COUNTY OF MARIN

COMMUNITY DEVELOPMENT AGENCY

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July 30, 2013

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Local Coastal Program Amendments (LCPA)
Seventh Board Public Hearing - Adopt Resolution to submit LCPA to California Coastal Commission, with revisions.

Dear Members of the Board,

RECOMMENDATION:
Approve revisions to the Local Coastal Program Amendment (LCPA) as recommended in Attachments 1 and 2, provide direction on the issues described in Attachment 3 for continued collaboration with Coastal Commission staff, and adopt the Resolution to submit the LCPA to the Coastal Commission in Attachment 4.

BACKGROUND:
At the April 16 hearing, Supervisor Kinsey described how the Coastal Commission and Marin County CDA staffs have been piloting a new model for the Commission and local governments to work more collaboratively on LCP amendments. This strategy is based upon efforts to identify, discuss and resolve issues as early in the LCP process as possible. Following submittal of the LCPA to the Coastal Commission, CDA staff will continue to discuss unresolved issues with Commission staff as they prepare their recommendation on certification of the LCPA for the Coastal Commission itself. This enhanced collaboration between Commission and local government staff is now recognized in the Coastal Commission's Strategic Plan.

As the objectives for the Marin County LCP Amendment have come into sharper focus through ongoing work work with the public, the Planning Commission and your Board, the remaining unresolved issues have also become better defined. CDA and Coastal Commission staff began a process to work through these issues, involving several face-to-face meetings and numerous phone conferences since late March of this year. By clarifying concerns of both agencies and mutually seeking to understand how certain proposals would be implemented, staff was able to eliminate some issues from the list of those requiring further discussion. Issues that would require changes in proposed language are reflected in Attachments 1-3.

Attachment 1 identifies regulations where minor clarification or rephrasing was sufficient to bring the issue to tentative resolution and earn preliminary agreement from Coastal Commission staff. County staff recommends your Board approve these changes prior to adopting the Resolution on the LCPA. It must be noted that *final* agreement from Coastal Commission staff is subject to their official evaluation of the entire LCP Amendment submittal package, parts of which are still under their review. Moreover, agreement on language by the Coastal Commission staff does not

guarantee approval of that language by the Coastal Commission itself. However, as work continues to resolve issues prior to Coastal Commission action on the LCPA, Coastal Commission staff will incorporate new agreed-to language into their staff recommendation for certification by the Commission.

Attachment 2 provides additional revisions recommended by CDA staff. Most of these CDA-proposed changes move in the direction of the Commission staff position on the issue, but have not yet been agreed to by them and remain under review. In addition, CDA staff recommends revisions to Policy C-DES-2 to respond to additional County concerns.

Staff recommends your Board adopt the changes proposed in Attachments 1 and 2 into the LCP Amendment so they are included in the Resolution of Submittal (Attachment 4) that you are requested to adopt today.

Attachment 3 provides a brief analysis and the status of issues that are still under active discussion between the Coastal Commission staff and CDA staff,. For these, we recommend submitting the language your Board has previously incorporated into the LCP Amendment (see Attachment 5). CDA staff has been working with Coastal Commission staff on resolving these issues, and will continue that effort following submittal of the LCPA. Staff requests any guidance your Board may wish to provide on these issues to help resolve these remaining items. The Board may choose to ratify these in a final Resolution.

Following the conclusion of the discussion on Attachments 1 through 3 staff recommends the Board adopt the Resolution to submit the Local Coastal Program Amendment and related items to the Coastal Commission for certification (see Attachment 4).

SUMMARY:
Staff recommends your Board adopt revisions to the LCP Amendment contained in Attachments 1 and 2, and adopt the Resolution to submit the LCPA to the Coastal Commission in Attachment 4.

- **Attachment 1** provides proposed changes that CDA and Coastal Commission staff have tentatively agreed upon.
- **Attachment 2** provides additional changes proposed by CDA staff that have not yet been agreed to by Coastal Commission staff.
- **Attachment 3** provides a brief discussion of remaining unresolved issues requiring further collaboration between Coastal Commission and CDA staff.
- **Attachment 4** is the Resolution for your Board to approve submittal of the Local Coastal Program Amendments to the California Coastal Commission for review and certification.
- **Attachment 5** includes the policies and sections under consideration, including all changes approved by your Board as of April 16, 2013.

On the Web: The LCPA Appendices and other referenced sections of the Development Code are provided online at www.MarinLCP.org.

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

REVIEWED BY: ***(These boxes must be checked)***

[ ] Department of Finance	[X] N/A
[X] County Counsel	[ ] N/A
[ ] Human Resources	[X] N/A

SIGNATURE: **Reviewed by:**

Jack Liebster
Planning Manager

Brian C. Crawford
Director

ATTACHMENTS:

- Attachment 1: Staff Recommended changes with preliminary Coastal Commission staff approval
- Attachment 2: Staff recommended changes not yet agreed to by Coastal Commission staff
- Attachment 3: Unresolved LCPA issues
- Attachment 4: Board Resolution to Submit the LCPA to the California Coastal Commission
- Attachment 5: Board-approved changes as of April 16, 2013
- **To conserve resources, hard copies of the Appendices, Background Reports, and referenced sections of the Development Code are available upon request. If you would like to request a copy, you may do so in person at the Planning Department front counter located in Suite 308 of the Marin County Civic Center, or by calling the Department at (415) 473-6269.**

ATTACHMENT #1
Local Coastal Program Amendment (LCPA)
Proposed Changes with Tentative CCC Agreement

This attachment includes proposed changes to the LCPA to address issues identified by the California Coastal Commission (Commission) staff. The changes proposed herein reflect the Marin County Community Development Agency ('CDA') staff recommendation and have earned tentative agreement from Commission staff.

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C-AG-1 *Agricultural Lands and Resources*

The following modifications to Policy C-AG-1 are proposed by CDA staff to emphasize the importance of family farming in Marin's Coastal Zone. Commission staff have tentatively agreed to the suggested revisions shown below.

> **C-AG-1 Agricultural Lands and Resources.** Protect agricultural land, continued agricultural uses, family farming, and the agricultural economy by maintaining parcels large enough to sustain agricultural production, preventing conversion to non-agricultural uses, providing for diversity in agricultural development, facilitating multi-generational operation and succession, 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, 1/24/1)
> *[Adapted from Unit II Agriculture Policy 1, p. 98, and CWP Goal AG-1, p. 2-157]*

C-AG-2.a *Allowed Uses*

Commission staff requested the following revisions to Program C-AG-2.a for clarity and consistency with Coastal Act standards for categorical exclusions contained in Section 30610(e). CDA staff recommend the followed changes as requested by Commission staff.

> ***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~~ have no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access and, hence, could be eligible additions to the categorical exclusion.
> *[BOS app. 10/2/2012]*
> *(PC app. 10/10/11, 1/24/11)*
> *[New program, not in Unit I or II]*

C-AG-2.d *Amnesty Program for Non-Conforming Agricultural Worker Housing Units*

Commission staff indicated that the specific provisions of any agricultural worker housing amnesty program would need to be developed and incorporated into the LCP prior to implementation. Program C-AG-2.d was adapted from a program in the 2009 Draft Housing Element which was subsequently deleted from that Element in favor of a more general program promoting agricultural worker housing. The Housing Chapter of the LCPA already contains a separate policy supporting the development of agricultural worker housing units in agricultural zones. Therefore, staff recommends deleting this program entirely. Commission staff have not indicated any objections to the deletion of this program.

~~***Program C-AG-2.d Amnesty Program for Unpermitted and Non-Conforming Agricultural Worker Housing Units.*** Support the establishment of an amnesty program for unpermitted and 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 requirements related to the type, location and intensity of land uses as well as applicable resource protection policies.~~

[BOS app. 10/2/2012]
(PC app. 1/9/12, 1/24/11)
[New program, not in Unit I or II]

C-BIO-4.a *Heritage Trees and Visually Prominent Vegetation*

Program C-BIO-4.a is intended to aid in implementation of the LCPA policies for major vegetation and was developed prior to adoption of the Native Tree Protection and Preservation Ordinance. Commission staff have requested that the LCPA include a definition for "heritage trees" and measures for tree preservation. CDA staff concur and note that the mapping program identified in BIO-4.a is unlikely to occur within the foreseeable time horizon. Ongoing maintenance for such an effort would present a continual commitment of County resources thereafter.

As such, CDA staff recommend that the Native Tree Protection and Preservation Ordinance be submitted to the Coastal Commission and that Program C-BIO-4.a be stricken from the LCPA. Commission staff have not yet reviewed the Ordinance for possible certification as part of the Implementation Program.

~~***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]

C-BIO-15 *Diking, Filling, Draining and Dredging*

Commission staff note that the clause in Policy C-BIO-15 regarding walkways is inconsistent with the Coastal Act, Section 30233(a)(2) and have requested that it be deleted. CDA staff do not object to the requested change as shown below.

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, access 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 scientific study and restoration.

[BOS app. 11/13/2012]
(PC app. 12/1/11, 1/24/11)
[Adapted from Unit II Diking, Filling and Dredging Policies 1 and 2, p. 136]

C-CD-16 *Maintenance of Rural Character of Roadways*

Commission staff suggested modifying Policy C-CD-16 to allow for context and community sensitive transportation infrastructure improvements since the language as currently written may preclude the ability to build pedestrian infrastructure to access coastal access. In addition, Commission staff commented that it is ambiguous and limiting that only the downtown community areas of Tomales, Point Reyes Station, and Stinson Beach, which are not mapped or defined, should receive such pedestrian infrastructure on roadways.
CDA staff agree with the suggested modifications as shown below.

C-CD-16 Maintenance of the Rural Character of Roadways. Roadways and accessways should reflect the character of coastal communities and should be context and location sensitive. The ~~only~~ primary areas to be considered for paved sidewalks, curbs, and similar roadway improvements shall be within designated village boundaries. ~~downtown areas of Point Reyes Station, Stinson Beach and Tomales~~.
(PC app. 9/19/11, 7/29/10)
[Adapted from Point Reyes Station Community Plan, Circulation and Transportation Policies T-1.1 and T-3.1, pp. 50-51; and Tomales Community Plan, Policy TR-1.1, p. IV-16]

C-SB-1 *Community Character of Stinson Beach*

Coastal Commission suggests modifying C-SB-1 so that all development and redevelopment within the Seadrift community must be designed to be consistent with community character and protection of scenic visual resources. CDA staff agree with the suggested modification as shown below.

C-SB-1 Community Character of Stinson Beach. Maintain the existing character of residential, small-scale commercial and visitor-serving recreational development in Stinson Beach. New development must be designed to be consistent with community character and protection of scenic resources.
(PC app. 9/19/11, 7/29/10)
[Adapted from Unit I New Development and Land Use Policy 29, p. 79]

C-HS-6 and C-HS-6.a *Short Term Vacation Rentals*

Coastal Commission staff requested the following revisions to Policy C-HS-6 and Program C-HS-6.a to eliminate redundancy between the two provisions, and to replace "restricting" with "regulating." Commission staff supports regulation of short term vacation rentals where appropriate through the implementation of specific land use standards. However, they are not supportive of language that would prohibit rentals entirely in any given area of the Coastal Zone. CDA staff agree with the following modifications as suggested by Coastal Commission staff.

C-HS-6 Restricted Short-Term Rental of Primary or Second Units. Consider ~~restricting~~ regulating the use of residential housing for short term vacation rentals.
(PC app. 9/19/11, 7/29/10)
[Adapted from the November 2009 Draft Housing Element Program 1.j]

Program C-HS-6.a ~~***Address Short-Term Rental of Primary or Second Units.*** Consider restricting the use of residential housing for short term vacation rentals.~~ **Vacation Rental Ordinance.**

1. Work with community groups to determine the level of support for an ordinance ~~restricting~~ regulating short-term vacation rentals.
2. Research and report to the Board of Supervisors on the feasibility of such an ordinance, options for enforcement, estimated program cost to the County, and the legal framework associated with rental properties.

(PC app. 9/19/11, 7/29/10)
[Adapted from the November 2009 draft Housing Element Program 1.j]

C-PA-4 and 22.64.180 *Direct Dedication of Public Coastal Access*

Commission staff commented that Policy C-PA-4 provides a welcome approach to providing public access, but noted that the policy is not accompanied by corresponding implementation measures. In particular, Commission staff suggested that direction should be provided in Development Code Section 22.64.180 *(Public Coastal Access)* to ensure that requirements for public access through coastal permit conditions be processed in a manner consistent with the Coastal Commission's procedures and the Coastal Act.

CDA staff agree that inclusion in the Development Code of procedures for the review of public access dedications or other public access conditions is appropriate, and therefore recommends that a sentence be added to 22.64.180.B.1 as shown below. There is no need to include the entire set of applicable Coastal Commission regulations from Coastal Act Section 13574 as part of the LCPA, since they adequately describe the Commission's review process. Commission staff has tentatively agreed to CDA staff's proposed change as shown below. *(Note that another, separate sentence is also proposed for addition to Section 22.64.180.B.1 related to Policy C-PA-3, as described in Attachment #2)*

Sec. 22.64.180 - Public Coastal Access
…
B. Public Coastal Access standards.

1. **Public coastal access in new developments.** New development located between the shoreline and the first public road shall be evaluated for impacts on public access to the coast per Land Use Plan Policy C-PA-2. Where a nexus exists, the dedication of a lateral, vertical and/or bluff top accessway shall be required per Land Use Plan Policy C-PA-9, unless Land Use Plan Policy C-PA-3 provides an exemption. All coastal development permits subject to conditions of approval pertaining to public access and open space or

conservation easements shall be subject to the procedures specified in Section 13574 of the Coastal Commission's Administrative Regulations.

Definitions: *Sewage Disposal System*

Commission staff commented that Policy C-PFS-11, which addresses "alternative on-site sewage disposal systems" should be accompanied by a definition of that term. Commission staff also commented that implementation measures regarding alternative sewage disposal systems should be included in the Development Code.

Section 22.64.140.A.11 includes a reference to Policy C-PFS-11, thus requiring that alternative sewage disposal systems only be approved where consistent with that policy. Regarding definition of the term, CDA staff proposes that the definition shown below be added to Section 22.130.030 of the LCPA for both standard and alternative sewage disposal systems. This definition is drawn from the County's existing regulations (Chapter 18.07), and Commission staff have tentatively agreed to CDA staff's recommendation as shown.

Individual Sewage Disposal System (Coastal). The term "individual sewage disposal system" means and includes any system of piping, treatment devices or other facilities (excluding chemical toilets) that store, convey, treat or dispose of sewage which is discharged anywhere other than into a public sewer system.

A. Standard Sewage Disposal System. A sewage disposal system which includes a septic tank (with or without the use of sump chamber and pump) by which method subsurface effluent is disposed of through leach lines.

B. Alternative Sewage Disposal System. Any individual sewage disposal system which may or may not include a standard septic tank for treatment, or does not include standard leaching trenches for effluent disposal, which has been demonstrated to function in such a manner as to protect water quality and preclude health hazards and nuisance conditions.

ATTACHMENT #2
Local Coastal Program Amendment (LCPA)
CDA Additional Proposed Changes

This attachment includes additional proposed changes to the LCPA to address other issues identified by the California Coastal Commission ('Commission') staff not discussed in Attachment #1. The changes proposed herein reflect the Marin County Community Development Agency ('CDA') staff recommendation and have not yet been agreed to by Commission staff.

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LCPA Appendices

As approved by the Board on October 2, 2012, CDA staff recommend that the LCPA Appendix includes the documents listed below. These are available online at www.MarinLCP.org. Commission staff have not yet agreed to this list of Appendices.

LCPA Appendices

1. List of Recommended Public Coastal Accessways
2. Inventory of Visitor-Serving, Commercial, and Recreational Facilities in Coastal Zone
3. Coastal Village Community Character Review Checklist
4. Design Guidelines for Construction in Areas of Special character and Visitor Appeal and for Pre-1930s Structures
5. Seadrift Settlement Agreement
6. "Geology for Planning in Western Marin County" by David L. Wagner, 1977
7. Categorical Exclusion Orders and Maps
8. Certified Community Plans *[Dillon Beach and Bolinas Gridded Mesa]*

Development Code Provisions and Other Relevant Documents

The LCPA references several provisions of the Marin County Development Code and other relevant documents that apply countywide. Since the applicability of these provisions is not limited to the Coastal Zone, they are not yet included as part of the LCPA. However, they have been compiled at the request of the California Coastal Commission (Commission) staff. Commission staff will use these to aid their review of the LCPA, and will determine which portions need to be included as part of the official LCPA Implementation Plan. Any portions to be included as part of the LCPA will need to be certified by the Coastal Commission for applicability in the Coastal Zone. The following items have been compiled for reference and are available online at www.MarinLCP.org:

- Agricultural Conservation Easement (Template)
- Telecommunications Facilities Policy Plan
- Chapter 22.01 – Purpose and Effect of Development Code
- Chapter 22.02 – Interpretation of Code Provisions
- Chapter 22.20 – General Property Development and Use Standards
- Chapter 22.22 – Affordable Housing Regulations
- Chapter 22.24 – Affordable Housing Incentives
- Chapter 22.27 – Native Tree Protection and preservation
- Chapter 22.56 – Second Unit Permits
- Chapter 22.58 – Large Family Day Care Permits
- Chapter 22.62 – Tree Removal Permits
- Chapter 22.112 – Nonconforming Structures, Uses, and Lots
- Section 22.122.050 – Enforcement of Development Code Provisions
- Article VI – Subdivision Procedures to Implement State Subdivision Map Act
- Chapter 24.04 – Development Standards – Improvements, Roads, Driveways
- Chapter 24.15 – Development Standards – Exceptions

C-AG-3 *Coastal Agricultural Residential Planned Zone (C-ARP)*

Commission staff indicated that the word "grouping" as used in Policy C-AG-3 is ambiguous and should be replaced with "clustering." They also suggested additional text clarifying the policy's intent to "avoid impacts to environmental and other coastal resources." The use of "grouping" was previously a topic of extensive discussion by the public and the Planning Commission, and therefore should be retained. However, CDA staff propose a compromise as shown below that retains the Commission staff's suggested language while also incorporating the concept of "groups" that was preferred by the Planning Commission. Commission staff have not yet agreed to this change.

> **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 to be clustered in a group or groups around existing development nodes to avoid impacts to environmental and other coastal resources.
>
> *(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]*

C-DES-2 *Protection of Visual Resources*

LCPA Policy C-DES-2 addresses the protection of visual resources. Coastal Act Section 30251 requires in part that *"development shall be sited and designed to protect views to and along the ocean and scenic coastal areas…"* Policy C-DES-2, as currently approved by the Board (see Attachment #5), addresses that concern while recognizing that the coastal views at issue are those available from public viewing areas rather than those that may exist from private property. The focus on public viewing areas is consistent with the Coastal Commission's interpretation of Coastal Act Section 30251. Furthermore, the existing certified LCP focuses on significant views as seen from public viewing places (see Unit II New Development and Land Use Policy 3.a.).

CDA staff recommend revisions as shown below to clarify Policy C-DES-2, in order to sharpen its focus on significant views from public places. First, to avoid the possible implication that no structure at all could be placed in a significant viewshed, CDA staff propose the addition of the word "substantial" to modify "obstruction." Thus, a new mailbox or toolshed along the road would not be subject to denial, even if such a structure might very briefly "obstruct" a view available to passersby on the highway. Second, CDA staff propose to rephrase the sentence regarding the intent of the policy to protect views from public places. These changes would exclude the consideration of views from private residential yards and driveways, as well as from the residences themselves.

CDA staff has discussed these proposed clarifications with Commission staff, who have not yet indicated agreement with them. Nevertheless, CDA staff is proposing these changes to the Board for consideration, with a recommendation to include them in order to clarify the interpretation of Policy C-DES-2.

C-DES-2 Protection of Visual Resources. Ensure appropriate siting and design of structures to prevent substantial obstruction of significant views, including views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes. The intent of this policy is the protection of significant public views rather than coastal views from private ~~residences~~ residential areas ~~where no public vistas are involved~~. Require development to be screened with appropriate landscaping provided that when mature, such landscaping shall not interfere with public views to and along the coast. The use of drought tolerant, native coastal plant species is encouraged. Continue to keep road and driveway construction, grading, and utility extensions to a minimum, except that longer road and driveway extensions may be necessary in highly visible areas in order to avoid or minimize other impacts.
(PC app. 11/7/11, 1/24/11)
[Adapted from Unit II New Development and Land Use Policy 3.b, p. 207]

C-SB-3 Density and Location of Development in Seadrift

Commission staff suggest modifying Policy C-SB-3 to include a description of the salient provisions of the Seadrift Settlement Agreement that address the kinds, intensities, and locations of uses, instead of a cross-reference to the agreement, so that the standards are clearly identified. In response, CDA staff clarified that the stipulations cited in the Settlement Agreement have been carried out. The existing zoning of the Seadrift area represents the lot reassignments and subdivision provisions outlined in the agreement. Because there is no further subdivision potential within Seadrift, the development provided by the agreement has been carried out, the recommended rezonings in the existing certified LCP have been implemented, and since the Settlement Agreement does not address development standards, CDA staff does not recommend modifying the language per Commission staff's suggestion. However, a reference to the Settlement Agreement has been added by CDA staff to Policy C-SB-3 as shown to provide information on where the terms of the agreement can be reviewed. Commission staff is not yet in agreement with the policy language as shown.

C-SB-3 Density and Location of Development in Seadrift. Development of the approximately 327 lots within the Seadrift Subdivision shall be allowed consistent with the provisions of the July 12, 1983 Memorandum of Understanding for the settlement of the litigation between Steven Weisenbaker and the William Kent Estate Company, and the County of Marin, and consistent with the terms of the March 16, 1994, Settlement Agreement in the litigation titled Kelly et al. v. California Coastal Commission, Marin County Superior Court Case No. 152998 between the Seadrift Association and the County of Marin. Minimum lot sizes shall be as shown on the final subdivision maps approved by Marin County, as modified by the referenced settlement agreements. See Appendix 5: Seadrift Settlement Agreement.
(PC app. 1/9/12, 9/19/11, *07/29/10)*
[Adapted from Unit I Location and Density of New Development Policy 36, p. 81]

C-PA-3 Exemptions to Public Coastal Access Requirements

Commission staff commented that the first sentence of part (3) of Policy C-PA-3 should be deleted. This provision allows for consideration of the privacy of neighboring residents when a new public accessway is under discussion. Commission staff commented that Coastal Act Section 30212(a) does not allow the County to exempt consideration of public access requirements in new development on the basis of

privacy. Instead, the basis for a possible exemption are factors such as public safety, military security needs, and the protection of fragile coastal resources.

However, the existing certified LCP contains very similar provisions regarding the privacy of adjacent residents (see Unit I Policy on Public Access #1, p. 7), and therefore is not a new concept in the LCPA. Furthermore, under the policy in the certified LCP as well as that which is proposed in the LCPA, the privacy of existing residents must be addressed through very specific measures, such as setbacks or regulated hours of use, before an exemption can be considered. Thus, it would not be "automatic" for an existing homeowner to simply object to an accessway nearby and thus avoid creation of such an accessway.

Because Policy C-PA-3 mirrors existing certified LCP requirements (albeit using slightly different words), CDA staff recommends no major changes. However, a minor change is recommended in order to help clarify the result of consideration of adjacent residents' privacy. That change would substitute the words "need not" for "may not." The phrase "public access may not be required" could be interpreted to mean that decision-makers would be prohibited from requiring access. Instead, the intent is that in some cases, access need not be required where specific findings are made supporting that conclusion. Furthermore, CDA staff recommends renumbering the paragraphs in Policy C-PA-3, so as to make it clear that "the findings on any point above" refers to all the situations for possible exemption from access requirements, as listed in paragraph #2.

To further clarify the precise requirements that would apply in order for a "privacy" exemption, CDA staff discussed with Commission staff the addition of a sentence to Section 22.64.180as shown below. This additional sentence would limit the circumstances in which a privacy exemption might be considered. For instance, a ten-foot setback, a hedge, or a fence might all suffice to ensure neighbor privacy, and thus avoid any exemption from a coastal access requirement. Although tentative agreement on this change has apparently not been reached with Commission staff, CDA staff recommends consideration of this change as a useful clarification. *(Note that another, separate sentence is also proposed for addition to Section 22.64.180.B.1 related to Policy C-PA-4, as described in Attachment #1)*

C-PA-3 Exemptions to Public Coastal Access Requirements. Exempt from the public coastal access requirement of Policy C-PA-2 a coastal permit for:

1. Improvement, replacement, demolition or reconstruction of certain existing structures, as specified in Section 30212 (b) of the Coastal Act, and
2. Any new development upon specific findings under Section 30212 (a) that (1) public access would be inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected.
3. Upon specific findings that public use of an accessway would seriously interfere with the privacy of adjacent residents, public access ~~may~~ need not be required. The findings on any point above shall include a consideration of whether or not (1) design measures such as setbacks from sensitive habitats, trails, or stairways, or (2) management measures such as regulated hours, seasons, or types of use could adequately mitigate potential adverse impacts from access.

(PC app. 9/19/11, 2/8/10)
[Adapted from Unit II Public Access Policies 2.d, p. 15, and 5, p. 23]

Dev. Code Section 22.64.180 – Public Coastal Access
…
B. Public Coastal Access standards.

1. **Public coastal access in new developments.** New development located between the shoreline and the first public road shall be evaluated for impacts on public access to the coast per Land Use Plan Policy C-PA-2. Where a nexus exists, the dedication of a lateral,

vertical and/or bluff top accessway shall be required per Land Use Plan Policy C-PA-9, unless Land Use Plan Policy C-PA-3 provides an exemption. A finding that an access way can be located ten feet or more from an existing single-family residence or be separated by a landscape buffer or fencing if necessary should be considered to provide adequately for the privacy of existing homes.

C-PA-20 Shoreline Structures on or Near Public Coastal Accessways

Commission staff suggest modifying Policy C-PA-20 to address parking fees and their impacts on coastal access since they have seen an increase in parking fees at public beaches and parks. They further suggested that the policy be changed to ensure that any proposed parking fees be commensurate with the cost of service provided and should not unduly burden a particular user group.

CDA staff do not recommend initiating such changes. Parking fees are not charged at most public beaches in Marin's Coastal Zone, including beaches in the Golden Gate National Recreation Area at Stinson Beach, Muir Beach, and Rodeo Beach, as well as beaches in the Point Reyes National Seashore. Furthermore, Program C-TR-10.a (Encourage Additional Transit Service) addresses the Board of Supervisor's endorsement of potential congestion and parking management options, potentially including parking fees, to fund public transit and other programs to meet coastal access and recreational use needs in a way focused more on people than on automobiles. However, CDA staff does concur with Commission staff's suggestion to mitigate any potential loss of public coastal access. CDA staff recommends revising C-PA-20 to include language to mitigate any potential loss of public coastal access as shown below, however Commission staff has not yet agreed to this change.

> **C-PA-20 Effects of Parking Restrictions on Public Coastal Access Opportunities.** When considering a coastal permit application that could result in reducing public parking opportunities near beach access points or parklands, evaluate options that consider both the needs of the public to gain access to the coast and the need to protect public safety and fragile coastal resources, including finding alternatives to reductions in public parking and ways to mitigate any potential loss of public coastal access.
> *(PC app. 9/19/11, 4/26/10)*
> *[New policy, not in Unit I or II]*

Section 22.64.150 Transportation Standards

Policies C-TR-6 and C-TR-7 encourage new bicycle and pedestrian facilities and bicycle storage facilities. Commission staff suggest adding standards to Section 22.64.150 to implement these policies and provide guidance on what facilities are required and under what circumstances. In addition, Commission staff said the LCPA should commit to providing "Complete Streets," where the County should ensure every new transportation project include bike, pedestrian, and transit facilities as needed and appropriate incorporated right into the design of the project. CDA staff recommends revising Section 22.54.150(A)(3) to include a reference to the Supplemental Bikeway Design Guidelines in the Marin County Unincorporated Area Bicycle and Pedestrian Master Plan. This document provides the design guidelines sought by Commission staff. With regards to Complete Streets, CDA staff recommends adding new language to Section 22.64.150 as shown below to ensure that all transportation projects include multi-modal facilities and improvements consistent with the Marin County Department of Public Works Directive 2006-1, dated January 23, 2006. Commission staff have not yet agreed to the changes shown.

22.64.150 – Transportation

A. Transportation standards.

1. **Roads in the Coastal Zone.** The motorized vehicular capacity of roads in the Coastal Zone shall be limited per Land Use Policy C-TR-1.
2. **Scenic quality of Highway One.** The scenic quality of Highway One shall be maintained per Land Use Policy C-TR-2.
3. **New bicycle and pedestrian facilities.** New development shall be encouraged or required to provide new bicycle and pedestrian facilities per Land Use Policy C-TR-6. Where appropriate, the installation of bike racks, lockers and other bike storage facilities shall be encouraged per Land Use Policy C-TR-7.

   (a) Bikeway Design Guidelines. For bikeway planning and design requirements, refer to the Marin County Unincorporated Area Bicycle and Pedestrian Master Plan Supplemental Bikeway Design Guidelines.
4. **Expansion of the Countywide Trail System**. Acquire additional trails to complete the proposed countywide trail system, providing access to or between public lands and enhancing public trail use opportunities for all user groups, including multi-use trails, as appropriate (Land Use Policy C-TR-8).
5. **Complete Streets**. Consistent with the local implementation of the State of California's Complete Streets policy, at the outset of all projects, other than routine maintenance, an analysis shall be performed to ensure the inclusion of all necessary, appropriate and reasonable multi-modal facilities and improvements, including transit, bike and pedestrian access, disabled access, and traffic safety. (See also Department of Public Works Directive 2006-1, dated January 23, 2006.)

Section 22.68.070 De Minimis Waiver

A "de minimis waiver" is a means of providing an expedited coastal permit review for a very minor project that is not otherwise exempt from permit requirements, and yet carries no risk of adverse impacts to coastal resources. The Coastal Commission regularly issues de minimis waivers for various types of projects, including construction of single-family homes in established residential areas, pursuant to Coastal Act Section 30624.7.

The LCPA includes provisions for de minimis waivers in Section 22.68.070. As included in the LCPA, the circumstances under which a de minimis waiver might be issued are very narrow, and the type of projects subject to a de minimis waiver are listed. Such projects include only very minor developments such as small retaining walls, repair of existing storage tanks, borings for test purposes, and other similar projects.

Commission staff commented initially that provisions for de minimis waivers for use by the County are not allowed by the Coastal Act and therefore should be deleted from the LCPA. However, the Coastal Commission's advice to local governments from years ago (Local Assistance Notes, May 1988) advised that de minimis waiver provisions might be included in an LCP under certain circumstances. Furthermore, coastal jurisdictions such as Humboldt County have provisions for de minimis waivers of certain very minor projects in their certified LCP.

In subsequent discussions with Commission staff, CDA staff have proposed to delete the list of projects potentially subject to a de minimis waiver, on the basis that it is not possible to foresee every type of very minor project that might be proposed. Furthermore, CDA staff have suggested adding a time limit for any de minimis waiver that might be approved, consistent with Commission staff comments. Those additional potential changes are shown below.

Commission staff have indicated continuing concerns with the proposed de minimis waiver provisions as shown below, including the fact that such waivers might be issued in an area where a coastal permit

would be appealable to the Coastal Commission. The Coastal Commission's procedures require generally that projects appealable to the Coastal Commission should be afforded a local public hearing. A de minimis waiver would not be accompanied by a public hearing, of course, which would tend to defeat the goal of providing a streamlined permit review process for very minor projects.

At the same time, with the additional changes suggested by staff below, the proposed de minimis waiver procedures would afford the public and the Coastal Commission full opportunity to comment. Public notice would be required of a proposed de minimis waiver just as it would be required if a full-scale coastal permit were to be required. Furthermore, the procedure as proposed below allows the Executive Director of the Coastal Commission to request, in any particular case, that a waiver not be issued, in which case a regular coastal permit would be required. That procedure would be consistent with the Coastal Commission's own de minimis waiver procedures for projects in its jurisdiction, which provide that a de minimis waiver is an optional procedure and can be used only where the Executive Director determines that the project involves no potential for any adverse effect on coastal resources.

Providing efficient methods of coastal permit review in the LCPA for very minor projects with no possible adverse impacts on coastal resources remains a desirable goal. CDA staff recommend inclusion of the changes as shown below, however these revisions have not yet been agreed to by Commission staff.

22.68.070 – De Minimis Waiver of Coastal Permit

The Director may waive the requirement for a Coastal Permit in compliance with this Section upon a written determination that the project meets all of the criteria in A. through G. below:

~~**A.**~~ Involves no potential for adverse effects, either individually or cumulatively on coastal resources,

~~**B.**~~ Is consistent with the certified Marin County Local Coastal Program,

~~**C.**~~ Is not of a type or in a location where the project~~, if subject to a Coastal Permit, would be appealable to the Coastal Commission or~~ would be subject to a Coastal Permit issued by the Coastal Commission,

~~**D.** Consists of one of the following or a project substantially similar to the following:~~

- ~~**1.** Construction of retaining walls less than four (4) feet in height,~~
- ~~**2.** Demolition of structures other than those built prior to 1930,~~
- ~~**3.** "One for one" replacement of or abandonment of minor utilities,~~
- ~~**4.** Repair and replacement work associated with underground and above-ground storage tanks,~~
- ~~**5.** Installation of borings for test purposes, monitoring wells, vadose wells, temporary well points, and vapor points, or~~
- ~~**6.** Merger of property~~

~~**E.**~~ **D.** Public notice of the proposed De Minimis Waiver of Coastal Permit and opportunities for public comment have been provided as required by Section 22.70.050 , including provision of notice to the Coastal Commission,

~~**F.**~~ **E.** The Director shall not issue a waiver until the public comment period specified by Section 22.70.050 ~~for the waiver~~ has expired ~~and no written requests for a coastal development permit have been submitted to the Department~~. If ~~any member of the public~~ the Executive Director of the Coastal Commission requests that a waiver not be issued, the applicant shall be advised that a Coastal Permit is required if the applicant wishes to proceed with the development.

~~**G.**~~ **F.** Within seven (7) calendar days of issuance of a De Minimis Waiver of Coastal Permit, the Director shall notify the Coastal Commission and any persons who specifically requested notice of such action via first class mail, a Notice of Final Action describing the issuance and effectiveness of the De Minimis Waiver.

G. A De Minimis Waiver shall expire and be of no further force and effect if the authorized development has not commenced within two years of the effective date of the waiver.

ATTACHMENT #3
Local Coastal Program Amendment (LCPA)
Unresolved Issues

This attachment provides a brief discussion of remaining unresolved issues not addressed in Attachments #1 and 2 that require further collaboration between Marin County Community Development Agency ('CDA') staff and California Coastal Commission ('Commission') staff.

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Permits for Agriculture in C-APZ: C-AG-2, C-BIO-14, 22.68.030 and 22.130.030

Coastal Permits are currently not required for routine agricultural production activities under the certified Marin County LCP, nor do they appear to have been required under the certified LCPs of other jurisdictions as far as CDA staff have been able to determine.

Commission staff have suggested that many routine agricultural practices include earthwork that constitutes grading, and that grading is a "development" that requires a permit under the Coastal Act. The Act, however, does not define "grading." Similarly, the phrase "change in the intensity of use of water, or access thereto," another component of "development," is also not specifically defined in the Act.

Consequently, the Board endorsed language to clarify that "on-going agriculture operations including cultivation, crop and animal management, and grazing are not considered to be development". To address continued Commission staff concerns, the Board made further changes to assure that agricultural activities did not impact ESHAs or develop new sources of water without a permit.

> **22.68.030 Coastal Permit Required**
> *…On-going agricultural operations including cultivation, crop and animal management and grazing are not considered to be development or a change in the density or intensity of the use of land. For the purposes of this Chapter, "on-going agricultural operations" are those which exist presently or historically, and do not entail new encroachment within 100 feet of the edge of a wetland, stream or riparian vegetation. For agricultural uses, a "change in the intensity of use of water, or access thereto" means the development of new water sources such as construction of a new well or the creation or expansion of a surface impoundment.*

In common usage, "grading" describes earth-moving related to construction involving such things as buildings or roads. The Dictionary of Construction.com defines it as:

1. *The act of altering the ground surface to a desired grade or contour by cutting, filling, leveling, and/or smoothing.*

On the other hand, agriculture obviously encompasses activities that involve the soil, such as plowing, planting, cultivating, etc.

Therefore the Board endorsed adding a definition of grading to the LCPA for clarity as follows:

> ***Grading (coastal)** – Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof that exceeds 150 cubic yards of material. As used in this Development Code, grading does not include plowing, tilling, harrowing, aerating, disking, planting, seeding, weeding, fertilizing or other similar routine agricultural cultivation practices.*

The purpose of these changes is to protect agriculture as required by the Coastal Act and ensure that existing agricultural operators can continue to conduct their routine agricultural activities and diversify their operations as they have under the certified LCP for the past thirty years, while fully protecting sensitive resources from new disturbances.

While the Commission staff have stated that coastal permit requirements would not be extended to "ongoing agricultural activities," the term was originally left vague and ill-defined It was suggested that activities such as plowing, tilling, and routine cultivation practices could be classified as grading and thus would require a coastal permit. Over the past several weeks, Commission and CDA staffs made progress in clarifying these policies and narrowing the gap between our respective interpretations of the Coastal Act on this matter. CDA staff's latest proposal is summarized below for the Board and public's information, and to facilitate any direction the Board may wish to provide to staff. The detailed text of the several policies and Code sections involved are shown at the end of this section.

- Policy C-AG-2 describing the C-APZ (Coastal, Agricultural Production Zone) district would be clarified to state that "ongoing agricultural activities" do not constitute development and do not require a coastal permit.
- Policy C-BIO-14 (Wetlands) would allow grazing or other agricultural uses in a wetland, where such activities are ongoing within the last 10 years. Commission staff favors that this be modified to the last 5 years. The CDA staff recommendation of 10 years is based upon consultation with U.C. Cooperative Extension Director David Lewis who cited situations where areas may not be grazed for more than five years due to circumstances such farm family estate settlement complications, market or other business conditions that force a reduction in herd size, or the purchase of a farm by a non-agricultural buyer. In the latter case the encroachment of brush and increasing fire hazard over time may cause the owner to seek to renew the agricultural use, but the sometimes onerous, costly and time consuming process of obtaining a coastal permit would be a substantial barrier to resuming agricultural production.

While Commission staff have not yet completed their internal review on this draft, some of the issues still being discussed include:

- Sections 22.68.030 (Coastal Permit Required) and 22.130.030 ("Agricultural activities, Ongoing (Coastal)" Definition) provide specific details of what constitute "ongoing agricultural activities" and the related "change in the intensity of use of water, or access thereto." This will allow landowners and regulators both to clearly understand the LCPA requirements and plan for them.
- The definition of "grading" similarly provides for greater certitude and consistency in the administration of the LCPA. It recognizes that not all earth movement is grading. The current version continues the certified LCP's threshold of 150 cubic yards to define grading. However, discussions have considered a lower threshold, especially if the County could gain De mimimis authority to address activities that have no potential for adverse effects, either individually or cumulatively, on coastal resources.

LCPA Text Under Discussion by CDA and Commission Staffs

NOTE: The following shows relevant portions of the text as it has developed through the discussions of Commission and CDA staffs. Highlighted, ~~strikethrough~~ and underline revision marks identify proposed changes to the current Board-accepted policies. ***Bold italic*** text shows CDA staff's proposed revisions that the Commission staff have not yet agreed to.

Coastal Permits for Ongoing Agricultural Activities:
(This question involves several different Policies and Code sections)

> **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. Ongoing agricultural activities do not constitute development and do not require a coastal permit**…**
>
> **C-BIO-14 Wetlands.** Preserve and maintain wetlands in the Coastal Zone as productive wildlife habitats and water filtering and storage areas, and protect wetlands against significant disruption of habitat values. Prohibit grazing or other agricultural uses in a wetland, except in those areas where such activities are ongoing ***(***i.e., within the last ***10 years)*** ~~used for such activities prior to April 1, 1981, the date on which Marin's LCP was first certified. 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).~~

22.68.030 – Coastal Permit Required

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, 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). On-going agricultural operations including cultivation, crop and animal management and grazing are not considered to be development or a change in the density or intensity of the use of land. For the purposes of this Chapter, "on-going agricultural operations" are those which exist presently or historically, and do not entail new encroachment within 100 feet of the edge of a wetland, stream or riparian vegetation. For agricultural uses, a "change in the intensity of use of water, or access thereto" means the development of new water sources such as construction of a new or expanded well or expansion of a surface impoundment.

22.130.030 – Definitions

Agricultural activities, Ongoing (Coastal). On land that has been used for crop production, including at a minimum planting or harvesting crops, within at least the previous ***ten years***, ongoing agricultural activities ~~include~~ are limited to normal, routine or repetitive agricultural activities such as crop production, changes in crops, grazing, grading, soil and crop preparation, seeding, planting, cultivation, irrigation, pest management, fertilizing, harvesting, removal of non-native vegetation, removal of no more than one-half acre of native vegetation, continued agricultural activities in areas otherwise qualifying as environmental sensitive habitat areas or their buffers ~~and~~ , restoration of existing fields, and similar activities . Ongoing grazing includes pasturing livestock, managing grazing lands or producing silage on land where livestock pasturing or silage production has occurred within at least the previous ***ten years.***

Development. On land, in or under water, the placement or erection of any solid material or structure;**…** grading,**…**; change in the intensity of use of water, or of access thereto; **…** "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. Development does not mean ongoing agricultural activities as defined in Sections 22.130.030 or ~~"Coastal Permit Required."~~ 22.68.030.

Grading (coastal) – Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof that exceeds 150 cubic yards of material. As used in this Development Code, grading does not include plowing, tilling, harrowing, aerating, disking, planting, seeding, weeding, fertilizing or other similar ~~routine agricultural cultivation practices.~~ ongoing agricultural activities.

C-AG-2 *Principal Permitted Uses in C-APZ*

Commission staff initially requested that principal permitted uses (PPUs) for C-APZ lands be limited to solely agricultural production, and that all other agricultural uses listed in C-AG-2 not be designated as PPUs, and thus be subject to appeal to the Coastal Commission. These uses included:

- "…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…"

- Additionally, Commission Staff recommended that one farmhouse be allowed per "farm," rather than per "legal lot."

In subsequent discussions, Commission staff indicated that a farmhouse could be allowed as a PPU because that is consistent with the certified LCP designation of one single family dwelling as a PPU in the C-APZ district. In a later discussion, Commission staff indicated that the first intergenerational unit could be consider a PPU if the restrictions on such units were sufficient.

With regard to intergenerational units, CDA and Commission staffs discussed a cap to assure that the total number of intergenerational units not exceed the small number of possible units calculated by the CDA, without a subsequent LCP amendment. Thus the Commission can have certainty about the extent of potential development, while landowners will know that there will be capacity for their intergenerational units if they decide to pursue that option, and will not be forced to act precipitously to preserve the intergenerational unit option.

Among the issues that CDA staff intends to continue to address with Commission staff are:

- The certified LCP specifically designates "accessory structures or uses appurtenant and necessary to the operation of agricultural uses…" as part of the PPU for the C-APZ district. These provisions should be carried over in the LCPA.

- Besides those uses already designated as PPUs in the certified LCP, PPUs should include proposed activities that are functionally-related to agricultural production itself: the first intergenerational unit for the farm family, agricultural worker housing, and limited production and processing facilities that support the continued or renewed feasibility of agriculture.

C-AG-5, -6, -7 and -9 *C-APZ Development Standards and Uses*

Policies C-AG-5, -6, -7 and -9 contain standards for development in the C-APZ district, including requirements related to intergenerational housing and agricultural worker housing. Commission staff expressed their view that as currently structured, standards for various uses do not necessarily correspond to their potential impacts. Accordingly, Commission staff proposed to reorganize the policies to create a hierarchy of requirements which they think better corresponds to the degree of potential impacts. CDA staff are not opposed to reorganization of the policy provisions per se, and have been working with Commission staff on a draft revision. However, the draft language proposed by Commission staff also includes changes that substantively alter a number of the requirements and provisions previously approved by the Board. For example, under the modified policies suggested by the Commission:

- Applications for agricultural worker housing would be appealable to the Coastal Commission and would be required to include an evaluation of existing worker housing in the area.
- Bed and breakfasts would not be permitted as stand-alone structures (separate from farmhouse).
- Farmhouses, intergenerational homes, and agricultural worker housing would explicitly be subject to public view protection policies.
- No flexibility to the 5% clustering provisions would be permitted
- Approval of a permitted or conditional non-agricultural use covering more than 20 percent of a property would require a full Local Coastal Program amendment in addition to a Coastal Permit and a Use Permit.

Due to the number and complexity of the issues involved, CDA and Commission staff have as yet been unable to reach agreement on a re-organized format and modified content for the above-referenced policies. Rather than present a significant number of complex revisions which have not been endorsed by Commission staff, CDA staff recommend keeping these policies in their current format, with the understanding that CDA and Commission staffs will continue to work toward a resolution after submission of the LCPA.

C-BIO-1 *Environmentally Sensitive Habitat Areas (ESHA)*

Policy C-BIO-1 establishes Environmentally Sensitive Habitat Area (ESHA) and identifies three separate categories of ESHA: wetlands, streams and riparian vegetation areas, and terrestrial ESHAs. With respect to terrestrial ESHA, the policy states: Terrestrial ESHA refers to those non-aquatic habitats that support rare and endangered species; coastal dunes as referenced in C-BIO-7 (Coastal Dunes); roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats); and riparian vegetation that is not associated with a perennial or intermittent stream.

Commission staff recommended that the description of terrestrial ESHA be revised to say that it "includes" rather than "refers to" the categories listed in Policy C-BIO-1. In subsequent communication, Commission staff clarified that the description (and definition) of terrestrial ESHA should be expanded to include additional classifications of wildlife and vegetation communities:

- **Fully Protected Species:** this is a regulatory designation that pre-dates the Endangered Species Act. Most Fully Protected species have subsequently been designated "threatened" or "endangered" under the Federal or California Endangered Species Acts. Including "fully protected species" in the definition of terrestrial ESHA would bring habitat for the Golden Eagle, White-Tailed Kite and California Brown Pelican (de-listed from Federal ESA in 2009) under the stringent ESHA protections of the Coastal Act, including avoidance and buffer standards.
- **Species of Special Concern (SSC):** this is an administrative designation that carries no formal legal status, according to the CA Department of Fish and Wildlife. The SSC designation is intended to bring focus on conservation of these species and stimulate research. Through environmental review procedures under CEQA, Species of Special Concern are identified and their habitat is protected to the extent feasible. Because many SSC are associated with wetlands, riparian habitat, or are colonial roosting species, they are encompassed in the approved ESHA definition.
- **Rare vegetation communities designated S1, S2 or S3 by the California Department of Fish and Wildlife:** this is an administrative ranking methodology for rare vegetation communities identified in the California Natural Diversity Database (CNDDB). Rare vegetation communities are alliances or communities of plants, which may also include rare, threatened, or endangered species already captured in the California Native Plant Society designation (CNPS species ranked 1.b or 2 are already considered ESHA under the proposed definition).

To date, agreement between CDA and Commission staffs has not been reached regarding the description of Terrestrial ESHA. As currently proposed and approved by your Board, the ESHA descriptions encompass the habitat of threatened and endangered species, rare native plants, habitat of colonial nesting species (such as monarch butterflies, egrets, and herons) and dune, wetland, stream and riparian areas. ESHA is a highly protective designation which requires avoidance of the habitat with no provision for mitigation, as well as a buffer that must be maintained in a natural state. Importantly, however, designation of ESHA is not the only means of habitat conservation – as noted, additional habitat areas for Species of Special Concern and native plant communities as identified in the CNDDB are evaluated and significant impacts are mitigated through the course of environmental review. There are additional state and federal regulations governing the protection of certain species (for example, the Bald and Golden Eagle Protection Act).

CDA staff recommends no additional revisions to the ESHA descriptions in Policy C-BIO-1 of the Land Use Plan or the ESHA definitions in the Implementation Plan.

C-BIO-2 *ESHA Protection*

Policy C-BIO-2.2 addresses public accessways and trails in ESHA and states, "Accessways and trails are resource dependent uses that shall be sited and designed to protect ESHAs against significant disruption of habitat values..."

Commission staff have suggested that the policy be revised to say that accessways and trails *may* be considered resource-dependent in certain circumstances, and then go on to list the types and situations where this may be the case.

Policy C-BIO-2.2 is derived from the Commission staff's own recommendations and certified language:

- Malibu LUP ("Public accessways and trails are considered resource dependent uses…") which was written by the Commission staff and certified in 2002
- Coastal Commission findings on A-1-DNC-12-016 ("As a resource dependent use, a nature trail is an allowed use within an ESHA consistent with Section 30240 of the Coastal Act…")
- Suggested modifications for the Santa Barbara Toro Canyon Plan ("Public accessways and trails located within or adjacent to ESH shall be sited to minimize impacts to ESH to the maximum extent feasible")

CDA and Commission staff have discussed the policy language but have not reached agreement to date. CDA staff recommend that the language of Policy C-BIO-2.2 be retained pending Commission staff review of the Malibu LUP certified language and its origins, as well as Commission staff research and recent cases on this topic.

C-BIO-3 *ESHA Buffers*

Policy C-BIO-3 establishes buffer requirements, and outlines distinct buffer standards for wetland, streams and riparian, and terrestrial ESHA. Regarding terrestrial ESHA, the policy states that the buffer "shall be 50 feet, a width that may be adjusted by the County as appropriate to protect the habitat value of the resource" based upon biological site assessment and consideration of multiple factors including the sensitivity of the resource, habitat requirements and site conditions.

Commission staff has requested that the County provide a minimum buffer width for terrestrial ESHA. In subsequent discussions, Commission staff indicated that an absolute minimum buffer of 25 feet could be acceptable.

The topic of terrestrial ESHA buffer widths was considered during public hearings on October 2 and November 13, 2012. As noted in the hearings, CDA staff recommend that the appropriate buffer for terrestrial ESHA be determined on a site-specific basis according to biological study that accounts for natural resources, current protocols, the anticipated impacts of development, and design measures to eliminate impact, all of which are provided in the approved policy language.

Moving forward, CDA staff will continue to work with Commission staff to explore whether there is a scientific basis for an absolute minimum buffer that can be logically applied to the wide spectrum of terrestrial ESHA, or whether the site-specific measures proposed in the LCPA would more effectively provide the protection required by the Coastal Act.

C-BIO-21 *Wetland Impact Mitigation*

Policy C-BIO-21 sets mitigation standards for any dike and fill development that is permitted in the Coastal Zone. It incorporates standards consistent with the Countywide Plan policies for Wetland Conservation Areas, which were approved by your Board on October 2, 2012.

Commission staff had initially raised several concerns about C-BIO-21, but upon review of Coastal Act Section 30607.1 no longer objects to:

.

- Wetland acquisition ("acquire areas of equal or greater biological productivity or opening up equivalent areas to tidal action") as a mitigation option;
- Policy C-BIO-21 language that exempts mitigation for temporary or short-term activities less than 12 months in duration, provided that a bond or financial surety is provided.

In discussions, Commission staff have stated their concern that the mitigation ratio be at least 4:1 rather than the graduated ratio proposed in the LCPA (2:1 on-site, 3:1 off-site and 4:1 for in-lieu fee), in part to account for the possibility of failed restoration.

CDA staff do not concur with Commission staff's recommendation. Graduated mitigation ratios are provided as a way to encourage mitigation on-site with monitoring and maintenance provided as a means of ensuring successful mitigation. The mitigation ratios are consistent with the Countywide Plan and establish similar standards across all planning areas.

- Increased mitigation ratios of 4:1 for all mitigation (C-BIO-21 allows 2:1 on-site, 3:1 off-site and 4:1 for in-lieu fee);
- Deletion of language that expresses preference for wetland restoration as opposed to creation of new replacement wetlands (C-BIO-21.2);

C-EH-13 *Shoreline Protective Devices*

Commission staff commented that a provision should be added to Policy C-EH-13 indicating that most armoring projects are likely to be located with the Coastal Commission's continuing jurisdiction area and therefore the LCPA policies would be advisory only. In response, CDA staff propose a clarification to the first paragraph of the policy, as shown below. Commission staff have tentatively agreed with this addition.

Commission staff also commented that Policy C-EH-13 contains no time limit for armoring permits. They state that the Coastal Commission's recent practice has been to permit armoring projects for a 20-year

period, after which the armoring and its surroundings can be reanalyzed to review the conditions that required the armoring in the first place.

Although Policy C-EH-13 lacks an across-the-board 20-year limit for armoring projects, the policy does address the possibility of changed circumstances. Policy C-EH-13 states that any shoreline protective device may be authorized for a specified time period depending on the nature of the project and other conditions that may change over time. For any particular armoring project, that specified time period might be longer or shorter than 20 years, depending on the circumstances at hand. For instance, in a situation where an armoring project is approved for the purpose of protecting public roads and utilities, a longer period may be appropriate, given that the hazard to the community at large is likely to remain indefinitely.

Commission staff suggested addition of the following sentence at the end of paragraph #8 regarding the time limit for an armoring permit:

> *"The specified time period shall normally be 20 years; however this time period may be decreased or increased if there are extenuating circumstances associated with the shoreline protective device or if such extension complies with an approved regional shoreline management program."*

However, such a sentence adds nothing significant to the policy that is not already there. Rather than lock future coastal permits into a 20-year lifespan, CDA staff continue to recommend that a flexible approach be used, allowing a suitable time limit for each project. Therefore, CDA staff recommend no further changes regarding a time limit for armoring permits, and recommends only the addition of the first sentence shown below.

> **C-EH-13 Shoreline Protective Devices.** For shoreline protective devices proposed to be located within the Coastal Commission's retained coastal permitting jurisdiction, the following policies are advisory only. Discourage shoreline protective devices (i.e., shoreline armoring) in the Coastal Zone due to their visual impacts, obstruction of public access, interference with natural shoreline processes and water circulation, and effects on marine habitats and water quality.
>
> Allow the construction or reconstruction of a shoreline protective device, including revetments, breakwaters, groins, seawalls, or other artificial structures for coastal erosion control, only if each of the following criteria is met:
>
> **1.** The shoreline protective device is required to serve a coastal-dependent use or to protect a principal structure, residence, or second residential unit in existence prior to the adoption of the Local Coastal Program (May 13, 1982) or a public beach in danger from erosion.
> **2.** No other non-structural alternative, such as sand replenishment, beach nourishment, or managed retreat is feasible.
> **3.** The condition causing the problem is site specific and not attributable to a general erosion trend, or the project reduces the need for a number of individual projects and solves a regional erosion problem.
> **4.** It can be shown that a shoreline protective device will successfully eliminate or mitigate its effects on local shoreline sand supply and that the device will not adversely affect adjacent or other sections of the shoreline.
> **5.** The shoreline protective device will not be located in wetlands or other significant resource or habitat area, and will not cause significant adverse impacts to fish or wildlife.
> **6.** There will be no reduction in public access, use, or enjoyment of the natural shoreline environment, and construction of a shoreline protective device will preserve or provide access to related public recreational lands or facilities.
> **7.** The shoreline protective device will not restrict navigation, mariculture, or other coastal use and will not create a hazard in the area in which it is built.
> **8.** The shoreline protective device may be authorized for a specified time period depending on the nature of the project and other possible changing conditions. Maintenance beyond the

specified time period, modification, or expansion of the approved device shall require approval of an amendment to the Coastal Permit.

C-EH-24 *Permit Exemptions for Structures Destroyed by Disaster*

Commission staff commented that Policy C-EH-24 includes a provision for allowing a destroyed structure to be rebuilt on a different site, without a coastal permit. This provision stems from the Coastal Act's exemption from coastal permit requirements for the rebuilding of certain structures destroyed by a disaster (Pub. Res. Code Sec. 30610(g)). That exemption provides generally that, in order to be exempt from a coastal permit, a replacement structure shall be sited in the same location on the affected property and shall generally be of the same size and for the same use as the destroyed structure. In addition, the Coastal Act states that the replacement structure shall conform to applicable existing zoning requirements.

Commission staff commented that the provision for potential relocation of a replacement project due to proximity to sensitive coastal resources, as contained in the final sentence of Policy C-EH-24, while beneficial in some cases, is not recognized by the Coastal Act. Commission staff suggested instead a provision to encourage relocation, where appropriate:

> *Where relocation would better protect coastal resources, relocation is encouraged*.

How encouragement of relocation would be accomplished is not clear, as the requirement for completing a full coastal permit process would be a significant disincentive. Furthermore, the existing certified LCP zoning (Sec. 22.56.050.C) states that to be exempt from a coastal permit, the replacement structure "shall be sited in the same location on the affected property as the destroyed structure, *unless the planning director determines that a relocation due to proximity to sensitive coastal resources is warranted*." (emphasis added). Therefore, the possibility of relocation is stated already in the existing certified zoning. Furthermore, the Coastal Act's exemption for replacement structures recognizes that applicable existing zoning must be applied, and possible relocation is anticipated in the existing zoning. In sum, CDA staff recommend maintaining the existing provision for permit exemptions for replacement of structures destroyed by disaster without further change to Policy C-EH-24.

C-DES-3 Protection of Ridgeline Views

Commission staff commented that the "visually prominent ridgelines" addressed by Policy C-DES-3 are not specifically defined for the Coastal Zone. In LCPA Section 22.130.030 - Definitions, the term "visually prominent ridgeline" is proposed to be defined with reference to the Marin Countywide Plan's Ridge and Upland Greenbelt areas, rather than with a definition specific to the Coastal Zone. Commission staff proposed a modification to the definition of "Visually Prominent Ridgeline" to delete the reference to the Countywide Plan. However, the Countywide Plan provides useful guidance regarding visual resources, whether inside or outside the Coastal Zone, and overlooking such guidance simply because it is not part of the LCPA seems unproductive.

In subsequent discussions, CDA staff considered the option of simply deleting Policy C-DES-3 altogether and instead renumbering proposed Program C-DES-3.a as C-DES-2.a. In that way, those visually prominent ridgelines in the Coastal Zone that are suitable for protection could be mapped over time, and meanwhile protection could be afforded to ridgeline visual resources through the application of the general Policy C-DES-2. However, deletion of Policy C-DES-3 could perhaps appear to downgrade the significance of ridgeline visual resources, which are indeed important in the hilly Marin County Coastal Zone. Therefore, CDA staff recommend no changes to Policy C-DES-3 and Program C-DES-3.a. That

program will result in mapping visually prominent ridgelines for use in future permit decisions, and until that mapping is complete, Policy C-DES-3 establishes goals for protection of visual resources that can be met through site-specific analysis of any projects that may be proposed that affect ridgeline views.

C-PK-1 and C-PK-3 *Opportunities for Coastal Recreation; Mixed Uses in C-VCR*

Policies C-PK-1 and C-PK-3 are closely related policies that address visitor-serving uses in the Coastal Zone. Specifically, Policy C-PK-1 establishes a priority for visitor-serving and commercial recreational facilities over residential or general commercial on lands designated for commercial or recreational uses. Policy C-PK-3 supports a continued mix of residential and commercial uses in coastal village areas while generally discouraging new ground floor residential uses. Together, these policies are intended to encourage visitor-serving uses while maintaining the established character of existing village commercial areas which serve both visitors to and residents of the Coastal Zone.

Commission staff have stated that there should be a specific mechanism to prioritize visitor-serving uses in coastal village areas. However, it is unclear how such a mechanism could be developed. The majority of parcels in the Coastal Zone villages are relatively small, which would make it difficult to require a particular mix of uses for any single property. More importantly, with the exception of overnight accommodations, most commercial uses can be considered both visitor and local serving, depending on character, hours of operation, and other factors. For example, principally permitted commercial uses in the C-VCR zoning district under the certified LCP include restaurants, banks, grocery stores, clothing shops and cafes, all of which could clearly serve both visitors and residents. Therefore, a strict definition of what constitutes a visitor-serving use would be difficult to develop and enforce. Finally, proposals for new development (or a change of use within an existing structure) are applied for individually, do not occur frequently, and are limited in number given the small size of commercial areas in the Coastal Zone. If a particular use is permitted by the zoning, it may not be practically or legally possible to deny that use based on expectations that a proposal for a "higher priority" use would be forthcoming. As noted, the LCPA proposes a new provision that has the effect of giving priority to commercial uses in the village visitor core by requiring a Use Permit for ground-floor residences facing the street, a feature not provided by the existing certified LCP. This provision provides an expedited path for commercial/visitor establishments over residences.

Commission staff have also recommended that all residential uses in the C-VCR district should be subject to Use Permit approval. As noted above, Policy C-PK-3 does limit new ground floor residential uses along streets in village commercial areas. However, the requirement that all residential uses be subject to a Use Permit is not consistent with existing C-VCR zoning provisions in the certified LCP and could constrain development of affordable housing in the Coastal Zone. Housing is critical to supporting visitor-serving businesses, and in the past, your Board has expressed interest in supporting housing opportunities in the Coastal Zone. Accordingly, CDA staff recommends no further changes to Policies C-PK-1 or C-PK-3.

C-PK-7 *Lower Cost Recreation Facilities*

Commission staff commented that Policies C-PK-7 and C-PK-1 do not explicitly address potential conversions of lower cost recreation facilities to higher cost facilities. This comment is based on Coastal Act Section 30213, which requires, in part, that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Commission staff suggested an addition to Policy C-PK-7, without specifying the particular wording, with the goal of ensuring that any conversion from lower cost recreational use be addressed through permit conditions requiring, for instance, replacement of any lower cost facilities that might be lost on a one-to-one basis.

As proposed, Policy C-PK-7 addresses two types of developments that present opportunities for lower cost overnight accommodations: (1) development of new facilities, and (2) conversion to private membership use of an existing facility. Development of new facilities has an indirect impact on lower cost overnight accommodations, even if the new project is intended to serve only a high-cost market. The reason is because there are limited sites in the Coastal Zone for visitor-serving facilities (and limited services for them). Therefore, any new development providing overnight accommodations arguably bears a responsibility for assuring that a lower cost component is provided either on-site or off-site through an in-lieu fee.

The second type of development, conversion to private use, would remove overnight accommodations from use by the general public. Both new construction and conversion to private membership use are clearly "development" under the Coastal Act and thus are appropriate for regulation with respect to providing lower-cost accommodations. Furthermore, the LCPA does not attempt to specify what "lower-cost" means in dollar terms; instead, Policy C-PK-7 specifies a type of development, such as campground or hostel, which is most likely to meet the lower-cost goal. The Coastal Act prohibits setting room rates (Section 30213), and thus it is not possible to specify how much a lower-cost facility can charge.

Commission staff have suggested adding a third component to the review of overnight accommodations: conversion from lower cost to higher cost. But such a "conversion" may very well not require a coastal permit at all. Room rates are set by the market and are subject to change by the operator at any time without permit review. And if an increase in room rates accompanies remodeling of a facility, that remodeling may very well be exempt from a coastal permit. In addition, as noted previously, it is not in the County's interest, or the public's interest, to discourage upkeep and maintenance of existing facilities. CDA staff recommend no changes to Policy C-PK-7.

C-PK-6 and Section 22.68.050.I *Temporary Events*

Policy C-PK-6 pertains to bed and breakfast facilities and states in part *"…Bed and breakfast inns shall be permitted to host or provide facilities for gatherings, such as weddings, receptions, private parties, or retreats if located in the C-APZ, C-ARP or C-R-A…"* Commission staff objected to this provision, stating that any such events be allowed only where there is a demonstrated need for supplemental income to support agriculture and that such activities must be subordinate and consistent with agricultural production and not de facto convert farms to commercial uses.

An alternative was explored which would consider such events, wherever they might be proposed, under the Temporary Event exception under Section 22.68.050 – Exempt Projects:

22.68.050 – Exempt Projects

The following projects, as determined by the Director, shall be exempt from the requirements of Section 22.68.030 – Coastal Permit Required, unless listed as non-exempt by Section 22.68.060…

…

I. Temporary event. A temporary event which:

1. Would have a duration of two consecutive days or less; and

2. Would not occupy a sandy beach in Muir Beach, Stinson Beach, Bolinas, or Dillon Beach; and

3. Would not involve a charge for general public admission or seating where no fee is currently charged for use of the same area; and

4. Would not take place in any wetlands, streams and riparian vegetation, other ESHAs, or their buffers.

…

The Coastal Commission has adopted a policy for the regulation of temporary events, noting therein that "most of the concerns raised in connection with the impacts of temporary events can best be addressed at the local government level."

CDA staff would appreciate guidance from the Board on whether to pursue this question in more detail, and what specific objectives to try to achieve.

RESOLUTION NO. 2013-___

A RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS APPROVING THE SUBMITTAL OF AMENDMENTS TO THE MARIN COUNTY LOCAL COASTAL PROGRAM TO THE CALIFORNIA COASTAL COMMISSION

* *

SECTION I: FINDINGS

WHEREAS, the Marin County board of Supervisors hereby finds and declares the following:

I. WHEREAS, Section 30500 of the Public Resources Code requires each County and City to prepare a Local Coastal Program (LCP) for that portion of the coastal zone within its jurisdiction.

II. WHEREAS, the California Coastal Commission effectively certified Unit I of the Marin County Local Coastal Program on June 3, 1981, and Unit II on April 7, 1982. The total LCP was certified on May 5, 1982, and the County assumed permit-issuing authority on May 13, 1982.

III. WHEREAS, in October 2008 the Board of Supervisors approved a work program and schedule to prepare amendments to the Marin County LCP. The LCP is a planning document that identifies the location, type, densities and other ground rules for future development in the coastal zone. The LCP is comprised of the Land Use Plan (LUP), the Implementation Program (IP), and all accompanying land use and zoning maps. The purpose of the LCP Amendments (LCPA) is to address issues that have arisen since the LCP was originally certified and to provide for more efficient and effective management of coastal resources.

IV. WHEREAS, the update process included extensive input from the public. There have been over 50 meetings and hearings open to the public regarding the LCPA. Comments and participation were sought from County residents, California Native American Indian tribes, public agencies, public utility companies, and various local community groups and organizations. The LCPA was referred to the California Coastal Commission, National Park Service, California State Department of Fish and Game, public water agencies, the Federated Indians of Graton Rancheria, and a number of other public agencies.

V. WHEREAS, beginning on March 16, 2009, the Marin County Planning Commission conducted the first of a series of 19 public issue workshops to obtain the public's input on issues of concern in the development of the LCPA. Input was obtained through public meetings on April 27, May 26, June 22, July 13, July 27, August 24, September 28, October 26, and November 23, 2009, and January 25, February 8, March 8, April 12, April 26, June 14, June 28 and July 29, 2010 and through correspondence and consultations through that period.

Written correspondence was placed on the LCPA website and made available to all.

VI. WHEREAS, a preliminary Public Review Draft of the LCPA was released on June 2011, which was followed by four community workshops that were held on July 12, 18, 20 and 25 to present the Public Review Draft to the public.

VII. In conjunction with the release of the Public Review Draft for the LCPA Amendment, the Board of Supervisors and Planning Commission met on June 28, 2011, and adopted a schedule for public hearings to obtain public comment on the LCPA.

VIII. WHEREAS, beginning on August 31, 2011, a series of public hearings were held by the Planning Commission to receive testimony on the LCPA and to provide the public and affected agencies and districts with the maximum opportunity to participate in the LCP Amendment process, consistent with California Code of Regulations Sec. 13515 and Public Resources Code Sec. 30503. Public hearings were held on September 19, October 10 and 24, November 7, and December 1, 2011, and January 9 and 23, 2012. Oral and written comments were presented and considered at the hearings.

IX. WHEREAS, following the close of the November 7, 2011, public hearing, the Commission directed that the June 2011Public Review Draft be revised to reflect the initial recommendations of the Commission at that time. These revisions were presented in the January 2012 Public Review Draft, which was made available for the January 9 and 23, 2012 public hearings.

X. WHEREAS, at the close of the January 23, 2012 public hearing, the Planning Commission directed staff to compile all the changes made by the Commission in a new, complete document entitled the "Planning Commission Recommended Draft."

XI. WHEREAS, prior to the February 13, 2012 hearing, the Commission was provided with the complete contents of the Local Coastal Program consisting of the following documents: (1) Marin County Planning Commission-Recommended Local Coastal Program Draft LUP Amendments (February, 2012); and (2) Marin County Planning Commission - Recommended Proposed Development Code Amendments (February 2012). Land Use and Zoning Maps; and Appendices had been previously distributed in June 2012. Both Planning Commission Recommended Amendment documents were also mailed to interested parties who had requested them. All documents were additionally made available to the public on the LCPA website at www.MarinLCP.org.

XII. WHEREAS, on February 13, 2012 the Marin County Planning Commission approved the LCPA and directed staff to incorporate all changes into the Planning Commission Approved Draft, Recommended to the Board of Supervisors, dated February 13, 2012. This draft document was mailed to interested parties, posted in all Marin County libraries, posted on the

MarinLCP.org website, and available to the public at the Marin County Community Development Agency front reception desk.

XIII. WHEREAS, beginning on October 2, 2012, a series of public hearings were held by the Board of Supervisors to receive testimony on the LCPA and to provide the public and affected agencies and districts with the maximum opportunity to participate in the update to the LCPA, consistent with California Code of Regulations Sec. 13515 and Public Resources Code Sec. 30503. Public hearings were held on November 13 and December 11, 2012, and January 14, February 26, April 16, and July 30, 2013. Oral and written comments were presented and considered at the hearings.

XIV. WHEREAS, the Marin County Board of Supervisors conducted a public hearing on July 30, 2013 and approved submitting the proposed amendments to the Marin County Local Coastal Program to the California Coastal Commission.

XV. WHEREAS, the existing policies in Land Use Plan Units I and II have been combined into one Land Use Plan representing the entire coastal zone. The LUP has also been reorganized into 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.

XVI. WHEREAS, the Implementation Program code provisions and zoning maps carry out the policies and programs in the LUP by indicating which land uses are appropriate in each part of the Coastal Zone. The IP also contains specific requirements that apply to development projects and detailed procedures for applicants to follow in order to obtain a coastal permit.

XVII. WHEREAS, pursuant to Sections 15250 and 15251(f) of the California Environmental Quality Act (CEQA) Guidelines, the preparation, approval, and certification of a Local Coastal Program Amendment is exempt from the requirement for preparation of an Environmental Impact Report (EIR) because the California Coastal Commission's review and approval process has been certified by the Secretary of Resources as being the functional equivalent of the EIR process required by CEQA in Sections 21080.5 and 21080.9 of the Public Resources Code.

XVIII. WHEREAS, the Marin County Board of Supervisors intends that the LCP shall be carried out in a manner fully in conformity with the Coastal Act consistent with Public Resources Code Section 30510.

XIX. WHEREAS, the Marin County Board of Supervisors has reviewed and considered the information in the Marin County Local Coastal Program

Amendment administrative record and staff reports for consistency with the California Coastal Act.

NOW, THEREFORE, BE IT RESOLVED, that the Marin County Board of Supervisors authorizes the filing of the following Amendments to the certified Marin County Local Coastal Program included in Exhibit 1 for approval by the California Coastal Commission:

1. Amendment 1.1: Amended Agricultural Policies
2. Amendment 1.2: Amended Biological Resources
3. Amendment 1.3: Amended Environmental Hazards, Mariculture, and Water Resources Policies
4. Amendment 1.4: Amended Built Environment Policies
5. Amendment 1.5: Amended Socioeconomic Policies
6. Amendment 1.6: Amended Development Code Implementation Measures

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Marin County Board of Supervisors submits the following sections of the Marin County Code which are referred to in the proposed Amendments listed above to solicit California Coastal Commission's views on which, if any, of these sections should be included in the certification of the submitted Amendments:

1. Agricultural Conservation Easement (Template)
2. Telecommunications Facilities Policy Plan
3. Chapter 22.01 – Purpose and Effect of Development Code
4. Chapter 22.02 – Interpretation of Code Provisions
5. Chapter 22.20 – General Property Development and Use Standards
6. Chapter 22.22 – Affordable Housing Regulations
7. Chapter 22.24 – Affordable Housing Incentives
8. Chapter 22.27 – Native Tree Protection and preservation
9. Chapter 22.56 – Second Unit Permits
10. Chapter 22.58 – Large Family Day Care Permits
11. Chapter 22.62 – Tree Removal Permits
12. Chapter 22.112 – Nonconforming Structures, Uses, and Lots
13. Section 22.122.050 – Enforcement of Development Code Provisions
14. Article VI – Subdivision Procedures to Implement State Subdivision Map Act
15. Chapter 24.04 – Development Standards – Improvements, Roads, Driveways
16. Chapter 24.15 – Development Standards – Exceptions

SECTION II: AMENDMENT TO THE MARIN COUNTY LOCAL COASTAL PROGRAM

NOW, THEREFORE, BE IT RESOLVED, that the Marin County Board of Supervisors makes the following findings:

1. The recitals above are true and accurate and reflect the independent judgment of the Board of Supervisors.

2. Notices of the Planning Commission and Board of Supervisor hearings on the LCPA were given as required by law, and the actions were conducted pursuant to the Planning and Zoning Law and California Code of Regulations Sec. 13515.

3. All individuals, groups, and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the LCPA. These opportunities for comment meet or exceed the requirements of the Planning and Zoning law and California Code of Regulations Sec. 13515.4.

4. All comments submitted during the public hearings on the LCPA were provided to and considered by the Planning Commission and Board of Supervisors.

5. The Board of Supervisors were presented with all of the information described in the recitals and has considered this information in adopting this resolution.

6. The LCPA has been completed in compliance with the intent and requirements of California Coastal Act, and reflects the independent judgment of the County of Marin.

7. The Marin County Board of Supervisors certifies the Local Coastal Program Amendment is intended to be carried out in a manner fully in conformity with the policies and requirements of the California Coastal Act, and that it contains, in accordance with guidelines established by the California Coastal Commission, materials sufficient for a thorough and complete review.

8. The Local Coastal Program Amendment approved in this resolution shall become effective only through formal adoption by the Marin County Board of Supervisors after approval by the California Coastal Commission.

NOW, THEN, LET IT BE FURTHER RESOLVED that the Marin County Board of Supervisors submits the July 2013 Marin County Local Coastal Program Amendment. This document meets the requirements of and conforms with the policies of Chapter 3 of the California Coastal Commission pursuant to the following provisions of the Public Resources Code:

1. Section 30004(a): the Legislature further finds and declares that (a) To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement; and

2. Section 30500(c): The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the Commission and with full public participation; and

3. Section 30512.1(a): The Commission's review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3 (commencing with Section 30200). In making this review, the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan; and

4. Section 30512.2(c): The Commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) only to the extent necessary to achieve the basic state goals specified in Section 30001.5.

NOW, THEN, LET IT BE FURTHER RESOLVED that the Marin County Board of Supervisors finds that adoption of the July 2013 Local Coastal Program Amendment is in the public interest and is necessary for the public health, safety, and welfare of Marin County and directs staff to submit the Local Coastal Program Amendments to the California Coastal Commission for certification of conformity with the California Coastal Act.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 30th day of July, 2013, by the following vote, to wit:

AYES:
NOES:
ABSENT:

_____
JUDY ARNOLD, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

Attest:

_____
MATTHEW HYMEL
Clerk of the Board

ATTACHMENT #5
Local Coastal Program Amendment (LCPA)
Referenced Policies and Sections

This attachment provides all LCPA policies and code sections that are referenced in Attachments #1 – 3 of this report. Text is shown as approved by your Board as of April 16, 2013. Any revisions proposed in Attachments #1 – 3 are not reflected in this document.

TABLE OF CONTENTS

AGRICULTURE

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.

In the C-APZ zone, the principal permitted use shall be agriculture 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 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 (not including wind energy conversion systems and wind testing 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.
[BOS app. 10/2/2012, 11/13/2012, 1/15/2013]
(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.

[BOS app. 10/2/2012]
(PC app. 10/10/11, 1/24/11)
[New program, not in Unit I or II]

Program C-AG-2.d Amnesty Program for Unpermitted and Non-Conforming Agricultural Worker Housing Units. Support the establishment of an amnesty program for unpermitted and 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 requirements related to the type, location and intensity of land uses as well as applicable resource protection policies.

[BOS app. 10/2/2012]
(PC app. 1/9/12, 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]

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. <u>Standards for Agricultural Uses in the C-APZ:</u>
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 (i.e., prime agricultural land or other land suitable for agriculture) 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.
[BOS app. 10/2/2012, 11/13/2012]

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 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.
[BOS app. 10/2/2012]

B. <u>Standards for Non-Agricultural Uses</u>:
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.
[BOS app. 10/2/2012]

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. Where 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 be retained as a single unit and will not be further subdivided.

[BOS app. 2/26/2013]

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 or 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.

[BOS app. 3/12/2013]

(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-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.

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]

BIOLOGICAL RESOURCES

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

ESHA consists of three general categories: wetlands, streams and riparian vegetation ~~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); roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats); and riparian vegetation that is not associated with a perennial or intermittent stream. 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.

[BOS app. 10/2/2012, 11/13/2012, 1/15/2013]
(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. Protect ESHAs against disruption of habitat values, and only allow uses within those areas that are dependent on those resources or otherwise provided in C-BIO-14 (Wetlands), C-BIO-15 (Diking, Filling, Draining and Dredging) or C-BIO-24 (Coastal Streams and Riparian Vegetation). 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.

Accessways and trails are resource dependent uses that shall be sited and designed to protect ESHAs against significant disruption of habitat values in accordance with Policy C-BIO-2.1. Where it is not feasible to avoid ESHA, the design and development of accessways and trails shall minimize intrusions to the smallest feasible area or least impacting routes. As necessary to protect ESHAs, trails shall incorporate measures to control the timing, intensity or location of access (e.g., seasonal closures, placement of boardwalks, limited fencing, etc.).

Avoid fence types, roads, and structures that significantly inhibit wildlife movement, especially access to water.

Development proposals within or adjacent to ESHA will be reviewed–prepared by a qualified biologist hired by the County and paid for by the applicant. 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.

[BOS app. 10/2/2012, 11/13/2012, 1/15/2013, 2/26/2013]
(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. 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.

Provide buffers for wetlands, streams and riparian vegetation in accordance with C-BIO-19 and C-BIO-24, respectively.

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 degrade the habitat. Buffers for terrestrial ESHA shall be 50 feet, a width 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;
- **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.

[BOS app. 10/2/2012, 11/13/2012]

> ***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]*

C-BIO-14 Wetlands. Preserve and maintain wetlands in the Coastal Zone as productive wildlife habitats and water filtering and storage areas, and protect wetlands against significant disruption of habitat values. Prohibit grazing or other agricultural uses in a wetland, except in those areas used for such activities prior to April 1, 1981, the date on which Marin's LCP was first certified.

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).

[BOS app. 10/2/2012, 11/13/2012]
(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, access 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 scientific study and restoration.

[BOS app. 11/13/2012]
(PC app. 12/1/11, 1/24/11)
[Adapted from Unit II Diking, Filling and Dredging Policies 1 and 2, p. 136]

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.

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.
[BOS app. 10/2/2012]
(PC app. 12/1/11, 6/28/10)
[New policy, not in Unit I or II]

ENVIRONMENTAL HAZARDS

C-EH-13 Shoreline Protective Devices. Discourage shoreline protective devices (i.e., shoreline armoring) in the Coastal Zone due to their visual impacts, obstruction of public access, interference with natural shoreline processes and water circulation, and effects on marine habitats and water quality.

Allow the construction or reconstruction of a shoreline protective device, including revetments, breakwaters, groins, seawalls, or other artificial structures for coastal erosion control, only if each of the following criteria is met:

1. The shoreline protective device is required to serve a coastal-dependent use or to protect a principal structure, residence, or second residential unit in existence prior to the adoption of the Local Coastal Program (May 13, 1982) or a public beach in danger from erosion.
2. No other non-structural alternative, such as sand replenishment, beach nourishment, or managed retreat is feasible.
3. The condition causing the problem is site specific and not attributable to a general erosion trend, or the project reduces the need for a number of individual projects and solves a regional erosion problem.
4. It can be shown that a shoreline protective device will successfully eliminate or mitigate its effects on local shoreline sand supply and that the device will not adversely affect adjacent or other sections of the shoreline.
5. The shoreline protective device will not be located in wetlands or other significant resource or habitat area, and will not cause significant adverse impacts to fish or wildlife.
6. There will be no reduction in public access, use, or enjoyment of the natural shoreline environment, and construction of a shoreline protective device will preserve or provide access to related public recreational lands or facilities.
7. The shoreline protective device will not restrict navigation, mariculture, or other coastal use and will not create a hazard in the area in which it is built.
8. The shoreline protective device may be authorized for a specified time period depending on the nature of the project and other possible changing conditions. Maintenance beyond the specified time period, modification, or expansion of the approved device shall require approval of an amendment to the Coastal Permit.

(PC app. 1/23/12)
[Adapted from Unit I Shoreline Protection and Hazard Areas Policy 5, p. 42, and Unit II Shoreline Structure Policies 1 and 2, p. 132]

C-EH-24 Permit Exemption for Replacement of Structures Destroyed by Disaster. Exempt from the requirement for a coastal permit the replacement of any structure, other than a public works facility, destroyed by a disaster, if the replacement structure:

1. Conforms to applicable existing zoning requirements;
2. Is for the same use as the destroyed structure;
3. Does not exceed the floor area of the destroyed structure by more than 10 percent or 500 square feet, whichever is less, or the height or bulk of the destroyed structure by more than 10 percent (the applicant must provide proof of pre-existing height and bulk); and
4. Is sited in the same location on the affected property as the destroyed structure, unless the Director determines that relocation is warranted because of proximity to coastal resources.

(PC app. 2/13/12, 12/1/11, 3/16/09)
[Adapted from Unit II New Development and Land Use Policy 8.f(1), p. 216]

COMMUNITY DESIGN

C-DES-2 Protection of Visual Resources. Ensure appropriate siting and design of structures to prevent obstruction of significant views, including views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes. The intent of this policy is the protection of significant public views rather than coastal views from private residences where no public vistas are involved. Require development to be screened with appropriate landscaping provided that when mature, such landscaping shall not interfere with public views to and along the coast. The use of drought tolerant, native coastal plant species is encouraged. Continue to keep road and driveway construction, grading, and utility extensions to a minimum, except that longer road and driveway extensions may be necessary in highly visible areas in order to avoid or minimize other impacts.
(PC app. 11/7/11, 1/24/11)
[Adapted from Unit II New Development and Land Use Policy 3.b, p. 207]

C-DES-3 Protection of Ridgeline Views. Require new development proposed on or near visually prominent ridgelines to be grouped below the ridgeline on the least visually prominent portion of the site. Prohibit new development on top of, within 300 feet horizontally, or within one hundred feet vertically of visually prominent ridgelines, whichever is more restrictive, if other suitable locations are available on the site. If structures must be placed within this restricted area because of site size or similar constraints, they shall be in locations that are least visible from public viewing areas and shall not exceed 18 feet in height.
(PC app. 9/19/11, 7/29/10)
[Adapted from CWP Program DES-4.d, p. 3-67, and Interim County Code Section 22.57.020.1.b]

COMMUNITY DEVELOPMENT

C-CD-16 Maintenance of the Rural Character of Roadways. The only areas to be considered for sidewalks, curbs, and similar roadway improvements shall be downtown areas of Point Reyes Station, Stinson Beach and Tomales.
(PC app. 9/19/11, 7/29/10)
[Adapted from Point Reyes Station Community Plan, Circulation and Transportation Policies T-1.1 and T-3.1, pp. 50-51; and Tomales Community Plan, Policy TR-1.1, p. IV-16]

COMMUNITY SPECIFIC

C-SB-1 Community Character of Stinson Beach. Maintain the existing character of residential, small-scale commercial and visitor-serving recreational development in Stinson Beach.
(PC app. 9/19/11, 7/29/10)
[Adapted from Unit I New Development and Land Use Policy 29, p. 79]

C-SB-3 Density and Location of Development in Seadrift. Development of the approximately 327 lots within the Seadrift Subdivision shall be allowed consistent with the provisions of the July 12, 1983 Memorandum of Understanding for the settlement of the litigation between Steven Wisenbaker and the William Kent Estate Company, and the County of Marin, and consistent with the terms of the March 16, 1994, Settlement Agreement in the litigation titled Kelly et al. v. California Coastal Commission, Marin County Superior Court Case No. 152998 between the Seadrift Association and the County of Marin. Minimum lot sizes shall be as shown on the final subdivision maps approved by Marin County, as modified by the referenced settlement agreements.
(PC app. 1/9/12, 9/19/11, *07/29/10)*
[Adapted from Unit I Location and Density of New Development Policy 36, p. 81]

HOUSING

C-HS-6 Restricted Short-Term Rental of Primary or Second Units. Consider restricting the use of residential housing for short term vacation rentals.
(PC app. 9/19/11, 7/29/10)
[Adapted from the November 2009 Draft Housing Element Program 1.j]

> ***Program C-HS-6.a Address Short-Term Rental of Primary or Second Units.*** Consider restricting the use of residential housing for short term vacation rentals.
>
> 1. Work with community groups to determine the level of support for an ordinance restricting short-term vacation rentals.
> 2. Research and report to the Board of Supervisors on the feasibility of such an ordinance, options for enforcement, estimated program cost to the County, and the legal framework associated with rental properties.
>
> *(PC app. 9/19/11, 7/29/10)*
> *[Adapted from the November 2009 draft Housing Element Program 1.j]*

PARKS, RECREATION, AND VISITOR-SERVING USES

C-PK-1 Opportunities for Coastal Recreation. Provide high priority for development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for lower-cost coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, ensure that higher priority shall be given to such uses over private residential or general commercial development. New visitor-serving uses shall not displace existing lower-cost visitor-serving uses unless an equivalent replacement is provided.
(PC app. 9/19/11, 10/26/09)
[Adapted from Unit II Recreation and Visitor-Serving Facilities Policy 1, p. 42, and Malibu LCP Policy 2.33]

C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone. Continue to permit a mixture of residential and commercial uses in the C-VCR zoning district to maintain the established character of village commercial areas. Principal permitted use of the C-VCR zone shall include commercial and residential uses. Require a Use Permit for residential uses proposed on the ground floor of a new or existing structure on the road-facing side of the property. Replacement, maintenance and repair of any legal existing residential use shall be exempt from the above provision and shall be permitted.

(PC app. 9/19/11, 7/29/10)

[Adapted from Unit I Recreation and Visitor-Serving Facilities Policy 14, p. 13]

C-PK-6 Bed and Breakfast Inns. Support bed and breakfast facilities in the Coastal Zone as a means of providing visitor accommodations, while minimizing their impacts on surrounding communities. Restrict the conversion of second units and affordable housing to bed and breakfast inns. In addition, support the location of bed and breakfast inns in areas that are easily and directly accessible from usual tourist travel routes and where there is adequate off-street parking for guests and where the problem of nearby residents being inconvenienced by noise and increased transient traffic is minimized. Bed and breakfast inns shall be permitted to host or provide facilities for gatherings, such as weddings, receptions, private parties, or retreats if located in the C-APZ, C-ARP or C-R-A. Each bed and breakfast inn must be operated by a householder who is the sole proprietor of the enterprise and whose primary residence is on the premises where the inn accommodations are located.

(PC app. 9/19/11, 1/24/11)

[Adapted from Unit I Recreation and Visitor-Serving Facilities Policy 15, p. 14, and Unit II Recreation and Visitor-Serving Facilities Policy 3.h, p. 52]

C-PK-7 Lower Cost Recreational Facilities. Protect and retain existing lower cost visitor and recreational facilities. Ensure that new development of overnight visitor-serving accommodations (other than bed and breakfast inns), or conversion to private membership use of an existing lower-cost overnight facility, provides a component of lower cost overnight visitor accommodations open to the public, such as a campground, RV park, hostel, or lower cost hotel. The required component of lower cost overnight accommodations should be equivalent to 20 percent of the number of high-cost or private membership overnight accommodations. This requirement may be met on site, off site, or by means of payment of an in lieu fee to the County for deposit into a fund to subsidize the construction of lower-cost overnight facilities in the Coastal Zone.

(PC app. 9/19/11, 11/23/09)

[Adapted from Malibu LUP Policy 2.35]

PUBLIC COASTAL ACCESS

C-PA-3 Exemptions to Public Coastal Access Requirements. Exempt from the public coastal access requirement of Policy C-PA-2 a coastal permit for:

1. Improvement, replacement, demolition or reconstruction of certain existing structures, as specified in Section 30212 (b) of the Coastal Act, and
2. Any new development upon specific findings under Section 30212 (a) that (1) public access would be inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected.
3. Upon specific findings that public use of an accessway would seriously interfere with the privacy of adjacent residents, public access may not be required.

The findings on any point above shall include a consideration of whether or not (1) design measures such as setbacks from sensitive habitats, trails, or stairways, or (2) management measures such as regulated hours, seasons, or types of use could adequately mitigate potential adverse impacts from access.

(PC app. 9/19/11, 2/8/10)
[Adapted from Unit II Public Access Policies 2.d, p. 15, and 5, p. 23]

C-PA-4 Direct Dedication of Public Coastal Access, if Feasible. If a coastal accessway is required as a condition of development pursuant to Policy C-PA-2, require, if feasible, direct dedication of an easement or fee title interest to the County, another public agency, or other suitable entity. If direct dedication is not feasible, require that a twenty-year irrevocable offer to dedicate the required easement(s) shall be recorded by the applicant prior to the issuance of a final County permit to commence construction. Upon recordation, immediately notify the California State Coastal Conservancy of such offers to dedicate. The County may process irrevocable offers according to the Coastal Commission's centralized coastal access program. In the event that a property owner is willing to accept responsibility for public use of a defined area of the property, and such public use can be assured in the future, a deed restriction may be required, rather than direct dedication of access or an offer to dedicate access.
(PC app. 9/19/11, 2/8/10)
[New policy, not in Unit I or II]

C-PA-20 Effects of Parking Restrictions on Public Coastal Access Opportunities. When considering a coastal permit application that could result in reducing public parking opportunities near beach access points or parklands, evaluate options that consider both the needs of the public to gain access to the coast and the need to protect public safety and fragile coastal resources, including finding alternatives to reductions in public parking.
(PC app. 9/19/11, 4/26/10)
[New policy, not in Unit I or II]

22.64.150 – Transportation

A. Transportation standards.

1. **Roads in the Coastal Zone.** The motorized vehicular capacity of roads in the Coastal Zone shall be limited per Land Use Policy C-TR-1.
2. **Scenic quality of Highway One.** The scenic quality of Highway One shall be maintained per Land Use Policy C-TR-2.
3. **New bicycle and pedestrian facilities.** New development shall be encouraged or required to provide new bicycle and pedestrian facilities per Land Use Policy C-TR-6. Where appropriate, the installation of bike racks, lockers and other bike storage facilities shall be encouraged per Land Use Policy C-TR-7.
4. **Expansion of the Countywide Trail System**. Acquire additional trails to complete the proposed countywide trail system, providing access to or between public lands and enhancing public trail use opportunities for all user groups, including multi-use trails, as appropriate (Land Use Policy C-TR-8).

22.64.180 – Public Coastal Access

…

B. Public Coastal Access standards.

1. **Public coastal access in new developments.** New development located between the shoreline and the first public road shall be evaluated for impacts on public access to the coast per Land Use Plan Policy C-PA-2. Where a nexus exists, the dedication of a lateral, vertical and/or bluff top accessway shall be required per Land Use Plan Policy C-PA-9, unless Land Use Plan Policy C-PA-3 provides an exemption.

2. **Direct dedication of public coastal access.** If feasible, direct dedication of an easement or fee title interest for a required coastal accessway is preferred per Land Use Plan Policy C-PA-4.

…

22.68.030 – Coastal Permit Required

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, 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). On-going agricultural operations including cultivation, crop and animal management and grazing are not considered to be development or a change in the density or intensity of the use of land. For the purposes of this Chapter, “on-going agricultural operations” are those which exist presently or historically, and do not entail new encroachment within 100 feet of the edge of a wetland, stream or riparian vegetation. For agricultural uses, a “change in the intensity of use of water, or access thereto” means the development of new water sources such as construction of a new or expanded well or expansion of a surface impoundment.

[BOS app. 10/2/12, 1/15/2013]

22.68.050 – Exempt Projects

The following projects, as determined by the Director, shall be exempt from the requirements of Section 22.68.030 – Coastal Permit Required, unless listed as non-exempt by Section 22.68.060.

…

I. Temporary event. A temporary event which:

1. Would have a duration of two consecutive days or less; and
2. Would not occupy a sandy beach in Muir Beach, Stinson Beach, Bolinas, or Dillon Beach; and
3. Would not involve a charge for general public admission or seating where no fee is currently charged for use of the same area; and
4. Would not take place in any wetlands, streams and riparian vegetation, other ESHAs, or their buffers.

…

[BOS app. 10/2/2012]

22.68.070 – De Minimis Waiver of Coastal Permit

The Director may waive the requirement for a Coastal Permit in compliance with this Section upon a written determination that the project meets all of the criteria in A. through G. below:

A. Involves no potential for adverse effects, either individually or cumulatively on coastal resources,

B. Is consistent with the certified Marin County Local Coastal Program,

C. Is not of a type or in a location where the project, if subject to a Coastal Permit, would be appealable to the Coastal Commission or would be subject to a Coastal Permit issued by the Coastal Commission,

D. Consists of one of the following or a project substantially similar to the following:

1. Construction of retaining walls less than four (4) feet in height,
2. Demolition of structures other than those built prior to 1930,
3. "One for one" replacement of or abandonment of minor utilities,
4. Repair and replacement work associated with underground and above-ground storage tanks,
5. Installation of borings for test purposes, monitoring wells, vadose wells, temporary well points, and vapor points, or
6. Merger of property

E. Public notice of the proposed De Minimis Waiver of Coastal Permit and opportunities for public comment have been provided as required by Section 22.70.050,

F. The Director shall not issue a waiver until the public comment period specified by Section 22.70.050 for the waiver has expired and no written requests for a coastal development permit have been submitted to the Department. If any member of the public the Executive Director of the Coastal Commission requests that a waiver not be issued, the applicant shall be advised that a Coastal Permit is required if the applicant wishes to proceed with the development.

G. Within seven (7) calendar days of issuance of a De Minimis Waiver of Coastal Permit, the Director shall notify the Coastal Commission and any persons who specifically requested notice of such action via first class mail, a Notice of Final Action describing the issuance and effectiveness of the De Minimis Waiver.

22.130.030 – Definitions

- **Development**. 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.

- **Grading (coastal)** – Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof that exceeds 150 cubic yards of material. As used in this Development Code, grading does not include plowing, tilling, harrowing, aerating, disking, planting, seeding, weeding, fertilizing or other similar routine agricultural cultivation practices.~~-ongoing agricultural activities.~~
  [BOS app. 1/15/2013]