vacant lots, no part of a proposed new structure development (other than a shoreline protective device), including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjacent structures. Enclosed living space in the a new unit or addition shall not extend farther seaward than a second line drawn between the most seaward portions of the enclosed living space of the adjacent structures.

Revise policy for consistency with C-BIO-11, which applies for roosting and nesting habitat for wildlife.

C-BIO-10 Roosting and Nesting Habitat. Prohibit the alteration or removal of groves of trees that provide colonial nesting and roosting habitat for monarch butterflies or other wildlife, except where they the trees pose a threat to life or property.

This issue has been legally resolved by the County and agricultural uses have been permitted.

Program C-BIO-11.a Grassy Uplands Surrounding Bolinas Lagoon. Collect and evaluate data and studies to determine the habitat values of upland grassland feeding areas around Bolinas Lagoon for shorebirds, and develop effective policies to protect these areas against significant disruption of habitat values. Limited grazing agricultural use of these lands may be permitted.

Revision proposed to eliminate redundant standards.

C-BIO-17 Conditions and Standards for Diking, Filling, Draining, and Dredging. Diking, filling, draining or dredging may be permitted for the purposes specified in policy C-BIO-15 above provided that all of the following conditions and standards are met:

1. There is no feasible less environmentally damaging alternative.
2. Mitigation measures have been provided in accordance with Policy C-BIO-21 (Wetland Impact Mitigation) in order to minimize adverse environmental effects.
3. The activities are planned, scheduled, and carried out to avoid significant disruption to marine and wildlife habitats, fish and bird breeding and migrations, and water circulation.
4. The need for both initial and maintenance dredging shall be minimized by careful design and location of facilities with respect to existing water depths, water circulation, siltation patterns, and by efforts to reduce controllable sedimentation.
5. In estuaries and wetlands, the diking, filling, or dredging shall maintain or enhance the functional capacity of the wetland or estuary.
- ~~6. Dike and fill projects in wetlands shall include mitigation measures specified in Policy C-BIO-21.~~

Revision proposed to eliminate use of outdated term "spoils" and for consistency with Coastal Act Section 30233.

C-BIO-18 Spoils Dredging and Disposal of Dredged Materials. Require the disposal of dredged

sediments to conform to the following standards:

1. The dredged ~~materials~~ ~~spoils~~ disposal site has been approved by all relevant agencies.
2. ~~Spoils d-Deposal of dredged materials~~ shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation.
3. Dredged ~~materials~~ ~~spoils~~ suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.
4. The disposal of dredged ~~materials~~ ~~spoils~~ shall conform to the most recently approved dredging requirements promulgated or adopted by the State or Regional Water Quality Control Board.

The term "exception" is unclear and not possible due to the absolute minimum buffer of 50' suggested for all wetlands and streams, strike "exception" throughout all LCPA BIO policies.

C-BIO-19 Wetland Buffers. Maintain a buffer area, a minimum of 100 feet in width, in a natural condition along the periphery of all wetlands. An additional buffer may be required based on the results of a site assessment, if such an assessment is determined to be necessary, and the site assessment concludes that a buffer greater than 100 feet in width is necessary to protect wetland resources from the impacts of the proposed development, including construction and post-construction impacts. Coastal Permits shall not authorize development within these buffer areas unless the project is otherwise determined to be consistent with policy C-BIO-20 Wetland Buffer Adjustments ~~and Exceptions~~.

Revision proposed to allow uses within buffers that are also specifically authorized within wetlands to parallel Coastal provisions in Section 30233 reflected in Policies C-BIO-14 and 15.

C-BIO-20 Wetland Buffer Adjustments ~~and Exceptions~~. Consider granting adjustments ~~and exceptions~~ to the wetland buffer width standard identified in Policy C-BIO-19 in certain limited circumstances for projects that are implemented in the least environmentally damaging manner. ~~An adjustment may be granted in any of the following circumstances as follows:~~

...

4. ~~An adjustment may be granted for the wetland buffer if the use within the buffer will~~ ~~The project conforms~~ to one of the purposes identified in Policy C-BIO-14 ~~or C-BIO-15 or C-BIO-16.~~

Revision proposed to incorporate Countywide Plan standards for wetland impact mitigation in response to request from Coastal Commission staff for more directive mitigation policies.

C-BIO-21 Wetland Impact Mitigation

Where any dike and fill development is permitted in wetlands in conformity with this section, require mitigation measures to include, at a minimum, either acquisition of required areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided, however, that if no appropriate restoration site is available, an in-lieu fee sufficient to provide an area of equivalent productive value or surface areas shall be dedicated to an appropriate public agency, or such replacement site shall be purchased before the dike or fill development may proceed. A minimum ratio of 2:1 in area is required for on-site mitigation, a minimum ratio of 3:1 is required for off-site mitigation, and a minimum ratio of 4:1 is required for an in-lieu fee. ~~Mitigations shall meet the following criteria:~~

1. ~~No net losses shall occur in wetland acreage, functions, or values. This should include both direct impacts on wetlands and essential buffers, and consideration of potential indirect effects of development due to changes in available surface water and nonpoint water quality degradation.~~

Detailed review of the adequacy of a proposed mitigation plan shall be performed as part of any required environmental review of the proposed development project to allow for a thorough evaluation of the anticipated loss, as well as the replacement acreage, functions, and values.

2. Restoration of wetlands is preferred to creation of new replacement wetlands, due to the greater likelihood of success.
3. Mitigation shall be implemented prior to and/or concurrently with the project activity causing the potential adverse impact to minimize any short-term loss and modification to wetlands.
4. An area of adjacent upland habitat shall be protected to provide an adequate buffer for wetland functions and values. Development shall be set back the minimum distance specified in Policy C-BIO-19 (Wetland Buffers) to create this buffer, unless an adjustment is allowed and appropriate mitigation is provided where necessary, pursuant to Policy C-BIO-20 (Wetland Buffer Adjustments).
5. Mitigation sites shall be permanently protected and managed for open space and wildlife habitat purposes.
6. Mitigation projects must to the extent feasible minimize the need for ongoing maintenance and operational manipulation (e.g., dredging, artificial water-level controls, etc.) to ensure long-term success. Self-sustaining projects with minimal maintenance requirements are encouraged.
7. All plans to mitigate or minimize adverse impacts to wetland environments shall include provisions to monitor the success of the restoration project. The measures taken to avoid adverse impacts may be modified if the original plans prove unsuccessful. Performance bonds shall be required for all mitigation plans involving habitat creation or enhancement, including the cost of monitoring for five years post-completion.
8. Mitigation must be commensurate with adverse impacts of the wetland alteration and consist of providing similar values and greater wetland acreage than those of the wetland area adversely affected. All restored or created wetlands shall be provided at the minimum replacement ratio specified in this Policy (C-BIO-21) and shall have the same or increased habitat values as the wetland proposed to be destroyed.

...

Revision proposed to clarify wording that describe stream buffer requirements. Strike unclear word "exceptions".

C-BIO-24 Coastal Streams and Riparian Vegetation.

...

3. Stream Buffers. Establish buffers to protect streams from the impacts of adjacent uses for each stream in the Coastal Zone. The stream buffer shall ~~include be the wider of the following on either side of the stream:~~ (a) the area 50 feet landward from the outer edge of the riparian vegetation, ~~or (b) the area. In no case shall the stream buffer be less than~~ 100 feet landward feet in width, on either side of the stream, as measured from the top of the stream banks.

4. Development in Stream Buffers. Prohibit development within stream buffers unless the project is otherwise designed to be consistent with policy C-BIO-25 Stream Buffer Adjustments ~~and Exceptions~~.

Revision proposed to allow uses within buffers that are also specifically authorized within streams, as provided in the Coastal Act and reflected in Policy C-BIO-24. As the term “exception” is unclear and not possible due to the absolute minimum buffer of 50’ suggested for all wetlands and streams, strike “exception” and use only the term “adjustment”.

C-BIO-25 Stream and Riparian Buffer Adjustments and Exceptions. Consider granting adjustments and exceptions to the coastal stream buffer standards in policy C-BIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. An adjustment or exception may be granted in any of the following circumstances:

...

3. **Exceptions-Adjustments** to the stream buffer policy may be granted for access and utility crossings when it has been demonstrated that developing alternative routes that provide a stream buffer would be infeasible or more environmentally damaging. Wherever possible, shared bridges or other crossings shall be used to provide access and utilities to groups of lots covered by this policy. Access and utility crossings shall be accomplished by bridging, unless other methods are determined to be less damaging, and bridge columns shall be located outside stream channels where feasible.

...

5. **An adjustment to the stream buffer may be granted if the use within the buffer will** The project conforms to **one of** the purposes **and standards** identified in policy C-BIO-24.1.

Revision proposed to correct department name and describe areas considered a high priority in the Coastal Zone.

C-BIO-29 Marin County Parks and Open Space. Support and encourage the environmental conservation, land and easement acquisition, and habitat restoration efforts of the Marin County **Parks Department of Parks and Open Space**. In particular, conservation activities related to **beach areas, lagoons, wetlands, streams, existing and potential boat launching sites, recreational areas, and Tomales Bay and its shoreline** the following areas are considered a high priority in the Coastal Zone:

- **Upton Beach in Stinson Beach**
- **Bolinas Lagoon in Bolinas**
- **Agate Beach in Bolinas**
- **Bolinas Park in Bolinas**
- **Chicken Ranch Beach in Inverness**
- **Miller Park Boat Launch in Marshall**
- **White House Pool in Inverness Park**
- **Lawson’s Landing area in Dillon Beach**
- **Tomales Bay**

Development Code Chapter 22.32: Standards for Specific Land Uses

Revisions proposed to correct section title in Table of Contents (page 1).

22.32.115 – Determination of Non-Agricultural Uses

Revisions proposed to incorporate reference to ESHA buffer and remove confusing zoning reference.

22.32.026 – Agricultural Processing Uses

...

(Coastal) In Coastal agricultural Zoning Districts **C-APZ**, **and C-ARP** agricultural processing is allowed as a Principal Permitted Use provided it meets the following standards:

A. Limitations on use:

1. Processing of agricultural product is a Principal Permitted Use only if conducted in a facility not exceeding 5,000 square feet that is located at least 300 feet from any street or separate-ownership property line (and not within an Environmentally Sensitive Habitat Area (ESHA) **or its buffer**).

...

~~6. Any agricultural processing in a C-ARP zoning district is a Conditional Use requiring a Use Permit.~~

...

Revisions to clarify redundant language.

22.32.027 - – Agricultural Retail Sales and Facilities (Coastal)

...

A. Limitations on use:

...

2. Items sold must be principally unprocessed produce grown in Marin County or at a site outside Marin County that is operated by the **operator owner or lessee** of the sales facility. For purposes of this section, “principally” shall mean at least 75% by dollar volume of sales. The operator of the sales facility must be directly involved in the agricultural production on the property on which the sales facility is located.

Revision for consistency with Land Use Table 5-1-a.

22.32.062 – Educational Tours (Coastal)

(Coastal) Limitations on use. As defined in Section 22.130.030, educational tours are interactive excursions for groups and organizations for the purpose of informing them of the unique aspects of a property, including agricultural operations and environmental resources. In the C-APZ, **and C-ARP** **and C-OA** zoning districts, educational tours operated by non-profit organizations or the owner/operator of the agricultural operation are a principal permitted use (except as provided in Section 22.32.026.A.4); those operated for commercial profit require a Use Permit.

**Development Code Chapter 22.64:
Coastal Zone Development and Resource Management Standards**

Revise submittal requirements fully incorporate the text of the Coastal Commission’s guidance on restoration and monitoring as provided in their 2007 document Protecting Sensitive Habitats and Other Natural Resources, in response to Commission staff request for specific provisions requiring a complete and detailed Restoration and Monitoring Plan for any proposed or required habitat creation or

restoration.

22.64.050 – Biological Resources

...

A. Submittal requirements

...

3. Restoration and Monitoring Plan. Restoration and Monitoring Plans shall include the following:

- a. A clear statement of the ESHA habitat restoration goals. Characterization of the desired habitat, including an actual habitat, that can act both as a model for the restoration and as a reference site for developing success criteria.
- b. Sampling of reference habitat using the methods that will be applied to the restoration site with reporting of resultant data.
- c. Quantitative description of the chosen restoration site.
- d. Requirements for designation of a qualified restoration biologist as the restoration manager who will be personally responsible for all phases of the restoration. Phases of the restoration shall not be assigned to different contractors without onsite supervision by the restoration manager.
- e. A specific Grading Plan if the topography must be altered.
- f. A specific Erosion Control plan if soil or other substrate will be significantly disturbed during the course of the restoration.
- g. A Weed Eradication Plan designed to eradicate existing weeds and to control future invasion by exotic species that is carried out by hand weeding and supervised by a restoration biologist.
- h. A Planting Plan that specifies detailed plant palette based on the natural habitat type that is the model for the restoration, using local native stock and requiring that if plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars. The Planting Plan should provide specifications for preparation of nursery stock and include technical details of planting methods (e.g., spacing, micorrhyzal inoculation, etc.)
- i. An Irrigation Plan that describes the method and timing of watering and ensures removal of watering infrastructure by the end of the monitoring period.
- j. An Interim Monitoring Plan that includes maintenance and remediation activities, interim performance goals, assessment methods, and schedule.
- k. A Final Monitoring Plan to determine whether the restoration has been successful that specifies:
 - 1) A basis for selection of the performance criteria.
 - 2) Types of performance criteria.
 - 3) Procedure for judging success.
 - 4) Formal sampling design.
 - 5) Sample size.
 - 6) Approval of a final report, and
 - 7) Provision for possible further action if monitoring indicates that initial restoration has failed.

3.4. Additional Information.

Revision proposed for consistency with Policy C-BIO-6 and Single Family Residential Design Guidelines.

22.64.050 – Biological Resources

...

B. Biological Resource standards.

...

- 4. Invasive Plants.** Where feasible, require the removal of non-native, invasive plant species, and revegetation of denuded areas with native plants, and provision of primarily native, drought tolerant plant species for areas of new or replacement planting, per Land Use Plant Policy C-BIO-6

...
<p><i>Revision proposed to replace “spoils” with “dredged materials” and eliminate reference to “exceptions”.</i></p> <p>22.64.050 – Biological Resources</p> <p>...</p> <p>B. Biological Resource standards.</p> <p>...</p> <p>8. Coastal wetlands. Coastal wetlands shall be preserved and maintained as productive wildlife habitats, water filtering and storage areas, and, as appropriate, recreational open space, by limiting diking, dredging, and draining per Land Use Plan Policies C-BIO-14, C-BIO-15, C-BIO-16, and C-BIO-17, disposing of spoils dredged materials per Land Use Plan Policy C-BIO-18 and mitigating wetland impacts per Land Use Plan Policy C-BIO-21.</p> <p>9. Coastal wetland buffers. Adequate buffers shall be maintained surrounding coastal wetlands per Land Use Policy C-BIO-19 unless an adjustment or exception to standard buffers is granted per Land Use Plan Policy C-BIO-20.</p> <p>...</p> <p>11. Coastal streams, riparian vegetation, and buffers. Alterations to coastal streams and riparian vegetation shall be limited and adequate buffers shall be provided surrounding those resources per Land Use Plan Policy C-BIO-24, unless an adjustment or exception to the standard buffers is granted per Land Use Plan Policy C-BIO-25. Any alteration of riparian vegetation which is allowed under these policies shall require an erosion control plan and re-vegetation plan that incorporates native species to the maximum extent feasible.</p>
<p style="text-align: center;">Development Code Chapter 22.65 Coastal Zone Planned District Development Standards</p>
<p><i>Revision proposed for consistency with revised Policy C-AG-7.</i></p> <p>22.65.030 – Planned District General Development Standards</p> <p>...</p> <p>D. Building location:</p> <p>1. Clustering requirement.</p> <p>...</p> <p>Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. Any new parcels created shall have building envelopes outside any designated scenic protection area.</p> <p>...</p>
<p style="text-align: center;">Development Code Chapter : Definitions</p>
<p><i>Revision proposed to reflect shared implementation of the federal Endangered Species Act and incorporate the California Endangered Species Act.</i></p> <p>Endangered Species. An Endangered Species is an animal or plant species in danger of extinction throughout all or a significant portion of its range, as determined by the U.S. Fish and Wildlife</p>

Service or National Oceanic and Atmospheric Administration consistent with the Endangered Species Act of 1973, or as designated by the California Department of Fish and Game consistent with the California Endangered Species Act.

Delete Definition of Site Restoration Plan (Coastal) which would be redundant with suggested modification to Development Code Section 22.64.050.A.3 (see above).

Site Restoration Program (coastal). A site restoration program is a documented plan to restore or enhance the ecological quality of an area, which is prepared by a qualified specialist in biology. Site restoration programs must contain the following key components:

- A. A clear statement of the goals of the restoration for all habitat types. Characterization of the desired habitat, including an actual habitat, that can act both as a model for the restoration and as a reference site for developing success criteria.
- B. Sampling of reference habitat using the methods that will be applied to the restoration site with reporting of resultant data.
- C. Quantitative description of the chosen restoration site.
- D. Requirements for designation of a qualified restoration biologist as the Restoration Manager who will be personally responsible for all phases of the restoration.
- E. Prohibition on assignment of different phases of the restoration to different contractors without onsite supervision by the restoration manager.
- F. A specific grading plan if the topography must be altered.
- G. A specific Erosion Control plan if soil or other substrate will be significantly disturbed during the course of the restoration.
- H. A Weed Eradication Plan designed to eradicate existing weeds and to control future invasion by exotic species that is carried out by hand weeding and supervised by a restoration biologist.
- I. A Planting plan that specifies detailed plant palette based on the natural habitat type that is the model for the restoration and using local native stock and requiring that if plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars. The Planting plan should provide specifications for preparation of nursery stock and include technical details of planting methods (e.g., spacing, *mycorrhizal* inoculation, etc.)
- J. An Irrigation Plan that describes the method and timing of watering and ensures removal of watering infrastructure by the end of the monitoring period.
- K. An Interim Monitoring Plan that includes maintenance and remediation activities, interim performance goals, assessment methods, and schedule.
- L. A Final Monitoring Plan to determine whether the restoration has been successful that specifies:
 - a. A basis for selection of the performance criteria,
 - b. Types of performance criteria,
 - c. Procedure for judging success,
 - d. Formal sampling design,
 - e. Sample size,
 - f. Approval of a final report, and
 - g. Provision for possible further action if monitoring indicates that initial restoration has failed.
- M. An ongoing Repair and Maintenance Plan.

Revision proposed to reflect shared implementation of the federal Endangered Species Act and incorporate the California Endangered Species Act.

Threatened Species. A Threatened Species is an animal or plant species likely to become endangered within the foreseeable future throughout all or a significant portion of its range, as determined by the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration consistent with the Federal Endangered Species Act of 1973, or as designated by the California Department of Fish and Game consistent with the California Endangered Species Act.

Introduction – Land Use Plan

Revisions proposed to update the Introduction, clarify the contents of the LCPA, and delete duplicative text which is being moved to a new chapter related to policy interpretation.

Introduction (p. 1 through 5)

This ~~proposed~~ Land Use Plan (LUP) (LCPA) document and ~~it's the~~ accompanying ~~Development Code implementation program materials described below~~ present proposed ~~amendments~~ changes to the Marin County Local Coastal Program (LCP), ~~as~~ The proposed amendments were recommended by the Marin County Planning Commission on February 13, 2012. The proposed amendments are the result of nearly three years of public, agency and individual involvement, formal hearings, and extensive deliberation by the Planning Commission, and are now presented for public review and for consideration by the Marin County Board of Supervisors.

The proposed amendments to the Marin County LCP are contained in the following documents. These documents are available on the County's website at: www.marinlcp.org.

- The ~~proposed~~ LCP "Land Use Plan (LUP) Amendments" document includes policies and programs, as well as background and introductory text for each policy section. ~~Also included in the Land Use Plan document are a set of policy related maps and zoning maps.~~
- The ~~proposed~~ LCP "Development Code Amendments" (under separate cover) document ~~apply to the coastal zone, as is~~ a means of implementing the policies and programs of the LCP Land Use Plan. ~~Coastal zone-specific portions of the Marin County Development Code are included in this document, along with the full Definitions chapter.~~
- Policy maps and zoning maps for the coastal zone.
- Appendices. The following Appendices constitute parts of the Local Coastal Program:
 - Appendix 1: List of Recommended Public Coastal Accessways
 - Appendix 2: Inventory of Visitor-Serving, Commercial, and Recreation Facilities in the Coastal Zone
 - Appendix 3: Coastal Village Community Character Review Checklist (Local Coastal Program Historic Review Checklist)
 - Appendix 4: Design Guidelines for Construction in Areas of Special Character and Visitor Appeal and For Pre-1930's Structures
 - Appendix 5: Seadrift Settlement Agreement
 - Appendix 6: 1977 Wagner Report "Geology for Planning, Western Marin County"
 - Appendix 7: Categorical Exclusions Orders and Maps
 - Appendix 8: Certified Community Plans
 - a. Dillon Beach Community Plan
 - b. Bolinas Gridded Mesa Plan

The remaining material (Background Reports 1 through 7) are presented for background only and do not constitute parts of the LCP.

~~Both of the two~~ The proposed Land Use Plan Amendments and the Development Code documents ~~containing proposed amendments to the Marin County LCP~~ are entitled "Planning Commission-Approved Recommended Draft." ~~Before endorsing these documents, T~~he Marin County Planning Commission held eight public hearings from August 2011 through January 2012, each focusing on particular policy areas, to review and provide direction to staff on the policies, programs, Development Code provisions, and other contents contained in the draft LCP amendments.

~~Previously~~ Prior to the public hearings, the Planning Commission conducted nineteen public workshops from March 2009 through January 2011. These workshops also focused on particular policy areas and resulted in revisions that were reflected in a June 2011 Public Review Draft of the entire Local Coastal Program. Furthermore, ~~T~~he Board of Supervisors and Planning Commission ~~also~~ held a joint meeting on June 28, 2011 to adopt a schedule for further review of the LCP amendments and to accept public comments.

In addition to the public hearings and workshops ~~with~~ conducted by the Planning Commission, staff of the Community Development Agency conducted four public meetings in West Marin communities during 2008 and 2009, at which time the process of updating the Local Coastal Program was introduced. Four additional community workshops were held during 2011, following publication of the June 2011 Public Review Draft of the LCP. Finally, staff has conducted numerous meetings with community groups, interested organizations, other agencies, and California Coastal Commission staff. At each public workshop, hearing, and meeting, public testimony and comments were accepted, ~~and a~~ significant number of other written and electronic communications have also been received by the Planning Commission. Valuable feedback and input was gathered during this process and has been very helpful in facilitating the development of the policies, programs, and other provisions contained in these documents.

During the ~~series of eight~~ public hearings held on the proposed LCP amendments during 2011-12, the Planning Commission ~~has~~ reviewed all the provisions of the entire Local Coastal Program, including those provisions proposed changes to be changed as well as those existing provisions proposed to be maintained as is. In reviewing LCP provisions, the Planning Commission has taken into account the comments provided by members of the public and by community groups and agencies. The Planning Commission ~~Approved Recommended~~ Draft of the proposed Land Use Plan and Development Code amendments, the maps, and the relevant Appendices, as published in February 2012, will be presented to the Board of Supervisors for consideration and possible adoption. The package of LCP amendments adopted by the Board of Supervisors will then be submitted ~~and proposed submittal~~ to the California Coastal Commission for review and certification.

~~The Marin County Coastal Zone is a landscape of unsurpassed variety and beauty. Much of the area is encompassed within federal, state, and county parks, which provide habitat protection and opportunities for public recreation. The Coastal Zone also includes several small villages, productive agriculture and mariculture areas, scattered residences, bed and breakfast inns, and significant amounts of open space. The Marin County Local Coastal Program (LCP) is designed to preserve the unique environment of the Coastal Zone and to encourage the protection and restoration of its coastal resources, while encouraging public enjoyment of its coastal recreation opportunities.~~

The Local Coastal Program (LCP)

~~The Marin County Coastal Zone is a landscape of unsurpassed variety and beauty. Much of the area is encompassed within federal, state, and county parks, which provide habitat protection and opportunities for public recreation. The Coastal Zone also includes several small villages, productive agriculture and mariculture areas, scattered residences, bed-and-breakfast inns, and significant amounts of open space. The Marin County Local Coastal Program (LCP) is designed to preserve the unique environment of the Coastal Zone and to encourage the protection and restoration of its coastal resources, while encouraging public enjoyment of its coastal recreation opportunities.~~

The Local Coastal Program, or LCP, is the primary document that governs land development in the Marin County Coastal Zone. The LCP guides both public and private activities that constitute “development” on land or in water. In general, constructing a dwelling, a commercial building, a road, a boat dock, or other improvements constitutes a “development” that requires a coastal permit, with specific exceptions. Furthermore, “development” includes changes in the use of land or water, even where construction is not involved. Within the Coastal Zone, ~~t~~he definition of “development” in its entirety is as follows:

Development (coastal). On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973(commencing with Section 4511 of the Public Resources Code).

As used in this section, "structure" includes any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

"Development does not mean a "change of organization", as defined in California Code Section 56021 or a "reorganization", as defined in California Code Section 56073.

The Coastal Zone

The Marin County Coastal Zone is a strip of land and water defined by the California Coastal Act of 1976 that extends along the Pacific Ocean coastline. The Coastal Zone extends seaward from the shore a distance of three miles, and a variable distance landward, depending on topography (see Map 2 - Marin County Coastal Zone; only the land portion of the Coastal Zone is shown on Map 2). Maps available at the Community Development Agency show the boundary of the Coastal Zone, and a more detailed description can be found in the LCP Administrative Manual.

Purpose of the Local Coastal Program

The purpose of the LCP is to carry out the coastal resource protection policies of the California Coastal Act of 1976. Each coastal city and county in California is required by that law to prepare and implement an LCP for its portion of the Coastal Zone. Like other counties in California, Marin County has also adopted a comprehensive land use plan for its entire jurisdiction area, which extends landward well beyond the Coastal Zone boundary. Adopted in 2007, the Marin Countywide Plan and its related Community Plans guide land development throughout the County. However, in the Coastal Zone, the LCP takes precedence over these plans. Where the LCP contains specific provisions applicable to land and water development, such LCP provisions govern development activities. Policies of the Countywide Plan that are not addressed by the Coastal Act and the LCP (e.g. policies that address education, diversity, and public health) apply throughout the entire County, both within and outside the Coastal Zone.

Components of the Local Coastal Program

For purposes of submittal to the California Coastal Commission, as required by Coastal Act Section 30500, the an LCP is comprised of the a Land Use Plan, the an Implementation Program, and all accompanying land use and zoning maps, and, where necessary, other implementing actions including those represented in the Appendices. The two key components of the LCP are the Land Use Plan (LUP) and the Implementation Program (IP). The Land Use Plan contains written policies that indicate which land uses are appropriate in the various parts of the Coastal Zone. The LUP policies and programs also guide how natural resources shall be protected when land is developed, how public access to the coast shall be preserved, and how other coastal resources shall be maintained and enhanced.

The Marin County's LCP Land Use Plan contains chapters of the LUP are grouped in three major sections: Natural Systems and Agriculture, Built Environment, and Socioeconomic. The Natural Systems and Agriculture section contains the policy chapters of Agriculture; Biological Resources; Environmental Hazards; Mariculture; and Water Resources. The Built Environment section contains the policy chapters of Community Design; Community Development; Community Specific Policies; Energy; Housing; Public Facilities and Services; and Transportation. Finally, the Socioeconomic section contains the policy chapters of Historical and Archaeological Resources; Parks, Recreation and Visitor-Serving Uses; and Public Coastal Access. The Land Use Policy maps (Map Set 18a–18m) also form part of the Land Use Plan.

The A second major component of the an LCP is referred to by the Coastal Commission as the Implementation Program (IP). In Marin County's case, this component consists of the coastal zone-specific portions of the Marin County Development Code and the zoning maps of for the Coastal Zone (Map Set 29a–29l). The IP plays a central role in carrying out the policies and programs of the Land Use Plan by indicating which land uses are appropriate in each part of the Coastal Zone. Furthermore, the Code provisions of the IP contain specific requirements that apply to development projects, as well as detailed procedures for applicants to follow in order to obtain a coastal permit.

Finally, Marin County's LCP includes the resource and other maps found in the published set of maps and Appendices 1 through 8, as described above.

The Coastal Permit

The A—primary tool for implementing the LCP is the “coastal permit.” Most Many types of land development activities require that a coastal permit be issued by Marin County. Certain projects, such as those that involve work on tidelands around the margin of Tomales Bay, require a coastal permit from the California Coastal Commission (a state agency) rather than from the County.

The Marin County Community Development Agency (CDA) is responsible for implementing the LCP and for reviewing coastal permit applications. The CDA assists property owners and developers to determine whether their proposed project requires a coastal permit, whether the coastal permit should be obtained from Marin County or the Coastal Commission, and whether other types of permits from the County may also be required. Certain coastal permits approved by Marin County are appealable to the California Coastal Commission by an interested party who does not agree with the County's decision regarding the permit. Such permits are known as “appealable” permits (see the categorical exclusion areas as shown on Maps 27a—27k and appeal and permit jurisdiction areas on Maps 28a and 28b).

Interpretation of the Land Use Plan (Note: this section is being replaced with a new chapter related to Policy Interpretation)

Policy Interpretation. For consistency with the Marin Countywide Plan and other County documents, most of the policies contained in the LUP have been written in the imperative form. In other words, the policy sentence begins with a verb that gives instructions or directions (for example, “limit roads in the Coastal Zone to two lanes” or “preserve and restore structures with special character.”) Where the imperative form is used, the policy should be interpreted as being a mandatory requirement which, if written in a “subject verb” format, would incorporate the term “shall” (for example, “roads in the Coastal Zone shall be limited to two lanes” or “structures with special character shall be preserved and restored”). Alternatively, a policy statement which incorporates the term “should” is not mandatory, but strongly recommended, whereas a policy statement which uses “may” is permissive. Finally, the term “including” should be interpreted to mean “including but not limited to...”

Conflicts with existing laws. The LCP is guided by all applicable laws, and none of the provisions of the LCP will be interpreted by the County in a manner which violates those local, state, or federal laws. In particular, as consistent with Coastal Act Section 30040, Marin County will not grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation. The term “take” derives from the Fifth Amendment of the U.S. Constitution, which

~~states, in part: "... nor shall private property be taken for public use, without just compensation."~~

Effects of headings and titles. Each LUP policy is accompanied by a heading or title. These are provided for convenience only. To the degree that these headings or titles conflict with the text they accompany, the text shall govern.

Relationship to community plans. Community plans are considered part of the Marin Countywide Plan (CWP) and supplement the CWP by providing local goals and objectives that pertain to an individual community. With the exception of Dillon Beach and the Bolinas Gridded Mesa area, existing community plans in Marin's coastal zone were not certified by the Coastal Commission and thus are not a formal part of the LCP. However, the provisions of these plans do govern any permits issued under the CWP, such as Design Review and Use Permits, which are applicable to a majority of development in the Coastal Zone. In addition, the LUP incorporates many community plan policies that were identified by members of the communities as being appropriate to be part of the LCP. Accordingly, although the community plans themselves are separate documents from the LCP, they remain as important and relevant policy guides for development in their respective communities.

Administrative Manual and Appendices

As noted previously, Appendices 1 through 8 constitute part of the LCP. These Appendices contain elements that are essential to the interpretation and application of Land Use Plan policies. For instance, Appendix 2 contains the list of recommended Public Coastal Accessways referred to in Land Use Plan Policy C-PA-6 "Acquisition of New Public Coastal Accessways through Suitable Means." To improve readability of the Land Use Plan, this detailed list has been placed in an Appendix rather than in the body of the Land Use Plan itself.

The **Administrative Manual and remaining material (Background Reports 1 through 7) Appendices** contains background and supporting information that is intended to assist permit applicants and members of the public. The materials contained in these sections, **Background Reports** are not part of the LCP for purposes of the California Coastal Act. **The Administrative Manual contains the following items:**

- ◆ **"Categorical Exclusion Orders,"** which are documents adopted by the California Coastal Commission in order to exempt certain specified developments, as provided by law, from the need to obtain a coastal permit. (The Categorical Exclusion Orders require approval by the Coastal Commission under procedures separate from those that apply to LCPs, and therefore they are not part of the LCP)
- ◆ **A chart entitled "When Is a Coastal Permit Required?"** that describes various types of development projects and indicates whether or not a coastal permit is required.
- ◆ **Maps of the Coastal Zone, and maps of areas in which a coastal permit decision may be appealed to the California Coastal Commission**
- ◆ **Guidelines for development in mapped districts called "Areas of Special Character and Visitor Appeal" (formerly called "historic preservation" areas)**
- ◆ **Coastal permit application forms and other forms**
- ◆ **Development Approval Process in Detail** (a comprehensive description of coastal permits and how they are related to other County land use permits, as well as a brief history of the Marin County LCP)

The Appendices are as follows:

- Appendix 1: **Policies of Chapter 3 of the California Coastal Act of 1976**
- Appendix 2: **Local Coastal Program Framework**
- Appendix 3: **Unit I Existing and Proposed Policy Comparison**
- Appendix 4: **Unit II Existing and Proposed Policy Comparison**
- Appendix 5: **List of Recommended Public Coastal Accessways**

Approved Changes, Corrections and Errata

~~Appendix 6: Inventory of Visitor-Serving, Commercial, and Recreational Facilities in the Coastal Zone~~

~~Appendix 7: Coastal Village Community Character Review Checklist~~

~~Appendix 8: Design Guidelines for Construction in Areas of Special Character and Visitor Appeal and for Pre-1930's Structures~~

~~Seadrift Settlement Agreements~~

Appendix 1: List of Recommended Public Coastal Accessways

Appendix 2: Inventory of Visitor-Serving, Commercial, and Recreation Facilities in the Coastal Zone

Appendix 3: Coastal Village Community Character Review Checklist (Local Coastal Program Historic Review Checklist)

Appendix 4: Design Guidelines for Construction in Areas of Special Character and Visitor Appeal and For Pre-1930's Structures

Appendix 5: Seadrift Settlement Agreement

Appendix 6: 1977 Wagner Report "Geology for Planning, Western Marin County"

Appendix 7: Categorical Exclusions Orders and Maps

Appendix 8: Certified Community Plans

c. Dillon Beach Community Plan

d. Bolinas Gridded Mesa Plan

The Background Reports are as follows:

1. Policies of Chapter 3 of the California Coastal Act of 1976
2. Local Coastal Program Framework, including background information about the history of the LCP, how coastal permit requirements are implemented, and related materials
3. Unit I Existing and Proposed Policy Comparison
4. Unit II Existing and Proposed Policy Comparison
5. Biological Text Excerpts from Unit I and II LCP
6. Land Use Analysis
7. Agricultural Land Analysis

ATTACHMENT #6
Local Coastal Program Amendments (LCPA)

ALTERNATIVE TEXT FOR BOARD CONSIDERATION

The following is an excerpt from the February 2012 PC-Approved LCPA, containing the Agriculture and Biological Resources chapters of the Land Use Plan along with related Development Code sections. Also included is the new Land Use Plan chapter addressing Policies for the Interpretation of the LCP.

This document compiles all the Alternative text and other changes being proposed by staff for Board consideration in Attachments # 1 through 5 to the Board Letter. Proposed changes are shown in **highlighted strike-out and underline** format. Each proposed change also includes a corresponding note indicating where further discussion and details are provided in Attachments # 1 through 5. Except as noted, the Land Use Plan policies in Attachment #5 are listed in the order that they appear in the LCPA.



Photo courtesy of: Kurt Schroeder

Natural Systems and Agriculture

Introduction

In the Marin County Coastal Zone, development is closely intertwined with the natural environment. Villages, homes, farms, and parks co-exist with natural communities of plants and animals. Water and biological resources are abundant, providing sustenance to wildlife as well as beauty and pleasure to residents and visitors. Agriculture, mariculture and open space are mainstays of both community character and the local economy. Yet these resources are vulnerable. Poorly planned land development and construction can degrade or eliminate the values of sensitive habitat areas, agricultural productivity, and the open, unspoiled character of the Marin County Coastal Zone. The Local Coastal Program (LCP) therefore includes strong policies requiring that new development is undertaken in a way that assures the protection of natural resources.

The Natural Systems and Agriculture section addresses the following subjects:

- ♦ Agriculture (AG)
- ♦ Biological Resources (BIO)
- ♦ Environmental Hazards (EH)
- ♦ Mariculture (MAR)
- ♦ Water Resources (WR)



Photo courtesy of: Katherine Mindel Jones

Agriculture (AG)

Background

The rolling coastal hills and stream valleys of the Marin County Coastal Zone provide an exceptional environment for a distinctive type of agriculture that takes advantage of high quality grasslands sustained by the cool, moist conditions that prevail much of the year. Animal agriculture makes up the greatest part of the County's total agricultural production. This includes beef cattle, sheep, poultry and eggs, as well as dairy cows and the milk, yogurt, and cheese they yield. While the hilly terrain, pervasiveness of non-prime soils, and scarcity of dependable water sources limit intensive row crop cultivation through most of the Coastal Zone, a number of farms, many of them organic, raise fruits, vegetables, flowers, nuts and other crops.

In Marin County, coastal agriculture is important as an essential livelihood, a foundation for regional economic activity, and a wholesome, local source of food for residents of the Bay Area and beyond. It is estimated that every dollar of agricultural production yields a multiple of 2.5 additional dollars contributed to the local economy in employment opportunities, support industries, and tourism. In addition to economic benefits, agricultural land use also provides crucial ecosystem services such as the maintenance of soil fertility and structure, wildlife habitat and biodiversity, watershed benefits, nutrient cycling, and carbon sequestration. Finally, the working agricultural landscape provides world-class views, a pastoral frame for Marin's distinctive coastal villages, and an extraordinary open space backdrop for the myriad of recreational activities offered throughout the Coastal Zone. For all these reasons, the Local Coastal Program (LCP) policies seek to preserve viable agriculture as a permanent part of the fabric of coastal Marin for the benefit of residents, visitors, and the environment itself (see Map 3 - Protected Agricultural Lands).

The Coastal Act supports the continuation of agriculture on suitable lands in Sections 30241, 30241.5, and 30242. The conversion of land with prime agricultural soils to non-agricultural uses, such as residential or commercial development, is strictly limited by the Act; however, very little of the land in Marin County's Coastal Zone is classified as prime (see Map 4 - Agricultural Land). The Coastal Act mandates that all other lands suitable for agricultural use shall not be converted to nonagricultural uses unless continued or renewed agricultural use is not feasible, or such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.



Achieving these goals depends on interdependent resources: the land itself, and the people and systems that make it agriculturally productive. Marin is fortunate to have a strong community dedicated to agriculture and its future, comprised of hard-working, experienced, and resourceful people. However, some important trends point to the need to adjust certain LCP provisions to help assure that future.

In an era of corporate, industrialized agriculture, the great majority of Marin farms and ranches are family owned and operated, with most of those the third or fourth generation working the land. Fluctuating commodity prices, the expense of investments needed to stay competitive, and the rising cost of farmland are only some of the challenges casting doubt over the future viability of coastal agriculture. One clear need is the ability to pass the reins to the younger generation, while providing for the retiring one. In 1997 the average age of Marin's principal agricultural operators was 55.7 years. By 2002 it had risen to 58.4, and in 2007, to 59.7. At the same time, the family unit itself is a critical part of maintaining agriculture. More than 85% of Marin farms had between one and four family members involved in their operation, and 71% had a family member interested in continuing ranching or farming. Providing policies that support current agriculture while responding to these important trends is one of the key objectives of the changes proposed to the LCP, especially the provisions for intergenerational homes (Policy C-AG-5).

Other policies similarly provide for the essentials sustaining agriculture. Over half our farms and ranches report hiring farm labor, but securing additional farmworker housing has been a challenge. Many agricultural activities, especially dairying, require workers close at hand. As with other commercial and visitor-serving support workers, the lack of suitable housing leads to longer commutes with attendant traffic congestion, pollution and greenhouse gas emissions. The LCP recognizes that farmworker housing is an integral part of the principal permitted use of agriculture (Programs C-AG-2.b and 2.c).

Prices for commodities such as milk and beef are notoriously volatile and unreliable, often placing Marin's relatively small producers in jeopardy. Recently, one of Marin's historical dairies had to go out of business. Marin agriculture has responded with innovation and creativity to secure its future. Responding to a Cooperative Extension survey, 29% of Marin operations report having added new productions or enterprises to their farm or ranch over recent years, and 24% are making value-added products. Proposed LCP policies would help support such agricultural diversification, including making it easier for small scale direct to consumer sales (Program C-AG-2.e).

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While strengthening the economic vitality and long-term protection of agriculture, LCP policies work equally hard to deter the incursion of non-agricultural uses that would convert agricultural land and erode agricultural production. A key measure to continue the preservation of agriculture is the Agricultural Production Zone (C-APZ), which limits the use of land to agriculture, or uses that are accessory to, in support of, and compatible with agriculture. Additional LCP policies protect the land itself, by limiting subdivision and non-agricultural uses, providing for long-term agricultural and stewardship plans, and by controlling the size of private residences. Together, the LCP agricultural policies shape a balanced strategy to assure the protection of agricultural lands and to continue agricultural uses throughout the Marin County Coastal Zone for generations into the future.

Policies

C-AG-1 Agricultural Lands and Resources. Protect agricultural land, continued agricultural uses and the agricultural economy by maintaining parcels large enough to sustain agricultural production, preventing conversion to non-agricultural uses, and prohibiting uses that are incompatible with long-term agricultural production or the rural character of the County's Coastal Zone. Preserve important soils, agricultural water sources, and forage to allow continued agricultural production on agricultural lands.

(PC app. 10/10/11, 1/24/11)

[Adapted from Unit II Agriculture Policy 1, p. 98, and CWP Goal AG-1, p. 2-157]



C-AG-2 Coastal Agricultural Production Zone (C-APZ). Apply the Coastal Agricultural Production Zone (C-APZ) to preserve privately owned agricultural lands that are suitable for land-intensive or land-extensive agricultural productivity, that contain soils classified as Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, or Grazing Land capable of supporting production agriculture, or that are currently zoned C-APZ. Ensure that the principal use of these lands is agricultural, and that any development shall be accessory and incidental to, in support of, and compatible with agricultural production.

~~For the purposes of In~~ the C-APZ zone, the principal permitted use shall be agriculture, ~~defined as follows:~~

1. uses of land for the breeding, raising, pasturing, and grazing of livestock;
2. the production of food and fiber;
3. the breeding and raising of bees, fish, poultry, and other fowl;
4. the planting, raising, harvesting and producing of agriculture, aquaculture, horticulture, viticulture, vermiculture, forestry crops, and plant nurseries;
5. substantially similar uses of an equivalent nature and intensity; and
6. accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including one farmhouse per legal lot, one intergenerational home, agricultural worker housing, limited

Comment [1]: Att. 1, Sec. I (Agricultural Operations)

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agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities.

Viticulture is a permitted use. Conditional uses in the C-APZ zone include additional agricultural uses and non-agricultural uses including residential development potentially up to the zoning density, consistent with Policies C-AG-7, 8 and 9.

Comment [2]: Att. 1, Sec. 1 (Agricultural Operations)

Development shall not exceed a maximum density of 1 residential unit per 60 acres. Densities specified in the zoning are maximums that may not be achieved when the standards of the Agriculture policies below and other relevant LCP policies are applied.

(PC app. 10/10/11, 1/24/11)

[Adapted from Unit II Agriculture Policies 2 and 3, p. 98, and CWP Program AG-1.g, p. 2-162]

Program C-AG-2.a Allowed Uses: Use allowed by right. No permit required. Seek to clarify for the agricultural community those agricultural uses that are allowed by right and for which no permit is required. These include the Agricultural Exclusions from the existing Categorical Exclusion Orders. Clarify or add to these orders to specifically incorporate agricultural uses as defined in the LCP, including commercial gardening, crop production, dairy operations, beekeeping, livestock operations (grazing), livestock operations (large animals), and livestock operations (small animals). **Review aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that do not cause adverse environmental impacts and, hence, could be eligible additions to the categorical exclusion.**

(PC app. 10/10/11, 1/24/11)

[New program, not in Unit I or II]

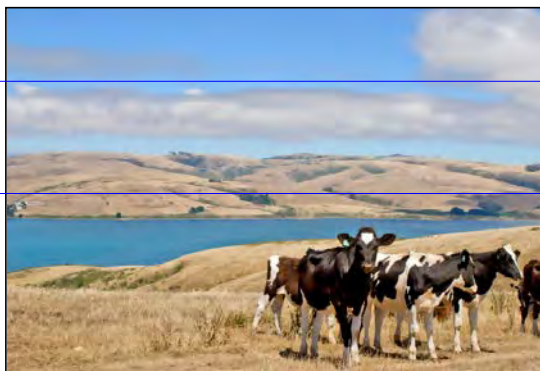
Comment [3]: Att.3, Sec I (Categorical Exclusions)

~~**Program C-AG-2.b Develop Implementation Measures for the C-APZ.**~~ (Program C-AG-2.b implemented by Development Code Section 22.62.060.B.1 and Table 5.1, deleted 1/23/12)

~~**Program C-AG-2.c Agricultural Worker Housing on Agricultural Lands.**~~ (Program C-AG-2.c implemented by Development Code Section 22.32.028, deleted 1/23/12)

Program C-AG-2.d Amnesty Program for Unpermitted and ~~Legal~~ Non-Conforming Agricultural Worker Housing Units.

Support the establishment of an amnesty program for unpermitted and ~~legal~~ non-conforming agricultural worker housing units in order to increase the legal agricultural worker housing stock and guarantee the health and safety of agricultural worker housing units. A specific period of time will be allowed for owners of illegal units to register their



units and make them legal without incurring fines, along with written assurances of the long-term use by agricultural workers and their families. Any such program must be consistent with LCP

Comment [4]: Att. 5

Comment [5]: Att. 5

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requirements related to the type, location and intensity of land uses as well as applicable resource protection policies.

(PC app. 1/9/12, 1/24/11)

[New program, not in Unit I or II]

Program C-AG-2.e Community-Specific Retail Sales Policies. Policies should be developed in the LCP's Community Development section, as appropriate, to address the concerns of specific communities with respect to retail sales (roadside especially). As necessary, greater constraints on these activities could be specified for individual communities or roadway segments than the general provisions in the LCP's Agriculture section (up to and including, for example, the possibility of specifying an outright prohibition of roadside agricultural sales in a particular area or along a particular stretch of roadway).

(PC app. 1/9/12, 10/10/11, 1/24/11)

[New program, not in Unit I or II]

(Note: Other agricultural sales and processing provisions originally included in Program C-AG-2.e implemented by Development Code Section 22.32.026 and 22.32.027)

Program C-AG-2.f Facilitate Agricultural Tourism. Review agricultural policies and zoning provisions and consider seeking to add educational tours, homestays and minor facilities to support them as a Categorical Exclusion.

(PC app. 10/10/11, 1/24/11)

[New program, not in Unit I or II]



C-AG-3 Coastal Agricultural Residential Planned Zone (C-ARP). Apply the Coastal Agricultural Residential Planned Zone (C-ARP) designation to lands adjacent to residential areas, and at the edges of Agricultural Production Zones in the Coastal Zone that have potential for agricultural production but do not otherwise qualify for protection under Policy C-AG-2. The intent of the C-ARP Zone is to provide flexibility in lot size and building locations in order to:

1. Promote the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use, and
2. Maintain the visual, natural resource and wildlife habitat values of subject properties and surrounding areas. The C-ARP district requires the grouping of proposed development.

(PC app. 10/10/11, 1/24/11)

[Adapted from Interim County Code Section 22.57.040. This policy also carries forward the concept of Unit I Agriculture Policy 30, p. 35]

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~~**Program C-AG-3.a Protect Agriculture Use Where Combined with Residential Use (C-ARP).**~~
(Program C-AG-3.a implemented by Development Code Section 22.62.060.B.2, Table 5-1, and Section 22.65.050, deleted 1/23/12)

C-AG-4 C-R-A (Coastal, Residential, Agricultural) District. Apply the C-R-A zoning district to provide areas for residential use within the context of small-scale agricultural and agriculturally-related uses, subject to specific development standards.

(PC app. 10/10/11, 1/24/11)

[Adapted from Interim County Code Section 22.57.020]

~~**Program C-AG-4.a Provide for Small Scale Agriculture Combined with Residential (C-R-A).**~~
(Program C-AG-4.a implemented by Development Code Section 22.62.070.B.1 and Table 5-2, deleted 1/23/12)

C-AG-5 Intergenerational Housing. Support the preservation of family farms by facilitating multi-generational operation and succession. In addition to the farmhouse, up to two additional dwelling units per legal lot may be permitted in the C-APZ designation for members of the farm operator's or owner's immediate family. Such intergenerational family farm homes shall not be subdivided from the primary agricultural legal lot, and shall be consistent with the standards of *LCP Policy C-AG-7* and the building size limitations of *Policy C-AG-9*. Such intergenerational homes shall not be subject to the requirement for an Agricultural Production and Stewardship Plan (C-AG-8), permanent agricultural conservation easement (C-AG-7), nor shall occupants be required to be actively and directly engaged in the agricultural use of the land. An equivalent density of 60 acres per unit shall be required for each home, including any existing homes. No Use Permit shall be required for the first intergenerational home on a qualifying lot, but a Use Permit shall be required for a second intergenerational home.

(PC app. 2/13/12, 10/10/11, 1/24/11)

[New policy, not in Unit I or II]

C-AG-6 Non-Agricultural Development of Agricultural Lands. Require that non-agricultural development, including division of agricultural lands, shall only be allowed upon demonstration that long-term productivity on each parcel created would be maintained and enhanced as a result of such development. In considering divisions of agricultural lands in the Coastal Zone, the County may approve fewer parcels than the maximum number of parcels allowed by the Development Code, based on site characteristics such as topography, soil, water availability, environmental constraints and the capacity to sustain viable agricultural operations.

(PC app. 10/10/11, 1/24/11)

[Adapted from CWP Policy AG-1.5, p. 2-158, and consistent with Coastal Act Policy 30241 and 30242]

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.

Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP, and in particular the policies of the Natural Systems and Agriculture Element of the LUP.

A. **Standards for Agricultural Uses in the C-APZ:**

All of the following development standards apply:

1. Permitted development shall protect and maintain continued agricultural use and contribute to agricultural viability. Development of agricultural facilities shall be sited to avoid agricultural land whenever possible, consistent with the operational needs of agricultural production. If use of agricultural land is necessary, prime agricultural land shall not be converted if it is possible to

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utilize other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted.

Comment [6]: Att. 3, Sec II (Structures on Agricultural Land and Clustering)

2. Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies, including Tomales Bay, either individually or cumulatively.
3. Permitted development shall have no significant adverse impacts on environmental quality or natural habitats, and shall meet all other applicable policies, consistent with the LCP.

4. In order to retain the maximum amount of land in agricultural productions or available for future agricultural uses, farmhouses, intergenerational homes, and agricultural homestay facilities shall be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space.

Comment [7]: Att. 3, Sec II (Structures on Agricultural Land and Clustering)

B. Standards for Non-Agricultural Uses:

In addition to the standards of Section A. above, all of the following development standards apply to non-agricultural uses, including division of agricultural lands or construction of two or more dwelling units (excluding agricultural worker or intergenerational housing). The County shall determine the density of permitted residential units only upon applying Policy C-AG-6 and the following standards and making all of the findings listed below.

1. In order to retain the maximum amount of land in agricultural production or available for future agricultural use, homes, roads, residential support facilities, and other non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, or shall not require new road construction or improvements resulting in significant impacts on agriculture, natural topography, major vegetation, or significant natural visual qualities of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations and shall be designed and sited to avoid hazardous areas. Any new parcels created shall have building envelopes outside any designated scenic protection area.
2. The creation of a homeowners' or other organization and/or the submission of an Agricultural Production and Stewardship Plan (APSP) may be required to provide for the proper utilization of agricultural lands and their availability on a lease basis or for the maintenance of the community's roads, septic or water systems.
3. Consistent with state and federal laws, a permanent agricultural conservation easement over that portion of the property not used for physical development or services shall be required for proposed land divisions, non-agricultural development, and residential projects, other than a farmhouse, agricultural worker housing, or intergenerational housing, to promote the long-term preservation of these lands. Only agricultural and compatible uses shall be allowed under the easement. In addition, the County shall require the execution of a covenant not to divide for the parcels created under this division so that each will

Comment [8]: Att. 5



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be retained as a single unit and will not be further subdivided.

4. Proposed development shall only be approved after making the following findings:
 - a. The development is necessary because agricultural use of the property would no longer be feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property.
 - b. The proposed development will not conflict with the continuation or initiation of agricultural uses on that portion of the property that is not proposed for development, on adjacent parcels, or on other agricultural parcels within one mile of the perimeter of the proposed development.
 - c. Appropriate public agencies are able to provide necessary services (fire protection, police protection, schools, etc.) to serve the proposed development without extending urban services.

(PC app. 2/13/12, 1/9/11, 1/24/11)

[Adapted from Unit II Agricultural Policies 4 and 5, pp. 98-99. This policy also carries forward Unit I Agriculture Policy 30, p.35.]

C-AG-8 Agricultural Production and Stewardship Plans.

1. ~~A master plan may require s~~Submission of an Agricultural Production and Stewardship Plan (APSP); ~~An APSP shall also~~ be required for approval of land division or non-agricultural development of Agricultural Production Zone (C-APZ) lands ~~when the master plan requirement has been waived,~~ except as provided for in (3) below.
2. The purpose of an APSP prepared and submitted for land division or for residential or other non-agricultural development of C-APZ lands is to ensure that long-term agricultural productivity will occur and will substantially contribute to Marin's agricultural industry. Such a plan shall clearly identify and describe existing and planned agricultural uses for the property, explain in detail their implementation, identify on-site resources and agricultural infrastructure, identify product markets and processing facilities (if appropriate), and demonstrate how the planned agricultural uses substantially contribute to Marin's agricultural industry. An APSP shall provide evidence that at least 95% of the land will remain in agricultural production or natural resource protection and shall identify stewardship activities to be undertaken to protect agriculture and natural resources. An APSP shall be prepared by qualified professionals with appropriate expertise in agriculture, land stewardship, range management, and natural resource protection. The approval of a development proposal that includes an APSP shall include conditions ensuring the proper, long-term implementation of the plan.
3. The requirement for an APSP shall not apply to agricultural worker housing or to intergenerational housing units. The APSP may be waived for residences and residential accessory buildings or structures to be occupied or used by the property owner(s) or lessee who is directly engaged in the production of agricultural commodities for commercial purposes on the property. It may also be waived for non-agricultural land uses when the County finds that the proposal will enhance current or future agricultural use of the property and will not convert the property to primarily residential or other non-agricultural use, as evidenced by such factors as bona fide commercial agricultural production on the property, the applicant's history and experience in production agriculture, and the fact that agricultural infrastructure (such as fencing, processing facilities, marketing mechanisms, agricultural worker housing, or agricultural land leasing opportunities) has been established or will be enhanced.
4. Projects subject to the potential requirement of preparing an APSP should be referred to such individuals or groups with agricultural expertise as appropriate for analysis and a recommendation.

Comment [9]: Att. 5

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Such individuals or groups should also be requested to periodically review and evaluate the effectiveness of the APSP program.

(PC app. 2/13/12, 10/10/11, 1/24/11)

[Adapted from CWP Program AG-1.b, pp. 2-160 and 2-161]

Program C-AG-8.a Commercial Agricultural Production. Develop criteria and standards for defining commercial agricultural production so that APSPs can differentiate between commercial agricultural production and agricultural uses accessory to residential or other non-agricultural uses.

(PC app. 10/10/11, 1/24/11)

[New program, not in Unit I or II]

C-AG-9 Residential Development Impacts and Agricultural Use. Ensure that lands designated for agricultural use are not de facto converted to residential use, thereby losing the long-term productivity of such lands.

1. Residential development shall not be allowed to diminish current or future agricultural use of the property or convert it to primarily residential use.
2. Any proposed residential development subject to a Coastal Permit shall comply with LCP policies including ensuring that the mass and scale of new or expanded structures respect environmental site constraints and the character of the surrounding area. Such development must be compatible with ridge protection policies and avoid tree-cutting and grading wherever possible.

The County shall exercise its discretion in light of some or all of the following criteria and for the purpose of ensuring that the parcel does not de facto convert to residential use:

- a. The applicant's history of production agriculture.
 - b. How long term agricultural use of the property will be preserved — for example, whether there is an existing or proposed dedication or sale of permanent agricultural easements or other similar protective agricultural restrictions such as Williamson Act contract or farmland security zone.
 - c. Whether long term capital investment in agriculture and related infrastructure, such as fencing, processing facilities, market mechanisms, agricultural worker housing or agricultural leasing opportunities have been established or are proposed to be established.
 - d. Whether sound land stewardship practices, such as organic certification, riparian habitat restoration, water recharge projects, fish-friendly farming practices, or erosion control measures, have been or will be implemented.
 - e. Whether the proposed residence will facilitate the ongoing viability of agriculture such as through the intergenerational transfer of existing agricultural operations.
3. In no event shall a single-family residence subject to these provisions exceed 7,000 square feet in size. Where one or two intergenerational residence units are allowed in the C-APZ zone, the aggregate residential development on the subject legal lot shall not exceed 7000 square feet.
 4. However, agricultural worker housing, up to 540 square feet of garage space for each residence unit, agricultural accessory structures, and up to 500 square feet of office space in the farmhouse used in connection with the agricultural operation on the property shall be excluded from the 7,000 square foot limitation.

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5. The square footage limitations noted in the above criteria represent potential maximum residence unit sizes and do not establish a mandatory entitlement or guaranteed right to development.

(PC app. 10/10/11, 1/24/11)

[Adapted from CWP Program AG-1.a, pp.2-159 and 2-160]

C-AG-10 Marin Agricultural Land Trust (MALT) and Other Methods of Preserving Agriculture.

Support the objectives of the Marin Agricultural Land Trust (MALT) to protect agricultural lands through the transfer, purchase, or donation of development rights or agricultural conservation easements on agricultural lands. Support and encourage action by MALT in the Coastal Zone to preserve agricultural land for productive uses. Support the use of the County's adopted model agricultural easement, implementation of Transfer of Development Rights (TDR) programs and similar innovative techniques to permanently preserve agricultural lands.

(PC app. 10/10/11, 1/24/11)

[Adapted from Unit II Agriculture Policy 7, p. 101]

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Photo courtesy of: Deborah Ahern-Perchetti

Biological Resources (BIO)

Background

The Marin County Coastal Zone contains a broad range of estuarine and marine environments, tidal marshes, freshwater wetlands, stream corridors, upland forests, chaparral, and grasslands.

Much of the Coastal Zone in Marin County is managed by the National Park Service, California Department of Parks and Recreation, and California Department of Fish and Game. These agencies place a high priority on resource stewardship along with serving recreation purposes. Various state and federal laws and regulations govern the definition and protection of biological resources, including the state and federal Endangered Species Acts and the federal Migratory Bird Treaty Act.

Despite a wealth of protections, biological resources remain vulnerable. Land development, if not well-planned and executed, can result in degradation of resources through loss or fragmentation of wildlife habitat, filling of crucial wetlands, and displacement of plant communities.

The Coastal Act places a high priority on the protection of biological resources. Strict limits are placed on development in environmentally sensitive habitat areas (ESHA). The Act defines such areas to encompass habitats that are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. In general, only land uses that are dependent on the habitat resources are allowable within ESHAs.

Wetlands are one class of ESHA and in California approximately 92 percent of our wetlands have been lost. The Coastal Act defines wetlands broadly and addresses both areas of substantial size, such as Bolinas Lagoon, and smaller, isolated wetlands, such as those formed by seeps or springs. Very limited types of development are allowed in wetlands and then only where there is no feasible less environmentally damaging alternative and feasible mitigation measures have been adopted.



Streams are another type of ESHA. Many species of animals and plants are dependent on them and on their associated riparian corridors, which are especially valuable as habitat connectors. The Coastal Act allows very limited types of development within streams, including necessary water supply projects, flood control projects, and habitat improvement projects.

Other sensitive biological resources in the County's coastal zone include dunes and beaches, salt marshes, fresh water marshes, tidal freshwater wetlands, riparian corridors, chaparral, and grasslands, which are fragile habitats that are

easily disturbed, as well as communities of rare plants, and essential habitats for protected species of fish and wildlife such as Snowy Plover (*Charadrius alexandrinus nivosus*), Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), California red-legged frog (*Rana draytonii*) and Central California coast steelhead (*Oncorhynchus mykiss*). This list is not exhaustive, but is meant to highlight those habitats that are prevalent in the Coastal Zone (see Map 5 – Vegetation, Map 6 – Special-status Species and Sensitive Natural Communities, and Map 7 – Wetlands and Streams).

The biological resources of Marin County include unique habitat areas that support wildlife and plants that maintain the function and integrity of the ecosystem. These areas not only serve an important ecological function, but they also have an intrinsic and aesthetic value to residents and visitors. The ecological importance of these areas has been recognized, such as the special designation of Bolinas Lagoon and Tomales Bay as "Wetlands of International Significance" by the Convention on Wetlands of International Importance, called the Ramsar Convention. This intergovernmental treaty provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. Bolinas Lagoon received its recognition on September 1, 1998, and Tomales Bay on September 30, 2002.

Bolinas Lagoon and Tomales Bay are part of a larger, relatively undisturbed complex of wetlands along the Marin/Sonoma coast that includes Drakes and Limantour Esteros, Abbotts Lagoon, Estero Americano, Estero de San Antonio, and Bodega Harbor. Tomales Bay, Bolinas Lagoon, and the waters along much of the County's ocean shoreline are also part of the Gulf of the Farallones National Marine Sanctuary. The area is within the Pacific flyway and supports approximately 20,000 wintering shorebirds, seabirds, and waterbirds both seasonally and year-round. Subtidal areas and extensive mudflats support diverse populations of invertebrates and provide nursery and feeding habitat for resident and migratory fish, while steelhead and coho salmon access streams in the watershed.

In Tomales Bay, eelgrass beds occur within the shallow waters at the northern end of the Bay that are critical for particular species of migratory birds, and for fish species such as Pacific herring. The rocky points, intertidal areas, and shoreline substrate in Tomales Bay provide habitat for many distinct invertebrate communities. The wetlands areas in Tomales Bay also serve as corridors to valuable spawning nurseries for the Coho salmon and Steelhead. Estero Americano and Estero de San Antonio are "seasonal estuaries" and their unique morphology result in a fjord-like quality which is not found in other California wetlands and results in a wide variety of species diversity and habitats.

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The Coastal Zone also includes unique terrestrial habitats such as serpentine grasslands, chaparral habitat that contain endemic plants such as Mount Tamalpais Manzanita (*Arcostaphylos hookeri Montana*), and coastal terrace prairie grasslands. In California, there has been a loss of 99% of native grasslands which offer valuable foraging and dispersal habitat for many wildlife species. The coastal dune communities provide habitat for several species of plants and animals that have adapted to the harsh environment of the shoreline and provide protection to inland areas from wave run-up generated by prolonged storms and high seas. The list of unique species and habitats of the Coastal Zone is extensive, which is evident in the amount of literature and research that has been produced in the region, as highlighted in the 1980 Marin County Local Coastal Programs, Unit I and Unit II.

In 1980 and 1981, respectively, the Marin County Local Coastal Program, Unit I and Unit II were certified by the State Coastal Commission. The original plans contain important information regarding the natural resources, geology, and historical development of the Coastal Region. This plan is a continuation of the direction and foundation of knowledge established in the original plans. Since approval of the original LCPs, certain programs have been completed and new knowledge gained; yet, there is still much more to learn. The policies in this chapter are based on the foundation of the original LCP's commitment to conservation and protection of our biological resources, while providing for development that is allowed under the Coastal Act and preserving the function and values of these areas. These policies are to be implemented in light of the best available science, including reports, studies, or plans that are now available or may be available in the future regarding environmental findings, such as:

- Bolinas Lagoon Ecosystem Restoration Project: Recommendations for Restoration and Management, Gulf of the Farallones National Marine Sanctuary Advisory Council, Bolinas Lagoon Restoration Project Working Group, 2008.
- Fisheries Assessment for Bolinas Lagoon Tributaries within the Golden Gate Area, Golden Gate National Park Service, 2002.
- Projecting the Future Evolution of Bolinas Lagoon, Marin County Open Space District, 2006
- Tidal Marsh Birds of the San Francisco Bay Region, Status, Distribution and Conservation of 5 Category 2 Taxa, USGS, 1997.

Implementation of the Local Coastal Program (LCP) is carried out, in part, through the use of mapped data. Maps of biological resources, including special status species, wetlands, and streams, are included in the LCP document. While these maps are important indicators of the presence of significant resources that require protection under LCP policies, additional information regarding such resources will become available through site-specific review of proposed projects, through future map updates, and through other means. Thus, protection of biological resources is not limited to those that are mapped in this document. Furthermore, LCP policies address areas adjacent to ESHAs and parks and recreation areas, and as knowledge about those areas increases or as park boundaries change through land acquisitions, the LCP policies will be applied accordingly.

This region is also home to nonprofit research organizations and institutions such as the Audubon Canyon Ranch and PRBO Conservation Science (formerly the Point Reyes Bird Observatory) Palomarin Field Station and Wetland Center that actively contribute to the growing body of research on conservation science which can be used to address problems related to watershed protection, habitat management, recreational pressures, invasive species, and other coastal management issues, and these databases of knowledge should be included in relevant discussion related to ESHAs.

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Marin County's biological resources are intertwined with villages, farms, homes, and roads. LCP policies are designed to support the protection and enhancement of biological resources, while the activities of coastal residents and visitors continue to flourish.

Policies

C-BIO-1 Environmentally Sensitive Habitat Areas (ESHAs).

1. An environmentally sensitive habitat area (ESHA) is any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.
2. For the purposes of this Chapter, ESHA is addressed in three general categories: wetlands, streams and riparian areas, and terrestrial ESHAs. Terrestrial ESHA refers to those non-aquatic habitats that support rare and endangered species; coastal dunes as referenced in C-BIO-7 (Coastal Dunes); and roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats). The ESHA policies of C-BIO-2 (ESHA Protection) and C-BIO-3 (ESHA Buffers) apply to all categories of ESHA, except where modified by the more specific policies of the LCP.
2. Protect ESHAs against disruption of habitat values, and only allow uses within those areas that are dependent on those resources. Disruption of habitat values occurs when the physical habitat is significantly altered or when species diversity or the abundance or viability of species populations is reduced. The type of proposed development, the particulars of its design, and its location in relation to the habitat area, will affect the determination of disruption. Control public access to ESHAs, including the timing, intensity, and location of such access, to minimize disturbance to wildlife. Avoid fences, roads, and structures that significantly inhibit wildlife movement, especially access to water. *(relocate text to C-BIO-2)*
3. In areas adjacent to ESHAs and parks and recreation areas, site and design development to prevent impacts that would significantly degrade those areas, and to be compatible with the continued viability of those habitat and recreation areas. *(relocate text to C-BIO-3)*

(PC app. 1/23/12, 12/1/11, 1/24/11)

[Adapted from Unit I Habitat Protection Policies 24 and 25, p. 34, and Unit II Natural Resources Policy 5, p. 74]

C-BIO-2 ESHA Protection Development Proposal Requirements in ESHAs. Allow development in or adjacent to an ESHA only when the type of development proposed is specifically allowed in the applicable Biological Resources Policies of the LCP. Consistent with Coastal Act Sections 30233 and 30236, development in wetlands, estuaries, streams and riparian habitats, lakes and portions of open coastal waters are limited as provided in C-BIO-14 through C-BIO-26.

1. Prioritize avoidance of land use and development impacts to ESHAs. Where this is not feasible, protect ESHAs against disruption of habitat values, and only allow uses within those areas that are dependent on those resources. Disruption of habitat values occurs when the physical habitat is significantly altered or when species diversity or the abundance or viability of species populations is reduced. The type of proposed development, the particulars of its design, and its location in relation to the habitat area, will affect the determination of disruption. *(relocated text from PC-Approved C-BIO-1.2)*

Comment [10]: Att.1, Sec. V (Types of ESHA and ESHA Definition)

Comment [11]: Att. 1, Sec VI (Uses in ESHA and Site Assessments)

Comment [12]: Att.1, Sec VI (Uses in ESHA and Site Assessments)

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2. Control public access to ESHAs, including the timing, intensity, and location of such access, to minimize disturbance to wildlife. *(relocated text from PC-Approved C-BIO-1.2)*

3. Avoid fences, roads, and structures that significantly inhibit wildlife movement, especially access to water. *(relocated text from PC-Approved C-BIO-1.2)*

4. Except for those limited uses provided in C-BIO-2.1, C-BIO-14 (Wetlands), C-BIO-15 (Diking, Filling, Draining and Dredging), and C-BIO-24 (Coastal Streams and Riparian Vegetation), or as allowed pursuant to C-EH-25 (Vegetation Management in an ESHA), maintain ESHAs in their natural condition. Any permitted development in an ESHA. Such uses must also meet the following general requirements:

Comment [13]: Att. 1, Sec VI (Uses in ESHA and Site Assessments)

- a. There is no feasible less environmentally damaging alternative.
- b. Mitigation measures are provided that will eliminate adverse environmental effects when possible, or, when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels.
- c. Disruption of the habitat values of the resources is avoided.

5. Development proposals within or adjacent to ESHA will be reviewed subject to a biological site assessment. Any development must also be determined to conform to all applicable Biological Resources policies in order to be permitted. This determination shall be based upon a site assessment which shall The purpose of the biological site assessment is to confirm the extent of the ESHA, document any site constraints and the presence of other sensitive biological resources, recommend buffers, development timing, mitigation measures or precise required setbacks, provide a site restoration program where necessary, and provide other information, analysis and modifications appropriate to protect the resource necessary to demonstrate compliance with the LCP.

Comment [14]: Att. 1, Sec VI (Uses in ESHA and Site Assessments)

(PC app. 12/1/11, 6/28/10)

[Adapted from the concept of Unit II Natural Resources Policy 5.b, p. 74]

C-BIO-3 ESHA Buffers, ~~Environmentally Sensitive Habitats of Rare or Endangered Species and Unique Plant Communities.~~ *(Deleted 12/1/11)*

Comment [15]: Att. 1, Sec VII (ESHA Buffers)

1. In areas adjacent to ESHAs and parks and recreation areas, site and design development to prevent impacts that would significantly degrade those areas, and to be compatible with the continued viability of those habitat and recreation areas. *(relocated text from PC-Approved C-BIO-1.3)*

2. Provide buffers for wetlands, streams and riparian areas in accordance with C-BIO-19 and C-BIO-24, respectively.

Comment [16]: Att. 1, Sec VII (ESHA Buffers)

3. Establish buffers for terrestrial ESHA to provide separation from development impacts. Maintain such buffers in a natural condition, allowing only those uses that will not significantly disrupt the habitat. Generally, buffers for terrestrial ESHA shall be 50 feet, a distance that may be adjusted by the County as appropriate to protect the habitat value of the resource. Such adjustment shall be made on the basis of a biological site assessment supported by evidence that includes but is not limited to:

- a. Sensitivity of the ESHA to disturbance;

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- b. Habitat requirements of the ESHA, including the migratory patterns of affected species and tendency to return each season to the same nest site or breeding colony;
- c. Topography of the site
- d. Movement of stormwater;
- e. Permeability of the soils and depth to water table;
- f. Vegetation present
- g. Unique site conditions;
- h. Whether vegetative, natural topographic, or built features (e.g., roads, structures) provide a physical barrier between the proposed development and the ESHA;
- i. The likelihood of increased human activity and disturbance resulting from the project relative to existing development.

Comment [17]: Att. 1, Sec VII (ESHA Buffers)

C-BIO-4 Protect Major Vegetation. Require a Coastal Permit for the removal or harvesting of major vegetation. Coastal Permits shall allow the management or removal of major vegetation where necessary to minimize risks to life and property or to promote the health and survival of surrounding vegetation native to the locale, while avoiding adverse impacts to an ESHA or its buffer, coastal waters, and public views, and shall not conflict with prior conditions of approval, consistent with Policy C-EH-2524 (Vegetation Management in an ESHA).

Comment [18]: Att. 5

(PC app. 2/13/12, 1/23/12, 6/28/10)

[Adapted from Unit I Habitat Protection Policy 22, p. 34, and Interim County Code Section 22.56.055]

Program C-BIO-4.a Determine the Location of Heritage Trees and Visually Prominent Vegetation. Develop a process for defining heritage trees and vegetation that is visually prominent or part of a significant view or viewshed, and for mapping areas in the Coastal Zone that contain such vegetation.

(PC app. 1/23/12)

[New Program, not in Unit I or II]

Program C-BIO-4.b Integrated Planning for Fire Risk, Habitat Protection, and Forest Health. Develop a Coastal Permit process that protects coastal resources and allows for expedited review of projects related to the management or removal of major vegetation to minimize risks to life and property or to promote the health and survival of surrounding vegetation native to the locale.

(PC app. 1/23/12)

[New Program, not in Unit I or II]

C-BIO-5 Ecological Restoration. Encourage the restoration and enhancement of degraded ESHAs and the creation of new ESHAs, and streamline regulatory processes whenever possible to facilitate the successful completion of restoration projects.

(PC app. 12/1/11, 6/28/10)

[New policy, not in Unit I or II]

Program C-BIO-5.a Determine Locations of ESHAs. Continue to update the process for determining whether projects are within or adjacent to ESHAs. The process shall continue to be based on the best available scientific and geographic information and a level of review commensurate with the nature and scope of the project and the potential existence of an ESHA.



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(PC app. 12/1/11, 6/28/10)
[New program, not in Unit I or II]

Program C-BIO-5.b ~~Allowed Development in an ESHA~~ **“Safe Harbor” for Expansion of ESHA.** Consider a future work item to encourage the expansion of ESHAs by establishing policies, procedures and criteria that would allow such enhancements and protect sensitive resources while maintaining affected properties to remain subject to pre-existing buffers. The size of any buffer designated as a result of this program would not be a precedent for the size of any buffer on any other development site. This program would lead to policies and implementing measures that would be subject to review and certification as an amendment to the LCP.

(PC app. 1/23/12, 12/1/11, 6/28/10)
[New program, not in Unit I or II]

Comment [19]: Att. 3, Sec VII (Allowed Development in an ESHA)

C-BIO-6 Invasive Plants. Where feasible, require the removal of non-native, invasive plant species such as pampas grass, brooms, iceplant, thistles and other invasive plant species on the list maintained by the California Invasive Plant Council in the areas of development and revegetate those areas with native plants as specified in Coastal Permit approvals. Ensure that required landscaping avoids use of non-native, invasive trees and plants in accordance with Policy C-DES-9 Landscaping. This policy does not apply to agricultural crops and pastures.

(PC app. 12/1/11, 1/24/11)
[Adapted from Unit I Habitat Protection Policy 28, p. 34]

Comment [20]: Att. 5

C-BIO-7 Coastal Dunes. Prohibit development in coastal dunes to preserve dune formations, vegetation, and wildlife habitats. Prevent overuse in dune areas by mechanisms such as restricting parking, directing pedestrian traffic to areas capable of sustaining increased use, and fencing. Prohibit motor vehicles in dune areas except for emergency purposes; prohibit motor vehicles in non-dune beach areas except for emergency and essential maintenance purposes and where previously permitted.

(PC app. 2/13/12, 12/1/11, 6/28/10)
[Adapted from Unit II Natural Resources Policy 5.a, p. 74]

Comment [21]: Att. 5

C-BIO-8 Stringline Method of Preventing Beach Encroachment. In a developed area where most lots are developed and where there are relatively few vacant lots, no part of a proposed new structure development (other than a shoreline protective device), including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjacent structures. Enclosed living space in the a new unit or addition shall not extend farther seaward than a second line drawn between the most seaward portions of the enclosed living space of the adjacent structures.

(PC app. 1/23/12, 12/1/11, 6/28/10)
[New policy, not in Unit I or II]

Comment [22]: Att. 5

C-BIO-9 Stinson Beach Dune and Beach Areas. Prohibit development that would adversely impact the natural sand dune formation, sandy beach habitat and potential prescriptive rights in the areas west of the paper street Mira Vista and the dry sand areas west of the Patios. Prohibit development west of Mira Vista, including erection of fences, signs, or other structures, to preserve the natural dune habitat values, vegetation and contours, as well as the natural sandy beach habitat, and to protect potential public prescriptive rights over the area. Continue to pursue a land trade between the lots seaward of Mira Vista and the street right-of-way to more clearly establish and define the boundaries between public and private beach areas.

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Site development of other shorefront lots within the Stinson Beach and Seadrift areas outside of the natural sand dune formations, consistent with LUP Policy C-BIO-7 (Coastal Dunes). Where no dunes are evident, any new development on shorefront lots shall be set back behind the first line of terrestrial vegetation to the maximum extent feasible, in order to minimize the need for protective works, protect sandy beach habitat, and provide a buffer area between private and public use areas to protect both the scenic and visual character of the beach, and the public right of access to the use and enjoyment of dry sand areas.

(PC app. 12/1/11, 6/28/10)

[Adapted from Unit I Natural Dune and Sandy Beach Protection Policies 19 and 20, p. 29]

C-BIO-10 Roosting and Nesting Habitat. Prohibit the alteration or removal of groves of trees that provide colonial nesting and roosting habitat for monarch butterflies or other wildlife, except where they the trees pose a threat to life or property.

(PC app. 12/1/11, 6/28/10)

[Adapted from Unit I Habitat Protection Policy 22, p. 34]



C-BIO-11 Development Adjacent to Roosting and Nesting Habitat. Development adjacent to wildlife nesting and roosting areas shall be set back a sufficient distance to protect against disruption in nesting and roosting activities and designed to avoid impacts on the habitat area. Time such development activities so that disturbance to nesting and breeding wildlife is minimized. To the extent feasible, use native vegetation for landscaping.

(PC app. 12/1/11, 6/28/10)

[Adapted from Unit I Habitat Protection Policy 23, p. 34]

Program C-BIO-11.a Grassy Uplands Surrounding Bolinas Lagoon. Collect and evaluate data and studies to determine the habitat values of upland grassland feeding areas around Bolinas Lagoon for shorebirds, and develop effective policies to protect these areas against significant disruption of habitat values. Limited grazing agricultural use of these lands may be permitted.

(PC app. 12/1/11, 1/24/11)

[Adapted from Unit I Habitat Protection Policy 26, p. 34]

~~**C-BIO-13 Biological Productivity.**~~ (Moved to Water Resources as C-WR-18, deleted 12/1/11)

C-BIO-14 Wetlands. Preserve and maintain wetlands in the Coastal Zone as productive wildlife habitats, water filtering and storage areas, and, as appropriate, recreational open space, consistent with the policies in this section. Evaluate land uses in wetlands as follows:

1. Permit diking, filling, and dredging of wetlands only in conformance with Policy C-BIO-15. Prohibit filling of wetlands for the purposes of residential development.

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Comment [23]: Att. 5

Comment [24]: Att. 5

2. Allow certain resource-dependent activities in wetlands including fishing, recreational clamming, hunting, nature study, bird watching and boating.
3. Prohibit grazing or other agricultural uses in a wetland, except in those **reclaimed** areas presently ~~(prior to the certification of this amended policy on [DATE]) used for such activities (i.e., grazing was established prior to April 1, 1981, the date on which Marin's first LCP was certified), or in new areas where a Ranch Water Quality Plan has been approved by the California Regional Water Quality Control Board, or where the landowner demonstrates to the CDA's satisfaction that he/she has developed and implemented management measures in partnership with Marin Resource Conservation District, Natural Resource Conservation Service, or comparable agency to prevent adverse impacts to wetland functions and resources.~~
4. **Where there is evidence that a wetland emerged primarily from agricultural activities (e.g., livestock management, tire ruts, row cropping) and does not provide habitat for any species that meet the definition of ESHA, such wetland may be used and maintained for agricultural purposes and shall not be subject to the buffer requirements of C-BIO-19 (Wetland Buffers).**

Comment [25]: Att. 3, Sec VI (Grazing in Wetlands)

Comment [26]: Att. 1, Sec VIII (Wetlands)

(PC app. 2/13/12, 1/23/12, 6/28/10)

[Adapted from Unit II Natural Resources Policy 4 (a – c), p. 74]

C-BIO-15 Diking, Filling, Draining and Dredging. Diking, filling, draining and dredging of coastal waters can have significant adverse impacts on water quality, marine habitats and organisms, and scenic features. Limit strictly the diking, filling, and dredging of open coastal waters, wetlands, and estuaries to the following purposes:

1. New or expanded 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. Incidental public service purposes, including burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
4. Mineral extraction, including sand for restoring beaches, except in ESHAs.
5. Restoration purposes.
6. Nature study, aquaculture, or similar resource-dependent activities.
7. Excluding wetlands, new or expanded boating facilities and the placement of structural pilings for public recreation piers that provide public access and recreational opportunities may be permitted. Only entrance channels or connecting walkways for new or expanded boating facilities shall be permitted in wetlands.
8. In the Esteros Americano and de San Antonio, limit any alterations to those for the purposes of nature study and restoration.

(PC app. 12/1/11, 1/24/11)

[Adapted from Unit II Diking, Filling and Dredging Policies 1 and 2, p. 136]

~~**C-BIO-16 Acceptable Purposes for Diking, Filling, and Dredging.**~~ (Combined with C-BIO-15 above, 12/1/11)

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C-BIO-17 Conditions and Standards for Diking, Filling, Draining, and Dredging. Diking, filling, draining or dredging may be permitted for the purposes specified in policy C-BIO-15 above provided that all of the following conditions and standards are met:

1. There is no feasible less environmentally damaging alternative.
2. Mitigation measures have been provided **in accordance with Policy C-BIO-21 (Wetland Impact Mitigation) in order** to minimize adverse environmental effects.
3. The activities are planned, scheduled, and carried out to avoid significant disruption to marine and wildlife habitats, fish and bird breeding and migrations, and water circulation.
4. The need for both initial and maintenance dredging shall be minimized by careful design and location of facilities with respect to existing water depths, water circulation, siltation patterns, and by efforts to reduce controllable sedimentation.
5. In estuaries and wetlands, the diking, filling, or dredging shall maintain or enhance the functional capacity of the wetland or estuary.

~~6. Dike and fill projects in wetlands shall include mitigation measures specified in Policy C-BIO-21.~~

(PC app. 12/1/11, 6/28/10)

[Adapted from Unit II Diking, Filling and Dredging Policy 3, p. 137]

C-BIO-18 Spoils Disposal of Dredged Materials. Require the disposal of dredged sediments to conform to the following standards:

1. The **dredged materials spoils** disposal site has been approved by all relevant agencies.
2. **Spoils disposal of dredged materials** shall be planned and carried out to avoid ~~significant~~ disruption to marine and wildlife habitats and water circulation.
3. **Dredged materials spoils** suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.
4. The disposal of **dredged materials spoils** shall conform to the most recently approved dredging requirements promulgated or adopted by the State or Regional Water Quality Control Board.

(PC app. 12/1/11, 6/28/10)

[Adapted from Unit II Diking, Filling and Dredging Policy 4, p. 137]

C-BIO-19 Wetland Buffers. Maintain a buffer area, a minimum of 100 feet in width, in a natural condition along the periphery of all wetlands. An additional buffer may be required based on the results of a site assessment, if such an assessment is determined to be necessary, and the site assessment concludes that a buffer greater than 100 feet in width is necessary to protect wetland resources from the impacts of the proposed development, including construction and post-construction impacts. Coastal Permits shall not authorize development within these buffer areas unless the project is otherwise determined to be consistent with policy C-BIO-20 Wetland Buffer Adjustments **and Exceptions**.

(PC app. 12/1/11, 6/28/10)

[Adapted from Unit I Lagoon Protection Policy 18, p. 28, and Unit II Natural Resources Policy 4.d, p. 74]

Comment [27]: Att. 5

Comment [28]: Att. 5

Comment [29]: Att. 5

Comment [30]: Att. 5

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C-BIO-20 Wetland Buffer Adjustments and Exceptions. Consider granting adjustments and exceptions to the wetland buffer width standard identified in Policy C-BIO-19 in certain limited circumstances for projects that are implemented undertaken in the least environmentally damaging manner. An adjustment may be granted in any of the following circumstances:

Comment [31]: Att. 5

Comment [32]: Att. 5

1. The County determines that the applicant has demonstrated that a 100-foot buffer is unnecessary to protect the resource because any significant disruption of the habitat values of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. A wetland buffer may be adjusted to a distance of not less than 50 feet if such reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with incorporated siting and design measures, will prevent impacts which would significantly degrade those areas, and will be compatible with the continuance of those habitat areas. An adjustment to the wetland buffer may be granted only where:
 - a. There is no feasible less environmentally damaging alternative;
 - b. Measures are provided that will eliminate adverse environmental effects when possible, or when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels; and
 - c. Any significant disruption of the habitat value of the resource is avoided.
2. The wetland was artificially created for the treatment and/or storage of wastewater or domestic water (e.g., detention pond or urban drain). However, facilities that drain a naturally-occurring wetland shall be subject to the provisions of C-BIO-20.1.
3. The wetland was created as a flood control facility as an element of a stormwater control plan, or as a requirement of a National Pollutant Discharge Elimination System (NPDES) Permit, and the Coastal Permit for the development incorporated an ongoing repair and maintenance plan to assure the continuing effectiveness of the facility or stormwater control plan.
4. An adjustment may be granted for the wetland buffer if the use within the buffer will conform to one of the purposes identified in policy C-BIO-14 or C-BIO-15 C-BIO-16.

Comment [33]: Att. 1, Sec X (Buffer Adjustments)

Comment [34]: Att. 3, Sec VIII (Wetland Buffers)

Comment [35]: Att. 5

(PC app. 12/1/11, 6/28/10)

[New policy, not in Unit I or III]

C-BIO-21 Wetland Impact Mitigation. Where any dike and fill development is permitted in wetlands in conformity with this section, require mitigation measures to include, at a minimum, either acquisition of required areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided, however, that if no appropriate restoration site is available, an in-lieu fee sufficient to provide an area of equivalent productive value or surface areas shall be dedicated to an appropriate public agency, or such replacement site shall be purchased before the dike or fill development may proceed. A minimum ratio of 2:1 in area is required for on-site mitigation, a minimum ratio of 3:1 is required for off-site mitigation, and a minimum ratio of 4:1 is required for an in-lieu fee. Mitigations shall meet the following criteria:

Comment [36]: Att. 5

1. No net losses shall occur in wetland acreage, functions, or values. This should include both direct impacts on wetlands and essential buffers, and consideration of potential indirect effects of development due to changes in available surface water and nonpoint water quality degradation. Detailed review of the adequacy of a proposed mitigation plan shall be performed as part of any required environmental review of the proposed development project to allow for a thorough evaluation of the anticipated loss, as well as the replacement acreage, functions, and values.

Comment [37]: Att. 5

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2. Restoration of wetlands is preferred to creation of new replacement wetlands, due to the greater likelihood of success.
3. Mitigation shall be implemented prior to and/or concurrently with the project activity causing the potential adverse impact to minimize any short-term loss and modification to wetlands.
4. An area of adjacent upland habitat shall be protected to provide an adequate buffer for wetland functions and values. Development shall be set back the minimum distance specified in Policy C-BIO-19 (Wetland Buffers) to create this buffer, unless an adjustment is allowed and appropriate mitigation is provided where necessary, pursuant to Policy C-BIO-20 (Wetland Buffer Adjustments).
5. Mitigation sites shall be permanently protected and managed for open space and wildlife habitat purposes.
6. Mitigation projects must to the extent feasible minimize the need for ongoing maintenance and operational manipulation (e.g., dredging, artificial water-level controls, etc.) to ensure long-term success. Self-sustaining projects with minimal maintenance requirements are encouraged.
7. All plans to mitigate or minimize adverse impacts to wetland environments shall include provisions to monitor the success of the restoration project. The measures taken to avoid adverse impacts may be modified if the original plans prove unsuccessful. Performance bonds shall be required for all mitigation plans involving habitat creation or enhancement, including the cost of monitoring for five years post-completion.
8. Mitigation must be commensurate with adverse impacts of the wetland alteration and consist of providing similar values and greater wetland acreage than those of the wetland area adversely affected. All restored or created wetlands shall be provided at the minimum replacement ratio specified in this Policy (C-BIO-21) and shall have the same or increased habitat values as the wetland proposed to be destroyed.

Comment [38]: Att. 5

Comment [39]: Att. 5

Comment [40]: Att. 5

Comment [41]: Att. 5

Comment [42]: Att. 5

Comment [43]: Att. 5

Comment [44]: Att. 5

Such mitigation measures shall not be required for temporary or short-term fill or diking; provided that a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest period of time not to exceed 12 months.

(PC app. 12/1/11, 6/28/10)

[New policy, not in Unit I or II]

C-BIO-22 Tomales Bay Shoreline. As part of the application for a coastal permit on any parcel adjacent to Tomales Bay, except where there is no evidence of wetlands, require the applicant to submit supplemental biological information prepared by a qualified biologist at a scale sufficient to identify the extent of the existing wetlands, based on Section 30121 of the Coastal Act and the area of the proposed buffer areas.

(PC app. 12/1/11, 6/28/10)

[Adapted from Unit II Natural Resources Policy 4.e, p. 74]

C-BIO-23 Marine Resources. Maintain, enhance, and, where feasible, restore marine resources. Provide special protection to

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areas and species of special biological or economic significance. Carry out uses of the marine environment 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.

(PC app. 12/1/11, 6/28/10)

[New policy, not in Unit I or II]

C-BIO-24 Coastal Streams and Riparian Vegetation.

1. Stream alterations. Limit river and stream dams, channelizations, or other substantial alterations to coastal streams or the riparian vegetation surrounding them to the following purposes:
 - a. Necessary water supply projects **where no other less environmentally damaging method of water supply is feasible.**
 - b. Flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development; or
 - c. Developments where the primary function is the improvement of fish and wildlife habitat.

Substantial alterations shall include channelizations, dams, or comparable projects which significantly disrupt the habitat value of a particular river or stream. Before any such activities are permitted, minimum flows necessary to maintain fish habitat and water quality, and to protect downstream resources (e.g. riparian vegetation, groundwater recharge areas, receiving waters, spawning habitats, etc.) and downstream users shall be determined by the Department of Fish and Game and the Division of Water Rights of the State Water Resources Control Board. Prohibit new impoundments which, individually or cumulatively, would decrease streamflows below the minimum.

2. Conditions. Minimize the alteration of streams allowed for the purposes listed in (1.) above in order to protect streamwater quality and the volume and rate of streamflow. Require all such developments to incorporate the best mitigation measures feasible, including erosion and runoff control measures, and re-vegetation of disturbed areas with native species. Minimize the disturbance of riparian vegetation and require revegetation wherever possible.
3. Stream Buffers. Establish buffers to protect streams from the impacts of adjacent uses for each stream in the Coastal Zone. The stream buffer shall **include be the wider of the following on either side of the stream: (a) the area 50 feet landward from the outer edge of the riparian vegetation, or (b) the area. In no case shall the stream buffer be less than 100 feet landward feet in width,** on either side of the stream, as measured from the top of the stream banks.
4. Development in Stream Buffers. Prohibit development within stream buffers unless the project is otherwise designed to be consistent with policy C-BIO-25 Stream Buffer Adjustments **and Exceptions.**

(PC app. 12/1/11, 1/24/11)

[Adapted from Unit I Stream Protection Policies 1 – 3, p. 19, and Unit II Natural Resources Policy 3 (a – d), p. 72]

C-BIO-25 Stream and Riparian Buffer Adjustments and Exceptions. Consider granting adjustments **and exceptions** to the **coastal** stream buffer standards in policy C-BIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. An adjustment **or exception** may be granted in any of the following circumstances:

Comment [45]: Att. 3, Sec V (Stream Improvements)

Comment [46]: Att. 5

Comment [47]: Att. 5

Comment [48]: Att. 1, Sec X (Buffer Adjustments)

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1. The County determines that the applicant has demonstrated that a ~~100/50-foot stream~~ buffer (see Policy C-BIO-24.3) is unnecessary to protect the resource because any ~~significant~~ disruption of the habitat value of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. ~~A stream buffer may be adjusted to a distance of not less than 50 feet from the top of the stream bank if such a reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with incorporated siting and design measures, will prevent impacts which would significantly degrade those areas, and will be compatible with the continuance of those habitat areas. An adjustment to the stream buffer may be granted only where:~~
 - ~~a. There is no feasible less environmentally damaging alternative;~~
 - ~~b. Measures are provided that will eliminate adverse environmental effects when possible, or, when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels; and~~
 - ~~c. Any significant disruption of the habitat values of the resource is avoided;~~
2. Where a finding based upon factual evidence is made that development outside a stream buffer area either is infeasible or would be more environmentally damaging to the riparian habitat than development within the riparian protection or stream buffer area, limited development of principal permitted uses may occur within such area subject to appropriate mitigation measures to protect water quality, riparian vegetation, and the rate and volume of stream flows.
3. ~~Exceptions Adjustments~~ to the stream buffer policy may be granted for access and utility crossings when it has been demonstrated that developing alternative routes that provide a stream buffer would be infeasible or more environmentally damaging. Wherever possible, shared bridges or other crossings shall be used to provide access and utilities to groups of lots covered by this policy. Access and utility crossings shall be accomplished by bridging, unless other methods are determined to be less damaging, and bridge columns shall be located outside stream channels where feasible.
4. When a legal lot of record is located substantially within a stream buffer area, development of principal permitted uses may be permitted but the Coastal Permit shall identify and implement the mitigation measures necessary to protect water quality, riparian vegetation and the rate and volume of stream flows. Only those projects that entail the least environmentally damaging alternative that is feasible may be approved. The Coastal Permit shall also address the impacts of erosion and runoff, and provide for restoration of disturbed areas by replacement landscaping with plant species naturally found on the site.
5. ~~An adjustment to the stream buffer may be granted if the use within the buffer will~~ The project conforms to ~~one of~~ the purposes ~~and standards~~ identified in policy C-BIO-24(1).

Comment [49]: Att. 1, Sec X (Buffer Adjustments)

Comment [50]: Att. 5

Comment [51]: Att. 5

(PC app. 2/13/12, 12/1/11, 6/28/10)

[Adapted from Unit I Stream Protection Policy 4, p. 19]

C-BIO-26 Diversions Outside the Coastal Zone. Require that the impacts from diversion projects, especially on the two major tributaries to Tomales Bay, Walker and Lagunitas Creeks, be fully studied through the CEQA process before they are permitted to proceed and in all cases, require mitigation and enhancement measures to ensure that coastal resources influenced by freshwater inflows are not significantly damaged.

(PC app. 12/1/11, 1/24/11)

[Adapted from Unit II Natural Resources Policy 3.e, p. 73]

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C-BIO-27 Federal Projects. Federal projects which require the modification or alteration of natural resources shall be evaluated by the Coastal Commission through the consistency review process.

(PC app. 12/1/11, 6/28/10)

[Adapted from Unit II Federal Parklands Policy 3, p. 61]

C-BIO-28 California Parks and Recreation. Support and encourage the environmental conservation, land and easement acquisition, and habitat restoration efforts of the California Department of Parks and Recreation.

(PC app. 12/1/11, 6/28/10)

[New policy, not in Unit I or II]

C-BIO-29 Marin ~~County Parks and Open Space~~. Support and encourage the environmental conservation, land and easement acquisition, and habitat restoration efforts of the Marin County ~~Parks Department of Parks and Open Space~~. In particular, conservation activities related to ~~beach areas, lagoons, wetlands, streams, existing and potential boat launching sites, recreational areas, and Tomales Bay and its shoreline~~ the following areas are considered a high priority in the Coastal Zone:

- ~~Upton Beach in Stinson Beach~~
- ~~Bolinas Lagoon in Bolinas~~
- ~~Agate Beach in Bolinas~~
- ~~Bolinas Park in Bolinas~~
- ~~Chicken Ranch Beach in Inverness~~
- ~~Miller Park Boat Launch in Marshall~~
- ~~White House Pool in Inverness Park~~
- ~~Lawson's Landing area in Dillon Beach~~
- ~~Tomales Bay~~

(PC app. 12/1/11, 6/28/10)

[New policy, not in Unit I or II]

Comment [52]: Att. 5

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Please Note: The following text is proposed as a new chapter for the LCPA Land Use Plan to be inserted at the beginning of the document, following the Introduction. Since the addition of this chapter will require document reformatting and page renumbering, the text is shown here (following Agriculture and Natural Systems) to avoid confusion and maintain existing page numbering during review of the document.

Policies for Interpretation of the Land Use Plan (INT)

(proposed new chapter for the LCPA Land Use Plan)

Background

The Marin County Local Coastal Program (LCP) is the primary document that governs land development in the Marin County Coastal Zone. However, the policies of the LCP must be applied and interpreted within the context of other applicable Local, State, and Federal laws, as well as other local plans, policies and regulations. The following policies apply to the interpretation of all policies within the Natural Systems and Agriculture, Built Environment, and Socioeconomic Sections of the Land Use Plan.

C-INT-1 Consistency with Other Law. The policies of the Local Coastal Program are bound by all applicable Local, State and Federal laws, and none of the provisions of the LCP will be interpreted by the County in a manner which violates those laws. In particular, as required by the Coastal Act, Public Resources Code Section 30010, Marin County shall not grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation therefor. This policy is not intended to increase or decrease the rights of any property owner under the Constitutions of the State of California or the United States.

C-INT-2 Precedence of LCP. The LCP supersedes and takes precedence over other local plans, policies and regulations, including any conflicting provisions of the Countywide Plan, Community Plans and relevant sections of the Marin County Code. Provisions that are not addressed by the Coastal Act and the LCP (e.g. policies that address education, diversity, public health, etc.) that apply throughout the County, also apply within the Coastal Zone. Where conflicts occur between one or more provisions of the LCP such conflicts shall be resolved in a manner which on balance is the most protective of significant coastal resources. Broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

C-INT-3 Community Plans. Community plans are part of the Marin Countywide Plan (CWP), and are implemented through measures such as Design Review and Use Permits. The existing Dillon Beach and Bolinas Gridded Mesa community plans have been certified by the Coastal Commission and made part of the LCP; all other community plans have not. However, the public LCP process identified many community plan policies that have been directly incorporated into, and will be implemented through, the LCP.

C-INT-4 Terminology. The following rules of interpretation shall apply, consistent with Marin County Development Code Sec.20.02.020.

1. Where the imperative form of a verb is used to start a policy, the policy will be interpreted as being a mandatory requirement which, if written in a "subject-verb" format, would incorporate

Comment [53]: Att. 1, Sec XI (Interpretation Policies)

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the term "shall." When used in the Land Use Plan, the words "shall," "will," "is to," and "are to" are always mandatory. "Should" is not mandatory but is strongly recommended; and "may" is permissive. The present tense includes the past and future tenses; and the future tense includes the present. The singular number includes the plural number, and the plural the singular, unless the natural construction of the word indicates otherwise.

"Including" means "... including but not limited to. . .".

2. Policy headings and titles are provided for convenience only. To the degree that these headings or titles conflict with the text they accompany, the text shall govern.

**LCPA Development Code Amendments
SUGGESTED MODIFICATIONS**

CHAPTER 22.32 – STANDARDS FOR SPECIFIC LAND USES

Sections:

* * *

22.32.115 – **Determination of** Non-Agricultural Uses (*Dev. Code Amend. p.1*)

Comment [54]: Att. 5

* * *

22.32.026 – Agricultural Processing Uses (*Dev. Code Amend. p.4*)

The standards of this Section shall apply to agricultural processing defined in Section 22.130.030.

For Agricultural and Resource-Related Districts outside the Coastal Zone, see Section 22.08.040.E.

(Coastal) In Coastal agricultural Zoning Districts C-APZ and C-ARP agricultural processing is allowed as a Principal Permitted Use provided it meets the following standards:

Comment [55]: Att. 5

A. Limitations on use:

1. Processing of agricultural product is a Principal Permitted Use only if conducted in a facility not exceeding 5,000 square feet that is located at least 300 feet from any street or separate-ownership property line (and not within an Environmentally Sensitive Habitat Area [ESHA]) **or its buffer.**
2. To qualify as a Principal Permitted Use, the agricultural product that is processed must be grown principally in Marin County or at a site outside Marin County that is operated by the operator of the processing facility (“principally” shall mean at least 75% by dollar volume of the processor’s sales of the processed product). The operator of the processing facility must be directly involved in the agricultural production on the property on which the production facility is located.
3. “Agricultural product that is processed” does not apply to additives or ingredients that are incidental to the processing.
4. A Conditional Use Permit shall be required if the processing facility is open routinely to public visitation or if public tours are conducted of the processing facility more than 24 times per year.
5. Under these criteria, up to 25% by dollar sales volume of the agricultural product that is processed could be grown outside Marin County (on sites not operated by the operator of the processing facility).

Comment [56]: Att. 5

6. ~~Any agricultural processing in a C-ARP zoning district is a Conditional Use requiring a Use Permit.~~

Comment [57]: Att. 5

* * *

22.32.027 – Agricultural Retail Sales and Facilities (Coastal) (*Dev. Code Amend. p.5*)

(Coastal) The standards of this Section shall apply to the sale of agricultural products. “Sale of Agricultural Products” is defined in Section 22.130.030.

For Agricultural and Resource-Related Districts outside the Coastal Zone, see section 22.08.040.F.

(Coastal) In Coastal agricultural Zoning Districts C-APZ and C-ARP, retail sales are allowed as a Principal Permitted Use provided they meet the following standards:

A. Limitations on use:

1. Retail sales must be conducted:
 - (a) Without a structure (e.g. using a card table, umbrella, tailgate, etc.); or
 - (b) From a structure or part of a structure that does not exceed 500 square feet in size and does not exceed 15 feet in height.
2. Items sold must be principally unprocessed produce grown in Marin County or at a site outside Marin County that is operated by the **operator owner or lessee** of the sales facility. For purposes of this section, “principally” shall mean at least 75% by dollar volume of sales. The operator of the sales facility must be directly involved in the agricultural production on the property on which the sales facility is located.
3. Sales of consigned produce grown in Marin County (or grown at a site outside of Marin County that is operated by a consignor whose principal agricultural activities are within Marin County) shall be allowed as part of the principal permitted use, provided that all produce being sold satisfies the criteria for the principal permitted use findings.
4. A Use Permit is required for picnic or recreational facilities. A Use Permit is also required for on-site consumption other than informal tastings at no charge of product offered for sale.
5. Sufficient parking is provided.

* * *

22.32.062 – Educational Tours (Coastal) (*Dev. Code Amend. p.8*)

(Coastal) **Limitations on use.** As defined in Section 22.130.030, educational tours are interactive excursions for groups and organizations for the purpose of informing them of the unique aspects of a property, including agricultural operations and environmental resources. In the C-APZ, **and C-ARP, and C-OA** zoning districts, educational tours operated by non-profit organizations or the owner/operator of the agricultural operation are a principal permitted use (except as provided in Section 22.32.026.A.4); those operated for commercial profit require a Use Permit.

Comment [58]: Att. 5

Comment [59]: Att.5

CHAPTER 22.64 – COASTAL ZONE DEVELOPMENT AND RESOURCE MANAGEMENT STANDARDS

* * *

22.64.050 – Biological Resources (*Dev. Code Amend. p.56*)

A. Submittal requirements.

1. Biological studies.

a. **Initial Site Assessment Screening.** The Marin County Community Development Agency (CDA) shall conduct an initial site assessment screening of all development proposals to determine the potential presence of Environmentally Sensitive Habitat Area (ESHA). The initial site assessment screening shall include a review of reports, resource maps, aerial photographs, site inspection and additional resources as necessary to determine the presence of ESHA.

Comment [60]: Att. 1, Sec VI (Uses in ESHA and Site Assessments)

b. **Site Assessment.** A site assessment shall be submitted for those Coastal Permit applications where the initial site assessment screening may be required to provide a site assessment based on a review of the best available scientific and geographic information reveals the potential presence of an Environmentally Sensitive Habitat Area (ESHA) within 100 feet of the proposed development. The permit will be and subject to a level of review that is commensurate with the nature and scope of the project and the potential existence of an Environmentally Sensitive Habitat Area (ESHA). A site assessment shall be prepared by a qualified biologist hired by the County and paid for by the applicant, and shall confirm the extent of the ESHA, document any site constraints and the presence of other sensitive resources, recommend buffers, development timing, mitigation measures or precise required setbacks and provide other information, analysis and potential modifications necessary to protect the resource, demonstrate compliance with the LCP. Where habitat restoration or creation is required to eliminate or offset potential impacts to an ESHA, a detailed Restoration and Monitoring Plan shall be required, as provided in this section. The Restoration and Monitoring Plan shall be consistent with the guidance provided in the California Coastal Commission LCP Guide for Local Governments, *Protecting Sensitive Habitats and Other Natural Resources* (undated).

Comment [61]: Att. 1, Sec VI (Uses in ESHA and Site Assessments)

c. **Buffer Areas.** Buffers shall be provided for ESHAs in accordance with the policies of C-BIO-3 (ESHA Buffers), C-BIO-19 (Wetland Buffers), or C-BIO-24 (Coastal Streams and Riparian Vegetation), in combination with the findings of a site assessment, as necessary to ensure the biological integrity and preservation of the habitat they are designed to protect. Maintain ESHA buffers in their natural condition, except as provided in C-BIO-20 (Wetland Buffer Adjustments), C-BIO-25 (Stream Buffer Adjustments) or C-BIO-4 (Protect Major Vegetation).

Comment [62]: Att. 1, Sec VI (Uses in ESHA and Site Assessments)

Determination of ESHA buffer requirements should consider the following:

- 1) Habitat requirements of the ESHA, including the migratory patterns of affected species and tendency to return each season to the same nest site or breeding colony;
- 2) Sensitivity of the ESHA to disturbance;
- 3) Topography of the site;
- 4) Movement of stormwater;
- 5) Permeability of the soils and depth to water table;
- 6) Vegetation present;
- 7) Unique site conditions

- 8) Whether vegetative, natural topographic, or built features (e.g., roads, structures) provide a physical barrier between the proposed development and the ESHA; and Proposed activities; and Behavior and movement of habitat dependent wildlife
- 9) The likelihood of increased human activity and disturbance resulting from the project relative to existing development.

d. **Habitat Mitigation.** New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate significant impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Residual adverse impacts to ESHA shall be fully mitigated, with priority given to on-site habitat mitigation. Off-site or fee-in-lieu habitat mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site habitat mitigation is more protective in the context of a biological analysis prepared by a qualified scientist and approved by the County of Marin. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.

Comment [63]: Att. 1, Sec VI (Uses in ESHA and Site Assessments)

Habitat mitigation shall occur in accordance with the provisions of C-BIO-21 (Wetland Impact Mitigation) for wetlands or the findings of a site assessment, and shall be provided at a minimum ratio of 2:1 for on-site mitigation; 3:1 for off-site mitigation or 4:1 for an in-lieu fee where applicable. In determining required mitigation, the acreage of habitat impacted shall be determined based on the size of the approved development area, road/driveway area, required fuel modification on the project site, and required vegetation clearance, if any, on adjacent properties. Habitat mitigation may be required at an adjusted ratio or through other appropriate techniques as commensurate with the extent of habitat disruption, based on the specific requirements of the ESHA as determined through the site assessment.

2. **Site map.** Coastal Permit applications shall contain a detailed site plan showing existing and proposed construction, with major vegetation, water courses, natural features, and other probable wildlife areas.

3. Restoration and Monitoring Plan. Restoration and Monitoring Plans shall include the following:

- a. A clear statement of the ESHA habitat restoration goals. Characterization of the desired habitat, including an actual habitat, that can act both as a model for the restoration and as a reference site for developing success criteria.
- b. Sampling of reference habitat using the methods that will be applied to the restoration site with reporting of resultant data.
- c. Quantitative description of the chosen restoration site.
- d. Requirements for designation of a qualified restoration biologist as the restoration manager who will be personally responsible for all phases of the restoration. Phases of the restoration shall not be assigned to different contractors without onsite supervision by the restoration manager.
- e. A specific Grading Plan if the topography must be altered.
- f. A specific Erosion Control plan if soil or other substrate will be significantly disturbed during the course of the restoration.
- g. A Weed Eradication Plan designed to eradicate existing weeds and to control future invasion by exotic species that is carried out by hand weeding and supervised by a restoration biologist.
- h. A Planting Plan that specifies detailed plant palette based on the natural habitat type that is the model for the restoration, using local native stock and requiring that if plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are

Comment [64]: Att. 5

- not cultivars. The Planting Plan should provide specifications for preparation of nursery stock and include technical details of planting methods (e.g., spacing, mycorrhizal inoculation, etc.)
- i. An Irrigation Plan that describes the method and timing of watering and ensures removal of watering infrastructure by the end of the monitoring period.
 - j. An Interim Monitoring Plan that includes maintenance and remediation activities, interim performance goals, assessment methods, and schedule.
 - k. A Final Monitoring Plan to determine whether the restoration has been successful that specifies:
 - 1) A basis for selection of the performance criteria.
 - 2) Types of performance criteria.
 - 3) Procedure for judging success.
 - 4) Formal sampling design.
 - 5) Sample size.
 - 6) Approval of a final report, and
 - 7) Provision for possible further action if monitoring indicates that initial restoration has failed.

34. Additional information. Based on review of the provided information, the County may request additional information to address site-specific conditions and/or as part of the environmental review process.

B. Biological Resource standards. (*Dev. Code Amend. p.57*)

- 1. Environmentally Sensitive Habitat Areas (ESHAs).** The resource values of ESHAs shall be protected by limiting development per Land Use Policies C-BIO-1, C-BIO-2, and C-BIO-3.
- 2. Habitats of rare or endangered species and unique plant communities.** Habitats of rare and endangered species and unique plant communities shall be protected by limiting development in those areas and providing adequate buffers surrounding those areas per Land Use Plan Policy C-BIO-3.
- 3. Ecological restoration.** Encourage restoration of degraded ESHAs per Land Use Plan Policy C-BIO-5.
- 4. Invasive plants.** Where feasible, require the removal of non-native, invasive plant species, and revegetation of denuded areas with native plants, and provision of primarily native, drought-tolerant plant species for areas of new or replacement planting, per Land Use Plan Policy C-BIO-6.
- 5. Coastal dunes and beaches.** Coastal dunes and beaches shall be preserved by limiting development in those areas per Land Use Plan Policies C-BIO-7, C-BIO-8, and C-BIO-9.
- 6. Roosting and nesting habitat.** Roosting and nesting habitat and the grassy shorebird feeding areas adjacent to Bolinas Lagoon shall be protected by limiting development per Land Use Plan Policies C-BIO-10, C-BIO-11, and C-BIO-12.

Comment [65]: Att. 5

7. **Biological productivity.** The biological productivity and quality of coastal waters, coastal streams, coastal wetlands, coastal estuaries and coastal lakes shall be maintained, and where feasible, enhanced per Land Use Plan Policy C-BIO-13.
8. **Coastal wetlands.** Coastal wetlands shall be preserved and maintained as productive wildlife habitats, water filtering and storage areas, and, as appropriate, recreational open space, by limiting diking, dredging, and draining per Land Use Plan Policies C-BIO-14, C-BIO-15, C-BIO-16, and C-BIO-17, disposing of **spoils dredged materials** per Land Use Plan Policy C-BIO-18 and mitigating wetland impacts per Land Use Plan Policy C-BIO-21.
9. **Coastal wetland buffers.** Adequate buffers shall be maintained surrounding coastal wetlands per Land Use Policy C-BIO-19 unless an adjustment **or exception** to standard buffers is granted per Land Use Plan Policy C-BIO-20.
10. **Marine resources.** Marine resources shall be maintained, enhanced, and where feasible, restored and special protection shall be provided to areas and species of special biological or economic significance per Land Use Plan Policy C-BIO-23.
11. **Coastal streams, riparian vegetation, and buffers.** Alterations to coastal streams and riparian vegetation shall be limited and adequate buffers shall be provided surrounding those resources per Land Use Plan Policy C-BIO-24, unless an adjustment **or exception** to the standard buffers is granted per Land Use Plan Policy C-BIO-25. Any alteration of riparian vegetation which is allowed under these policies shall require an erosion control plan and re-vegetation plan that incorporates native species to the maximum extent feasible.

Comment [66]: Att. 5

Comment [67]: Att.5

Comment [68]: Att. 5

CHAPTER 22.65 – COASTAL ZONE PLANNED DISTRICT DEVELOPMENT STANDARDS

* * *

22.65.030 – Planned District General Development Standards *(Dev. Code Amend. p.73)*

* * *

D. Building location:

1. **Clustering requirement.** Structures shall be clustered in a geologically stable, accessible location on the site where their visual prominence is minimized, consistent with needs for privacy. Clustering is especially important on open grassy hillsides; however, a greater scattering of buildings may be preferable on wooded hillsides to save trees. The prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography.

In the C-APZ and C-ARP agricultural zones, non-agricultural development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use. Non-agricultural development, including division of

agricultural lands, shall only be allowed upon demonstration that long-term productivity of agricultural lands would be maintained and enhanced as a result of such development. Non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, and shall not require new road construction or improvements resulting in significant impacts on agriculture, significant vegetation, significant scenic resources, or natural topography of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. Any new parcels created shall have building envelopes outside any designated scenic protection area.

Comment [69]: Att. 3, Sec II (Structures on Agricultural Land and Clustering)

Comment [70]: Att. 5

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22.65.040 – C-APZ Zoning District Standards (*Dev. Code Amend. p.77*)

* * *

C. Development standards. Development permits in the C-APZ district shall also be subject to the following standards and requirements in addition to Section 22.65.030:

1. Standards for agricultural uses:

- a. Permitted development shall protect and maintain continued agricultural use, and contribute to agricultural viability. Development of agricultural facilities shall be sited to avoid agricultural land whenever possible, consistent with the operational needs of agricultural production. If use of agricultural land is necessary, prime agricultural land shall not be converted if it is possible to utilize other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted.
- b. Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other public services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies including Tomales Bay, either individually or cumulatively.
- c. Permitted development shall have no significant adverse impacts on environmental quality or natural habitats, and shall meet all other applicable policies, consistent with the LCP.
- d. In order to retain the maximum amount of land in agricultural production or available for future agricultural uses, farmhouses, intergenerational homes, and agricultural homestay facilities shall be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space.

Comment [71]: Att. 3, Sec II (Structures on Agricultural Land and Clustering)

Comment [72]: Att. 3 Sec II (Structures on Agricultural Land and Clustering)

CHAPTER 22.68 – COASTAL PERMIT REQUIREMENTS

* * *

22.68.030 – Coastal Permit Required (*Dev. Code Amend. p.89*)

A Coastal Permit is required for development in the Coastal Zone proposed by a private entity or a state or local agency unless the development is categorically excluded, exempt, or qualifies for a De Minimis Waiver.

Development is defined in Article VIII of this Development Code and is interpreted to include installation of water or sewage disposal systems, the closure of County-managed public accessways, changes in public access to the water including parking availability, construction of agricultural processing facilities and the significant alteration of landforms. Significant alteration of land forms entails the removal or placement of vegetation on a beach, wetland, or sand dune, or within 100 feet of the edge of a coastal bluff, stream, or in areas of natural vegetation designated as environmentally sensitive habitat areas (ESHA). Ongoing Agricultural operations including cultivation, crop and animal management and grazing are not considered to be a significant alteration of land forms development.

Comment [73]: Att. 1, Sec I (Agricultural Operations)

CHAPTER 22.70 – COASTAL PERMIT ADMINISTRATION

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22.70.030 – Coastal Permit Filing, Initial Processing (*Dev. Code Amend. p.97*)

A. **Application and filing.** Coastal Permit application submittals shall include all information and other materials required by the Coastal Permit application forms, provided by the Agency. The application and accompanying materials shall be filed with the Agency before or concurrent with an application for any land use permit required by this Article. The Coastal Permit application shall include:

1. Project plans and supporting materials sufficient to determine whether the project complies with all relevant policies of the Local Coastal Program;
2. Documentation of the applicant's legal interest in all the property upon which work is proposed to be performed. The area of the subject Coastal Permit shall include at least all contiguous properties under the same ownership. The area covered by a proposed project may also include multiple ownerships;
3. A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application: and
4. Any additional information deemed by the Director to be required for specific categories of development or for development proposed from specific geographic areas.

Comment [74]: Att. 3, Sec IV (Master Plans)

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22.70.0180 – Potential Takings Economic Evaluation (Dev. Code Amend. p.108)

Comment [75]: Att. 1, Sec XI (Interpretation Policies)

If the application of the policies, standards or provisions of the Local Coastal Program regarding use of property designated as Environmentally Sensitive Habitat Area (ESHA) would likely constitute a taking of private property, then a use that is not consistent with the ESHA provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking as determined through an economic evaluation. The applicant shall supplement their application materials to provide the required information and analysis as specified below.

A. Filing. The economic evaluation shall include the entirety of all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application. Before any decision on a coastal development permit, the applicant shall provide the following information, unless the Director determines that one or more of the particular categories of information is not relevant to the analysis:

1. The date the applicant purchased or otherwise acquired the property, and from whom.
2. The purchase price paid by the applicant for the property.
3. The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time.
4. The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition.
5. Any development restrictions or other restrictions on use, other than government regulatory restrictions described in subsection d above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition.
6. Any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances and the relevant dates.
7. A discussion of whether the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased.
8. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.
9. Any offers to buy all or a portion of the property which the applicant solicited or received, including the approximate date of the offer and offered price.
10. The applicant's costs associated with the ownership of the property, annualized for each of the last five (5) calendar years, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs.
11. Apart from any rents received from the leasing of all or a portion of the property, any income generated by the use of all or a portion of the property over the last five (5) calendar years. If there is any such income to report it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.
12. Any additional information that the City requires to make the determination.

B. Evaluation. To evaluate whether a restriction would not provide an economically viable use of property as a result of the application of the policies and standards contained in the LCP regarding use of property designated as ESHA, an applicant shall provide information about resources present on the property sufficient to determine whether all of the property, or which specific area of the property, is subject to the restriction on development, so that the scope and

nature of development that could be allowed on any portions of the property that are not subject to the restriction can be determined.

Based upon this analysis, the least environmentally damaging feasible alternative shall be identified. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be mitigated to the maximum extent feasible, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to mitigate impacts on-site. Mitigation shall not substitute for implementation of the feasible project alternative that would avoid adverse impacts to ESHA.

C. Supplemental Findings for Approval of Coastal Development Permit. A Coastal Permit that allows a deviation from a policy or standard of the LCP to provide a reasonable economic use of the parcel as a whole may be approved or conditionally approved only if the appropriate governing body, either the Planning Commission or City Council, makes the following supplemental findings in addition to the findings required in Section 22.70.070 (Required Findings):

1. Based on the economic information provided by the applicant, as well as any other relevant evidence, no use allowed by the LCP policies, standards or provisions would not provide an economically viable use of the applicant's property.
2. The use proposed by the applicant is consistent with the applicable zoning.
3. The use and project design, siting, and size are the minimum necessary to avoid a taking.
4. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified LCP other than the provisions for which the exception is requested.
5. The development will not be a public nuisance. If it would be a public nuisance, the development shall be denied.

Definitions, Development Code Section 22.130.30

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Coastal Stream (coastal). Streams in the Coastal Zone, perennial or intermittent, which are mapped by the United States Geological Survey (USGS) in the National Hydrographic Dataset. In addition, those ephemeral streams that are not mapped by the United States Geological Survey if the stream: (a) supports riparian vegetation for a length of 100 feet or more, or (b) supports special status species or another type of ESHA, regardless of the extent of riparian vegetation associated with the stream.
(Dev. Code Amend. p.119)

Comment [76]: Att. 1, Sec IX (Streams)

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Endangered Species. An Endangered Species is an animal or plant species in danger of extinction throughout all or a significant portion of its range, as determined by the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration consistent with the Endangered Species Act of 1973, or as designated by the California Department of Fish and Game consistent with the California Endangered Species Act.
(Dev. Code Amend. p.127)

Comment [77]: Att. 5

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Environmentally Sensitive Habitat Area (ESHA) (coastal). Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. ESHAs include wetlands, coastal streams and riparian vegetation, and habitats of special-status species of plants and animals (i.e., species listed under the Federal or California Endangered Species Act and existing populations of the plants listed as 1b or 2 by the California Native Plant Society).

The ESHAs in the County of Marin are habitats that are essential for the specific feeding, cover, reproduction, water, and activity pattern requirements of existing populations of special status species of plants and animals, as designated by the California Department of Fish and Game and identified in the California Natural Diversity Database. In addition, ESHAs include existing populations of the plants listed as 1b or 2 by the California Native Plant Society and the following terrestrial communities that are identified in the California Natural Diversity Database:

- A. Central dune scrub
- B. Coastal terrace prairie
- C. Serpentine bunchgrass
- D. Northern maritime chaparral

Wetlands, estuaries, lakes and portions of open coastal waters are considered ESHAs. Coastal streams and the riparian vegetation surrounding them are considered ESHAs.
(Dev. Code Amend. p.127)

Comment [78]: Att. 1, Sec. V (Types of ESHA and ESHA Definition)

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Site Restoration Program (coastal). A site restoration program is a documented plan to restore or enhance the ecological quality of an area, which is prepared by a qualified specialist in biology. Site restoration programs must contain the following key components:

Comment [79]: Att. 5

- A. A clear statement of the goals of the restoration for all habitat types. Characterization of the desired habitat, including an actual habitat, that can act both as a model for the restoration and as a reference site for developing success criteria.
 - B. Sampling of reference habitat using the methods that will be applied to the restoration site with reporting of resultant data.
 - C. Quantitative description of the chosen restoration site.
 - D. Requirements for designation of a qualified restoration biologist as the Restoration Manager who will be personally responsible for all phases of the restoration.
 - E. Prohibition on assignment of different phases of the restoration to different contractors without onsite supervision by the restoration manager.
 - F. A specific grading plan if the topography must be altered.
 - G. A specific Erosion Control plan if soil or other substrate will be significantly disturbed during the course of the restoration.
 - H. A Weed Eradication Plan designed to eradicate existing weeds and to control future invasion by exotic species that is carried out by hand weeding and supervised by a restoration biologist.
 - I. A Planting plan that specifies detailed plant palette based on the natural habitat type that is the model for the restoration and using local native stock and requiring that if plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars. The Planting plan should provide specifications for preparation of nursery stock and include technical details of planting methods (e.g., spacing, *mycorrhizal* inoculation, etc.)
 - J. An Irrigation Plan that describes the method and timing of watering and ensures removal of watering infrastructure by the end of the monitoring period.
 - K. An Interim Monitoring Plan that includes maintenance and remediation activities, interim performance goals, assessment methods, and schedule.
 - L. A Final Monitoring Plan to determine whether the restoration has been successful that specifies:
 - a. A basis for selection of the performance criteria,
 - b. Types of performance criteria,
 - c. Procedure for judging success,
 - d. Formal sampling design,
 - e. Sample size,
 - f. Approval of a final report, and
 - g. Provision for possible further action if monitoring indicates that initial restoration has failed.
 - M. An ongoing Repair and Maintenance Plan.
- (Dev. Code Amend. p.165)

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Threatened Species. A Threatened Species is an animal or plant species likely to become endangered within the foreseeable future throughout all or a significant portion of its range, as determined by the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration consistent with the Federal Endangered Species Act of 1973, or as designated by the California Department of Fish and Game consistent with the California Endangered Species Act.

(Dev. Code Amend. p.172)

Comment [80]: Att. 5