

---

## Marin County Board of Supervisors

### **Staff Report Regarding Certain Modifications by the California Coastal Commission to Marin County 2015 LCP Amendments #1, #2, and #3 and 2016 Amendments #6 and #7**

<b>1.</b>	<b>AMENDMENT 1–Land Use Plan, without Agriculture, Hazard Chaps</b>	p. 1
1.1	Fire Hazards and ESHA	p. 1
1.2	C-PK-3 Mixed Uses in Coastal Village Commercial/Res. Zone	p. 5
1.3	Limited Service Capacity, Priority Uses	p. 6
<b>2.</b>	<b>AMENDMENT 2 LUPA Agriculture Chapter</b>	p. 8
2.1	“As Necessary for”	p. 8
<b>3.</b>	<b>AMENDMENT 3 IPA Agriculture Provisions</b>	p.10
3.1	Ongoing Agriculture	p.10
	A. “Legally Established” Existing Agriculture	
	B. “Conversion of Grazing Areas to Row Crops”	
	C. “Examples of activities that are NOT ongoing agricultural”	
3.2	Allowing Rancher/Farmer to receive pay for time providing Educational Tours	p.17
3.3	“Necessary for Operation of Agriculture”	p.18
3.4	Agriculture Exempt in Areas Identified in Cat. Ex. Orders	p.20
<b>4.</b>	<b>AMENDMENT 6 –IPA Permitting and Administration Chapters</b>	p.21
<b>5.</b>	<b>AMENDMENT 7 – All other sections of the IPA</b>	p.21
7.1	Definitions of “Existing”	p.22
7.2	“Legal Lot”	p.23
7.3	Piers and Caissons	p.25
7.4	Definition of Grading	p.25
7.5	Where No Bank, Ordinary High-Water Mark Establishes Streambank	p.26
7.6	Public Facilities and Services	p.27
7.7	Parks, Recreation, and Visitor Serving Uses	p.29
7.8	Lowest Density Required for Widespread Areas of Any Hazard	p.30

The modifications approved by the California Coastal Commission on Nov. 2, 2016 are shown in red.

**NOTE:** The discussion below identifies individual sections as “Accept.” It is understood that individual elements of a given Amendment cannot be “accepted” where there are one or more provisions that are not accept; i.e. each of the 5 separate Amendments must be accepted or not accepted as a whole. The designation “Accept” merely indicates that staff recommends such sections be considered acceptable in any future work on these Amendments.

## **AMENDMENT 1- Land Use Plan, without Agriculture, Hazard Chapters**

### **RECOMMENDATION: Accept Amendment 1 In Its Entirety**

Individual issues as previously addressed are discussed below.

#### **1-1. Fire Hazards and ESHA**

##### **Recommendation: Accept**

##### **As Modified**

**C-BIO-4 Protect Major Vegetation.** Require a Coastal Permit for the removal or harvesting of major vegetation other than for agricultural purposes. Such major vegetation removal shall avoid ~~adverse impacts to an~~ ESHA, ~~its~~ ESHA buffers, coastal waters, and public views, and shall not conflict with prior conditions of approval, ~~and shall be consistent with Policy C-DES-11 (Minimization of Fuel Modification).~~

***Program C-BIO-4.b Integrated Planning for Fire Risk, Habitat Protection, and Forest Health.*** Develop a Coastal Permit process that protects coastal resources and allows for expedited review of projects related to the management or removal of major vegetation to minimize risks to life and property or to promote the health and survival of surrounding vegetation native to the locale.

**C-DES-11 ~~Minimization~~Avoidance of Fuel Modification.** Site and design new development to avoid required initial and future fuel modification and brush clearance in general, and to avoid such activities within ESHAs and ESHA buffers, in order to avoid habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas. (See also Policies C-BIO-3, C-BIO-~~1819~~ and C-BIO-~~2324~~ (ESHA, Wetland, Stream Buffers), C-BIO-4 (Protect Major Vegetation) and C-EH-~~9~~ (Standards for Development Subject to Fire Hazards). ~~Vegetation Management in Environmentally Sensitive Habitat Areas.~~)

#### **Analysis**

The County acknowledges the priority the Coastal Act places on preventing significant impacts to ESHAs and adjacent areas. Therefore, the County accepts the modified language in Policy C-BIO-4 as stating the County's primary objective is to avoid removing major vegetation that may cause significant impacts to ESHA and ESHA buffers. However, it is also acknowledged that the above policies must be balanced with the implementation of with Coastal Act Section 30240, and with the defensible space requirement of Public Resources Code Sect. 4291. Therefore, to ensure overall consistency, the modified policy should not be implemented in a manner that prevents the County or the Coastal Commission from permitting the removal of major vegetation when determined necessary to protect life and property from the risk of hazard as required by Coastal Act section 30253, and to comply with defensible space standards in Public Resources Code Section 4291.

Coastal Commission staff has indicated the potential to clarify Program C-BIO-4.b to address ESHA as part of a concurrent "clean up" amendment when the Commission considers the Environmental Hazards chapters.

## Attachment 2

### Background

The modifications to Policy C-BIO-4 may conflict with the implementation of Program C-BIO-4.b insofar as the program calls for creating an expedited review process for removal of major vegetation to address risks to life and property and to promote native vegetation.

Coastal Act Section 30240 addresses environmentally sensitive habitat areas (ESHAs) and adjacent developments by protecting against the *significant disruption* of ESHAs and preventing significant degradation from development in adjacent areas (i.e. ESHA buffers):

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

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

The County added C-DES-11 to assure that new development will not encroach on ESHA or ESHA buffer areas. C-BIO-4 similarly provides such protection in the case of major vegetation removal. But the County is concerned that C-BIO-4 not be read to unduly limit the options to be explored under ***Program C-BIO-4.b, especially since any policy developed thereunder would require certification by the Commission.***

The County requested clarification from Commission staff regarding vegetation removal to meet fire safety requirements for existing structures. Commission staff indicated this type of clearance is considered maintenance of the existing structure. Under Coastal Act Section 30610(d), repair and maintenance activities that do not enlarge or expand a single-family residence are exempt from a Coastal Development permit, unless such repair and maintenance activities involve a risk of substantial adverse environmental impact and are located in an environmentally sensitive habitat area, per Public Resources Code Section 13252(a). LCPA Implementation Program Section 22.68.050, which carries out Coastal Act Section 30610(d), allows improvements to structures without a Coastal Permit, including landscaping.

Additional guidance on this issue is provided by Environmental Hazard Policy C-EH-9 (see full text below), which provides standards for both existing and new development subject to fire hazards. The policy allows removal of major vegetation adjacent to existing development for fire safety purposes as long as fuel modification and brush clearance are required in accordance with applicable fire safety regulations and are being carried out in a manner that reduces coastal resource impacts to the maximum extent feasible. Vegetation is often required by the fire department to be removed, thinned or otherwise modified in order to minimize the risk of fire hazard, and requires such activities be carried out in a manner which reduces coastal resource impacts to the maximum extent feasible. Under this scenario, the County asserts vegetation removal to meet defensible space requirements is considered maintenance when done for an existing structure. Accordingly, a Coastal Permit may be waived in compliance with a De Minimis Waiver per Section 22.68.070 as long as the fuel modification or brush removal activity has no potential for adverse effects on coastal resources.

## Attachment 2

Marin fire officials mitigate fires using hazardous fuel modification, which includes wide area defensible space projects and use of fuel breaks. Other programs encourage homeowners to prepare homes from the risk of wildfire, such as fuel reduction projects that involve cutting, clearing, and limbing understory vegetation around structures, fire roads, and evacuation routes, and making a home fire safe and ignition resistant. These measures are consistent with California Public Resources code 4291.

The County has also amended the 2003 International Urban-Wildland Interface Code to apply more stringent building standards that requires the preparation of a Vegetation Management Plan for development within the Wildland-Urban Interface (WUI). The County has also amended the 2013 California Fire Code (CFC) Chapter 49 requirements for defensible space around existing homes such that the property line no longer limits the amount of defensible space required around structures. If the 100-foot defensible space/fuel modification zone extends from private to public lands, the defensible space stops at the property boundary. However, fuel modification/clearance may be permitted after an evaluation and issuance of approval from the public land management agency.

The Marin County Fire Department's "2016 Community Wildfire Protection Plan" identifies and prioritizes areas for fuel reduction strategies. Several key actions recommended in this document are excerpted below:

### 8.1.2 Articulate and Promote the Concept of Land Use Planning Related to Fire Risk

- Continue to promote the concept of land use planning as it relates to fire risk and hazard reduction and landowner responsibilities; identify the key minimum elements necessary to achieve a fire safe community and incorporate these elements into community outreach materials and programs.
- Continue to implement the structural ignitability activities
- Coordinate with county and local government staff to integrate Firewise approaches into planning documents and ordinances
- Continue to secure funding opportunities for dedicated defensible space inspectors
- Consider how to make the tree removal process less cumbersome and less expensive

### 8.1.3 Support and continue to participate in the collaborative development and implementation of wildland fire protection plans

- Work collaboratively with county, local, and regional agencies and landowners to develop fuel reduction priorities and strategies based on this CWPP, local CWPPs, and/or other regional plans.
- Support the development and implementation of local-scale CWPPs.
- Provide a collaboration mechanism between private property owners (and Home Owners Associations) and large land owners (i.e., MCOCD, MMWD, NPS)
- Consider the creation of transition zones (areas between developed residential areas and open space areas) where additional defensible space or additional vegetation clearance is needed.

### 8.1.4. Increase awareness, knowledge, and actions implemented by individuals and communities to reduce human loss and property damage from wildland fires

- Continue to implement the defensible space and outreach activities

## Attachment 2

- Educate landowners, residents, and business owners about the risks and personal responsibilities of living in the wildland, including applicable regulations, prevention measures and preplanning activities
- Continue to increase education and awareness about structural ignitability and defensible space
- Improve the ability to enforce defensible space compliance with absentee property owners

### 8.1.5 Integrate fire and fuels management practices

- Continue to implement the vegetation management and fuel reduction activities
- Continue to implement and maintain vegetation/fuel management projects along highly traveled roadways and access points into all public lands in order to minimize ignitions
- Develop a program to address fuel reduction on vacant properties
- Create transition zones to extend shaded fuel breaks between developed residential areas and open space areas.
- Identify and implement vegetation management projects in priority WUI communities throughout the county.
- Work to reduce regulatory barriers that limit hazardous fuels reduction activities (e.g., tree removal process).

### Environmental Hazard Policy C-EH-9:

*(The following policy shows modifications adopted by the Coastal Commission in red. It is referenced here only to show its relationship to related policies and standards in Amendment 1.)*

**C-EH-9 Standards for Development Subject to Fire Hazards.** In addition to other requirements that may apply (e.g., if it is also shoreline, blufftop, or bluff face development, and/or development subject to geologic hazards), the following standards apply to development subject to fire hazards:

**C-EH-23-1) New Development and Fire Safety.** ~~Coastal Permit applications~~New development shall ~~demonstrate that the development~~ meets all applicable fire safety standards. and shall be sited and designed ~~new development~~ to minimize required initial and future fuel modification, and brush clearance in general, to the maximum feasible extent, and to avoid such activities within ESHA and ESHA buffers on site and on neighboring property, including parkland, where all such requirements shall be applied as conditions of approval applicable for the life of the development.

**C-EH-25 2) Existing Development and Fire Safety.** Removal of major vegetation ~~around adjacent to~~ existing development for fire safety purposes shall only be allowed ~~with a coastal permit waiver~~ upon a finding that fuel modification and brush clearance techniques are required in accordance with applicable fire safety regulations and are being carried out in a manner which reduces coastal resource impacts to the maximum feasible extent. In addition to the foregoing requirements, removal of ESHA, or ~~is~~ removal of materials in an ESHA buffer, shall only be allowed for fire safety purposes: if it is not already prohibited by coastal permit conditions; if there are no other feasible alternatives for achieving compliance with required fire safety regulations; and if all ESHA and related impacts are mitigated in a manner that leads to no net loss of ESHA resource value.

## **1-2. C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone**

### **Recommendation: Accept with Intent to Resubmit**

#### **LUPA As Modified by CCC**

**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 ~~be include commercial uses. In the village commercial core area, R~~ residential uses shall be limited to: (a) the upper floors, and/or (b) the lower floors if not located on the road-facing side of the property ~~within the commercial core area (i.e. the central portion of each village that is predominantly commercial).~~ Residential uses on the ground floor of a new or existing structure of the road-facing side of the property shall only be allowed ~~provided subject to a use permit where a finding can be made~~ that the development maintains and/or enhances the established character of village commercial ~~core~~ areas. Existing legally established residential uses in the C-VCR zone on the ground floor and road-facing side of the property can be maintained.

#### **Analysis**

The Policy, as modified by the CCC, designates commercial uses as principally permitted throughout the VCR zones, which apply to most of Marin's coastal villages. The policy should not be interpreted as restricting new residential uses to the second floor and ground floor (not on road facing side of property) of buildings for the entire VCR zone, but rather only the commercial core where existing businesses are the predominant use. The policy will be implemented by a future LCP amendment proposing maps defining the village commercial core area, and thereby better defining residential uses as the principal use outside the core commercial area, allowing for the construction, maintenance and replacement of homes in the area designated as residential and applying the residential restrictions in (a), (b) and (c) only in the commercial core area.

The Coastal Village Commercial Residential (C-VCR) zoning district is implemented through IP Section 22.64.170(B)(3), which allows a mixture of commercial and residential uses to maintain the established village character of the various village commercial areas.

#### **Background**

The existing LCP designates both commercial and residential as principal permitted uses (PPU), and the VCR zone constitutes the primary local and visitor serving commercial areas along Marin's coast.

In the LCP Amendment, the County proposed a mapped overlay zone for the commercial core where commercial uses would be the PPU, with residential dwellings, including, but not limited to affordable homes, restricted to:

- (a) the upper floors, and/or
- (b) the lower floors if not located on the road-facing side of the property, AND

## Attachment 2

(c) subject to a finding that such residential maintains and/or enhances the established character of village commercial core areas.

Outside the Commercial Core Overlay Zone, residential use would remain the PPU.

The Coastal Commission's November 2016 Modifications specify that commercial businesses be the principally permitted use for the entire C-VCR zone, with residential designated only as a permitted use for the entire zone. In addition, the Modification restricts residential uses based on the standards in (a) (b) and (c) above throughout the entire VCR zone, rather than just within a smaller, more discrete commercial overlay area as proposed by the County. The Commission's modifications do, however, make reference to the "commercial core" which may indicate an intent to limit to a subset of the VCR zone.

The County intends to initiate a public process to work with residents in each village to achieve approval of maps of the commercial core area, establish a corresponding overlay zone and complete required rezoning as a future LCP Amendment. These refined maps should draw a clear distinction for principally permitted commercial uses in the village core and principally permitted residential uses outside the core.

Commission staff agrees with the County's approach to pursue a rezoning process to vet the Commercial Core maps with village residents and the interested public and replace the Modification at the earliest possible date.

### **1-3. Limited Service Capacity, Priority Uses**

#### **Recommendation: Accept**

#### **As Modified by CCC**

##### **Land Use Plan**

**C-PFS-4 High-Priority Visitor-Serving and other Coastal Act Priority Land Uses.** In acting on any coastal permit for the extension or enlargement of community water or community sewage treatment facilities, determine that adequate capacity is available and reserved in the system to serve VCR- and RCR-zoned property, other visitor-serving uses, and other Coastal Act priority land uses (i.e. coastal-dependent uses, agriculture, essential public services, and public recreation). In areas with limited service capacity (including limited water, sewer and/or traffic capacity), new development for a non-priority use, including land divisions, not specified above shall only be allowed if adequate capacity remains for visitor-serving and other Coastal Act priority land uses, including agricultural uses.

**C-PFS-4.a Reservation of Capacity for Priority Land Uses.** Coordinate with water service and wastewater service providers to develop standards to allocate and reserve capacity for Coastal Act priority land uses.

#### **Analysis**

Land Use Policy C-PFS-4 addresses the extension or enlargement of *community* water or *community* sewage treatment facilities. In other words, it is limited to the provision of **public**

## Attachment 2

services and facilities, consistent with Coastal Act Section 30254, which requires that **public** service capacity be reserved for certain priority land uses such as agriculture, public recreation, and visitor-serving uses:

### Background

#### Coastal Act Section 30254 Public works facilities

New or expanded **public works** facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned **public works** facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

This policy and implementation program are limited to “any coastal permit for the extension or enlargement of **community** water or **community** sewage treatment facilities.” The modification approved by the CCC includes an additional standard applicable to community water and community sewage treatment “areas with limited service capacity.” However, the inclusion of that term does not appear to modify the fundamental intent of the policy and program to create capacity standards that will be considered for “any coastal permit for the extension and enlargement of community water and community sewage disposal systems...”. For consistency with Coastal Act Section 30254 as well as the remainder of the policy, including the implementing Program C-PFS-4.a, Policy C-PFS-4 clearly applies to public services, as distinguished from private individual water and wastewater disposal facilities, which are not considered “public works” facilities in the context of Coastal Act Section 30254. This interpretation is also reasonable when considering the definition of “limited public service capacity” proposed and approved by the Coastal Commission (IP Section 22.64.140.A.1.e), which applies the term to capacity limitations experienced by “water system operators” or “public/community sewer systems,” not individual property owners.



## **AMENDMENT 2 LUPA Agriculture Chapter**

### **RECOMMENDATION: Accept Amendment 2 In Its Entirety**

Individual issues as previously addressed are discussed below.

#### **2-1 “As Necessary for”**

##### **Recommendation: Accept**

##### **Land Use Plan As Modified by CCC**

###### **Agriculture Background (p.11)**

... A key measure to continue the preservation of agriculture is the Agricultural Production Zone (C-APZ), which limits the use of land to agriculture, or uses that are accessory to, in support of, and compatible with ~~or necessary for~~ agricultural production...

###### **Policy C-AG-2**

**C-AG-2 Coastal Agricultural Production Zone (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.

**A.** In the C-APZ zone, the principal permitted use shall be agriculture, limited to the following: ...

**5.** Other Agricultural Uses, appurtenant and necessary to the operation of agriculture, limited to:

**a.** Agricultural product sales and processing of products grown within the farmshed, provided that for sales, the building(s) or structure(s), or outdoor areas used for sales do not exceed an aggregate floor area of 500 square feet, and for processing, the building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet;

**b.** Not for profit educational tours

###### **Analysis**

Use of the phrase “appurtenant and necessary to” in C-AG-2.A.5 should be interpreted as a declarative statement meaning the limited “Other Agricultural Uses” specified in 5.a (Agricultural product sales and processing of products) and 5b. (educational tours) are in fact deemed to be appurtenant and necessary to the operation of agriculture as long as such uses meet the land use definition and applicable standards in the policy. The phrase “appurtenant and necessary” does not turn on discretionary determinations, rather it specifies that the enumerated uses are determined to be principally permitted.

The CCC findings (pg. 24 [Revised findings 7.14.17](#)) support this conclusion:

*“Necessary” for Agricultural Production*

As stated on page 52 of the staff report, C-AG-2 no longer includes the “and necessary for” language instead stating that in order to assure that the principal use of C-APZ land is agricultural, any development shall be “accessory to, in support of, and compatible with agricultural production.” However, C-AG-2 remains consistent with sections 30241 and 30242 of the Coastal Act because: (1) all development must still be “in support of agricultural protection;” (2) the proposed C-APZ zone would no longer include non-agricultural development as principally permitted as does the currently certified LCP; and (3) the agriculturally-related development designated as principally permitted in the C-APZ zone is defined as development that is “necessary and appurtenant” to the operation of agriculture.

The Revised Findings correctly describe the integrated, interdependent agricultural facilities, including accessory structures and activities, processing, and retail sales, that form the working fabric of the agriculture principal permitted use (pg. 42 [Revised Findings 7.14.17](#))

“Further, the principal permitted use of the C-APZ is agriculture, defined to include agricultural production, and the structures that truly support agricultural production (agricultural accessory structures, agricultural dwelling units, agricultural sales and processing facilities). Allowing agricultural production and the facilities that support it as types of development designated as principally permitted in the commercial agricultural zone is Coastal Act consistent not only because sustainable agricultural operations are critical to the long-term viability of agriculture in Marin but also because development of such agriculture uses does not involve a conversion of agricultural land to a non-agricultural use. Finally, to classify development other than agricultural production itself as a principally permitted use of agricultural land, development must in fact be supporting agricultural production.”

Thus, consistent with the findings above, agricultural accessory structures, agricultural dwelling units, agricultural sales and processing facilities that are accessory and incidental to, in support of, compatible with agricultural production should qualify as principally permitted uses, without requiring a project-specific test of necessity for the continued economic viability of and existing agricultural production operation. Such projects would, of course, need to meet the objective land use definition and development standards (e.g. siting, size, design, parking) applicable to each use type.

## **AMENDMENT 3 IPA Agriculture Provisions**

### **RECOMMENDATION: Do Not Accept**

As discussed in the Board Letter, the LCP regulations do not allow a local government to not accept one part of an Amendment while accepting the other parts. In the case of Amendment 3, while the recommendation is to not accept the issues related to “Ongoing Agriculture,” the regulations require that to effectuate that, the Amendment as a whole not be accepted.

### **3-1. Ongoing Agriculture**

#### **Section 22.130.030**

- A. “Legally Established” Existing Agriculture**
- B. “Conversion of Grazing Areas to Row Crops”**
- C. “Examples of activities that are NOT ongoing agricultural”**

The question of whether changes in agricultural production activities should require coastal permits, and if so, what the parameters of such requirements should be, was extensively discussed and debated in public workshops, meetings and hearing over a long period during the development of the LCP’s agricultural policies and implementing provisions. The Marin Conservation League sponsored discussions on the topic with representatives of the environmental and agricultural communities, including the UC Cooperative Extension, Environmental Action Committee of West Marin, Marin Farm Bureau and others. While the parties did not reach a consensus on a single regulatory approach, the following zoning standards were, in part, an outgrowth of this collaboration.

#### **22.68.050 – Coastal Permit Not Required: Exempt Development**

**A.** The following development, ~~as determined by the Director~~, shall be exempt from the requirements of Section 22.68.030 unless listed as non-exempt by Section 22.68.060...

**12. Ongoing Agricultural Activities.** See Chapter 22.130 for definition.

#### **Chapter 22.130...**

**Agriculture Ongoing (Coastal)** means the following agricultural activities:

1. All routine agricultural cultivation practices (e.g. plowing, tilling, planting, harvesting, and seeding), which are not expanded into Environmentally Sensitive Habitat Areas (ESHAs) and ESHA buffers, Oak woodlands or areas never before used areas for agriculture, and
2. Conservation practices required by a governmental agency including, but not limited to, the State Water Resources Control Board or Regional Water Quality Control Board, in order to meet requirements to protect and enhance water quality and soil resources.

The following activities shall not be considered ongoing agriculture for the purposes of the definition of “Development” and constitute new development requiring a coastal permit consistent with Chapters 22.68 and 22.70, unless such development is categorically excluded by a Coastal Commission approved Categorical Exclusion Order.

1. Development of new water sources such as construction of a new or expanded well or surface impoundment.
2. Installation or extension of irrigation systems
3. Terracing of land for agricultural production;
4. Preparation or planting of land for viticulture, including any initial vineyard planting work as defined in Chapter 22.130;
5. Preparation or planting of land for growing or cultivating the genus cannabis.
6. Routine agricultural cultivation practices on land with an average agricultural slope of more than 15%.

Suggested Modifications in the staff report for the CCC Nov. 2016 hearing made critical changes to the Board-adopted provisions. For example, explicit recognition and accommodation of conservation practices to promote water quality mandated upon farmers and ranchers by the Regional Water Quality Control Board were deleted from designation as an ongoing agricultural practice. Proposed Modifications relating to the legal status of agriculture and restricting conversion of grazing land to crop use were added. These became a principal focus of public comment letters and testimony at the CCC hearing. Ultimately, the Coastal Commission adopted a motion to strike two modifications as shown below:

**Agriculture, ongoing**

~~Existing legally established agricultural~~ Agricultural production activities (including crop rotation, plowing, tilling, planting, harvesting, and seeding) which have not been expanded into never before used areas. Determinations of such ongoing activities may be supported by Marin County Department of Agriculture, Weights and Measures information on such past activities. Examples of activities that are NOT considered ongoing agricultural activities include but are not limited to:

- ~~• Conversion of grazing area to crop production~~
- Development of new water sources (such as construction of a new or expanded well or surface impoundment)
- Installation or extension of irrigation systems
- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis
- Preparation or planting of land with an average slope exceeding 15%

*A Coastal Development Permit will not be required if the County determines the activity qualifies for a de minimis waiver pursuant to the requirements Section*

22.68.070, or is categorically excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.

## CCC Findings

Several months following the Commission's November 2016 decision to remove the "legally established" and the "Conversion of grazing area to crop production" criteria from the "Ongoing Agriculture" definition, Revised Findings were released that suggested these provisions should nevertheless be taken into consideration when making determinations about exempting changes in agricultural activities in the field. In this regard, County staff, the Marin Cooperative Extension Service, and former Commission Chair Steve Kinsey who made the motions to remove these provisions, went on the record at the hearing on the Revised Findings, but the Commission nevertheless adopted them. County staff is concerned that the Revised Findings may diminish the clarity and predictability of the definitive list of land use activities the County proposed and the Commission approved as the primary basis for making decisions on permit exemptions for ongoing agriculture.

Each of these three issues is addressed further below;

### **A. "Legally Established" Existing Agriculture**

#### **Recommendation: Do Not Accept**

After hearing concerns raised by the County and agricultural community at the November 2016 hearing, the Coastal Commission removed the "legally established" phrase from the permit exemption for "Agriculture, ongoing" (hereafter referred to as "ongoing agriculture"). This change was viewed as a benefit to the County by clarifying that existing agricultural producers seeking to change crops would not be subject to a presumption of illegality simply because the County had not issued a Coastal Permit (historically, neither the County nor the Commission itself has required Coastal Permits when, by way of example, a rancher converts grazing land to growing silage or other changes in agricultural use in the field). Without further explanation, the Commission's Revised Findings could be interpreted as injecting uncertainty about, or being contrary to, the Commission's intent of removing "legally established" by stating that existing agricultural uses must be "legal and allowable," that this status could be contested, presumably by anyone, and that the burden of proof of legality would be placed upon the farmer or rancher.

(pg. 39, 40 [Revised Findings 7.14.17](#)):

...since certification in 1982, proposed changes in the intensity of the use of agriculturally zoned land, as well as agricultural grading into areas not previously farmed, required County-issued coastal permits. The Commission staff suggested modifications do not "establish" a new coastal permitting requirement for agricultural production in Marin County. Rather, such a permit requirement has existed in the C-APZ since 1982 when the Commission certified the

County's existing LCP and prior to LCP certification through Commission regulatory action (pg.39)

“...the Commission’s suggested modifications limit ongoing agriculture to existing agricultural production activities that are not expanding into never before used areas. It is important to note that existing agricultural production activities are only considered ongoing agriculture if they are legal and allowable uses on agricultural land. The Commission’s conditionally certified definition is not intended to allow the continuation of any unpermitted or illegal activity on agricultural land because it has previously been occurring....

...if the extent or legality of agriculture production activities were to be contested, ... determinations of ongoing agricultural activities may need to be supported with evidentiary information...(pg. 40)

Based on the Coastal Commission staff’s reading of the County’s existing LCP, the above Revised Findings indicate two criteria for requiring Coastal Permits as a means of establishing legal agricultural production activities: 1) proposed changes in the intensity of use, an amorphous and subjective term; and 2) agricultural grading into areas previously not farmed. The Revised Findings go on to point out that agricultural activities will be considered for the permit exemption, available under the definition of ongoing agriculture, only if the activities are existing and they meet the above two criteria for intensity of use and avoiding areas not previously farmed.

County staff has two principal concerns about the way the Revised Findings have been written. First, the findings stop short of connecting the determination on changes in intensity of use to the above list of criteria in the definition of ongoing agriculture (i.e., expanding into never before used areas, new water sources, terracing, etc.). These criteria would be central to the County’s decision about whether a change in agricultural activity should or should not be exempt from a Coastal Permit. The lack of reference to the criteria in the Revised Findings raises questions about what, if any, additional criteria could disqualify a change in production activity from the permit exemption. Second, the Revised Findings explain that the Coastal Commission modifications limit ongoing agriculture, and therefore the permit exemption, to “existing agricultural production activities.” County staff is concerned that placing a limit on the permit exemption to *existing* activities could preclude the exemption from being applied to *changes* in production activities, which is the whole purpose of the exemption.

## Conclusion

Absent clarification of the above Coastal Commission Findings, County staff would apply the permit exemption for ongoing agriculture to changes in existing agricultural production activities if such activities met all of the exemption criteria in the above definition. Meaning no exemptions would be granted for changes in the field that affect land never before used for agriculture, that require new water sources or extensive irrigation, terracing, planting of vineyards or cannabis,

and grading on moderate to steep slopes. It's worth pointing out these criteria represent new regulations and thus, the permit exemption establishes a more structured and definitive approach as compared to current regulations. However, agricultural operations would not be disqualified from the exemption merely because the County has not required a permit in the past to graze cattle or grow crops.

The County could also submit clarifying amendments after acceptance of the above modifications and request the Coastal Commission act on the amendments prior to or in conjunction with the Environmental Hazard Amendments. Alternatively, if the above modifications are rejected, the rejection would apply to Amendment 3 in its entirety and the entire Amendment would need to be resubmitted to the Coastal Commission if the County chose to pursue revisions in this section of its LCP.

A. **“Legally Established:”** As part of its November 2016 decision, the Coastal Commission removed “legally established” from the approved definition of Ongoing Agriculture. However, the Revised Findings subsequently adopted by the Coastal Commission to support their decision state that “changes in the intensity of use of agriculturally zoned land...required County issued permits” since 1982 (the adoption of the County’s first LCP and implementing coastal zoning regulations) “and prior to LCP certification through Commission regulatory action” (presumably since the start of the Commission in Jan. 1973).

The findings go on to state “that existing agricultural production activities are only considered ongoing agriculture if they are legal and allowable uses on agricultural land”. The absence of permits covering the periods described above could thus render them not legal. Finally, the finding that “if the extent or legality of agriculture production activities were to be contested, ... determinations of ongoing agricultural activities may need to be supported with evidentiary information” appear to create a cloud of uncertainty and fear that anyone could allege illegality, and place the onerous burden of proof on the rancher or farmer. The implication that agricultural producers having either initiated or changed crops since 1973 may not be considered legal merely because they have not been required to first obtain a Coastal Permit and must bear the consequences neither seems to be consistent with the Commission’s deletion of the words “legally established,” and, more importantly, is not wise public policy.

## **B. “Conversion of Grazing Areas to Row Crops:”**

### **Recommendation: Do Not Accept**

The proposed Coastal Commission Staff modifications added “Conversion of grazing area to crop production” to the list of activities NOT considered ongoing agriculture. In response to objections raised by the County and the agricultural community, the Commission deleted this provision. However, the Revised Findings state that “*those conversions [of grazing areas to row crops] that would intensify the use of land or water or require grading*” will require a Coastal

Permit. As pointed out above, the Revised Findings provide no clear, objective or predictable standard to determine when a conversion would constitute such intensification. Clarity and certainty are essential to the fair and effective administration of policies, and are vital to facilitating compliance by the ranchers and farmers being regulated by the County. That is why the County set out clear and measurable criteria for defining intensification in its policy:

“The following activities shall not be considered ongoing agriculture for the purposes of the definition of “Development” ...

The county’s policy directly addresses the two components of the definition of “development” discussed in the Findings. The “change in the intensity of use of water” is defined by “Development of new water sources,” while the “change in the intensity of use of land” is determined by four measurable, objective criteria: any “terracing of land for agricultural production; preparation or planting of land for viticulture; preparation or planting of land for cannabis; preparation or planting of land with an average slope exceeding 15%,” as shown below, with categories added.

**Definition with deletions adopted by Commission Nov. 2, 2016**

**Agriculture Ongoing** means the following agricultural activities:

~~Existing legally established a~~Agricultural production activities (including crop rotation, plowing, tilling, planting, harvesting, and seeding) which have not been expanded into never before used areas. Determinations of such ongoing activities may be supported by Marin County Department of Agriculture, Weights and Measures information on such past activities. Examples of activities that are NOT considered ongoing agricultural activities include but are not limited to:

- ~~• Conversion of grazing area to crop production~~

***[Intensifying the Use of Water]:***

- Development of new water sources (such as construction of a new or expanded well or surface impoundment)
- Installation or extension of irrigation systems

***[Intensifying the Use of Land]***

- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis
- Preparation or planting of land with an average slope exceeding 15%

A Coastal Development Permit will not be required if the County determines the activity qualifies for a de minimis waiver pursuant to the requirements Section 22.68.070, or is categorically excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.



### C. “Examples” “of activities that are NOT ongoing agriculture:”

#### **Recommendation: Do Not Accept**

The intent of the County’s use of “ongoing agriculture” was to provide farmers and ranchers greater predictability in the face of having to operate under a coastal permitting scheme that has at the least been rigorously implemented in the more than 45 years of the Coastal Commission’s existence. The list of activities and other criteria that were not considered ongoing agriculture was created by working extensively and intensively with a broad spectrum of stakeholders. Couching this definitive list in the context of “examples” opens the administration of this permit exemption to questions concerning which, if any, additional activities will not be considered ongoing agriculture. It has been suggested that “conversion of grazing areas to row crops” could be an “example” of an activity that could be designated as an activity that is not ongoing agriculture even though the Commission itself deleted it from the list. As discussed in the previous section, the question revolves around the defining what constitutes change in the intensity of use, and regardless of the ambiguity injected by the Revised Findings, the clear and concise categories enumerated by the modified definition on its face, provide that clarity and predictability.

#### **Agriculture, ongoing**

~~Existing legally established agricultural~~ Agricultural production activities (including crop rotation, plowing, tilling, planting, harvesting, and seeding) which have not been expanded into never before used areas. Determinations of such ongoing activities may be supported by Marin County Department of Agriculture, Weights and Measures information on such past activities. Examples of activities that are NOT considered ongoing agricultural activities include but are not limited to:

- ~~Conversion of grazing area to crop production~~
- Development of new water sources (such as construction of a new or expanded well or surface impoundment)
- Installation or extension of irrigation systems
- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis
- Preparation or planting of land with an average slope exceeding 15%

A Coastal Development Permit will not be required if the County determines the activity qualifies for a de minimis waiver pursuant to the requirements Section 22.68.070, or is categorically excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.

## Conclusion

Not accepting the Modifications in Amendment 3 will prevent this modified provision from taking effect in the future. If so directed by the Board, staff would seek a subsequent amendment pertaining to this specific issue to reaffirm the plain meaning of the ongoing agriculture definition.

### **3-2. Allowing Rancher/Farmer to receive pay for time providing Educational Tours**

#### **Recommendation: Accept**

#### **As Modified**

##### **22.32.062 – Educational Tours**

**Limitations on use.** As defined in Section 22.130.030, educational tours are interactive excursions for groups and organizations for the purpose of informing them of the unique aspects of a property, including agricultural operations and environmental resources. In the C-APZ zoning district, educational tours operated by non-profit organizations or the owner/operator of the agricultural operation are a principal permitted use if no revenue is generated in excess of reimbursement costs related to the educational tour; for profit educational tours operated by a third party require a Conditional Coastal Permit appealable to the Coastal Commission and a Use Permit if revenue is generated in excess of reimbursement costs related to the educational tour.

#### **Analysis**

The specific details of interpreting the term “reimbursement costs” should be left to the County’s discretion to the County. A reasonable interpretation of the term includes payments to the operator or staff for their time (e.g. hourly rate charges), charges for the use of the farm or its facilities for the educational purpose, and revenues generated for non-profit organizations through tours.

In their May 9, 2017 letter, CCC staff appears to support this approach:

... As long as the fees that are received are solely for reimbursement, the County will be able to make a factual determination that the revenue being generated is not for profit. That factual determination is to be made on a case- by-case basis, however, because there are circumstances in which the same type of charge would exceed reimbursement costs and circumstances in which it would not exceed reimbursement costs.

Given this statement, the County would make the determination that the revenue is or is not “for profit,” and thus whether the specific tour is a principal permitted use, or merely a permitted use, subject to appeal to the CCC.

### **3-3. “And Necessary for Operation of Agriculture”**

#### **Recommendation: Accept**

#### **IP Sec.22.60.060**

According to the CCC findings discussed above, agriculturally-related development designated as principally permitted in the C-APZ zone, including agricultural sales and processing designated as principally permitted in C-AG-2.A.5.a is defined as “necessary and appurtenant” to the operation of agriculture. Thus, Policy C-AG-2 means that agricultural uses in the C-APZ zone are predetermined to be accessory, incidental, in support of, compatible with and necessary for agricultural production operations as long as such uses meet applicable land use definition and standards. In other words, these uses should not be subject to a project-by-project test to evaluate and determine if such uses are necessary for the agricultural use of the land to continue in operation. However, Modifications to the implementing zoning (IP) added the words “and necessary” to section 22.62.060.B.1.d., so that the phrase reads “if appurtenant and necessary.” Inclusion of the word “if” could possibly be interpreted as meaning that such uses should be subject to a project-specific test of necessity.

#### **22.62.060 – Coastal Agricultural and Resource-Related Districts...**

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

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

**d. Other Agricultural Uses, if appurtenant and necessary to the operation of agriculture, limited to:**

1. Agricultural product sales and processing of products grown within the farmshed, provided that for sales, the building(s) or structure(s), or outdoor areas used for sales do not exceed an aggregate floor area of 500 square feet, and for processing, the building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet;
2. Not for profit educational tours.

However, the CCC findings (pg. 24 [Revised findings 7.14.17](#)) make clear that the operative criteria are that developments are “accessory to, in support of, and compatible with agricultural production.”

***“Necessary” for Agricultural Production***

As stated on page 52 of the staff report, C-AG-2 no longer includes the “and necessary for” language instead stating that in order to assure that the principal use of C-APZ land is agricultural, any development shall be “accessory to, in support of, and compatible with agricultural production....”

And with specific regard to Section 22.62.060 (pg. 42 [Revised Findings 7.14.17](#)):

“Further, the principal permitted use of the C-APZ is agriculture, defined to include agricultural production, and the structures that truly support agricultural production (**agricultural accessory structures, agricultural dwelling units, agricultural sales and processing facilities**). Allowing agricultural production and the facilities that support it as types of development designated as principally permitted in the commercial agricultural zone is Coastal Act consistent not only because sustainable agricultural operations are critical to the long-term viability of agriculture in Marin but also because development of such agriculture uses does not involve a conversion of agricultural land to a non-agricultural use. Finally, to classify development other than agricultural production itself as a principally permitted use of agricultural land, development must in fact be supporting agricultural production. Suggested modifications in the proposed LCP’s IP definitions section discussed below, ensure that these permitted agricultural uses must meet all the following criteria **“accessory and incidental to, in support of, compatible with agricultural production”** to even be considered such agricultural uses under the LCP. These suggested modifications together will ensure that each new development on C-APZ lands will be in support of agricultural production.”

**Analysis**

The Revised Findings correctly describe the integrated, interdependent agricultural facilities, including accessory structures and activities, processing, and retail sales, that form the working fabric of the agriculture principal permitted use. Thus, consistent with the findings above for C-AG-2, agricultural accessory structures, agricultural dwelling units, agricultural sales and processing facilities that are accessory and incidental to, in support of, compatible with agricultural production will qualify as principally permitted uses subject to affirming the nature of the project is reasonably related to the definition itself and meets objective development standards. If any further clarification is required, it can be accomplished through a subsequent Amendment.

### **3-4. Agriculture Exempt in Areas Identified in Cat. Ex. Orders**

#### **Recommendation: Accept**

#### **As Modified by CCC**

#### **22.68.040 – Coastal Permit Not Required: Categorically Excluded Development**

- A. Development specifically designated as categorically excluded from the requirement for a Coastal Permit by Public Resources Code Section 30610(e) and implementing regulations is not subject to Coastal Permit requirements if such development is consistent with all terms and conditions of the Categorical Exclusion Order. A Coastal Permit is not required for the categories of development identified in Categorical Exclusion Orders E-81-2, E-81-6, and E-82-6 (see Appendix 7), and are only excluded provided that the Exclusion Orders themselves remain valid, the development is proposed to be located within the approved categorical exclusion area, and provided that the terms and conditions of the Exclusion Orders are met. For those Categorical Exclusion Orders that require development to be consistent with the zoning ordinances in effect at the time the Categorical Exclusion Order was adopted, all local zoning ordinance in effect at the time each Categorical Exclusion Order was adopted are provided within Appendix 7a.

#### **Analysis**

Activities that meet the definition of agriculture in the two applicable Categorical Exclusion Orders do not require a permit if consistent with the other provisions of the Orders. The definition in the Orders reads:

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

The County's categorical exclusion Orders E-81-2 and E-81-6 provide an exclusion from CDP requirements for listed activities described as "agriculture" and some agriculturally-related development, meaning that such activities do not require a CDP. Excludable development must still be found consistent with the zoning in effect at the time of the orders' adoption (meaning the zoning existing in 1981 prior to the certification of the LCP).

Orders E-81-2 and E-81-6, for example, exclude from coastal permit requirements barns, storage, equipment and other necessary buildings; dairy pollution project including collection, holding and disposal facilities; storage tanks and water distribution lines utilized for on-site, agriculturally-related activities; water impoundment projects not to exceed 10 acre feet; electric utility lines; and new fencing for farm or ranch purposes, provided no solid fence designs are used. In addition, Orders E-81-2 and E-81-6, also exclude all agriculture activities defined in the Orders as:

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

## **AMENDMENT 6- IPA Permitting and Administration Chapters**

### **RECOMMENDATION: Accept Amendment 6 In Its Entirety**

Amendment 6 concerns permitting requirements and administrative procedures. It includes new provisions that would provide for de minimis permit waivers, allowing more rapid County review of certain minor developments, while affording an opportunity for public review and comment. Similarly, when no person requests that a hearing be held on certain minor developments, a new rule allows the waiver of a public hearing that would otherwise be required. In addition, a project that qualifies for an administrative Coastal permit but also requires another “non-coastal” permit could now be handled administratively as long as no public hearing is required for the other discretionary permit. Modifications do require that exemptions and other determinations can still be challenged directly to the Commission per Coastal Act section 30625 and Section 13569 of the Commission’s administrative regulations.

Amendment 6 also allows the County to issue a coastal permit to authorize emergency work to avoid or mitigate damage in the event of an emergency such as an impending bluff failure, landslide or storm.

Revised coastal zone variance regulations provide relief from development standards relating to height, FAR and setbacks when special circumstances apply to the property.

The Amendment adds new “temporary event” regulations, identifying those that require coastal permits and establishing a coastal Permit exemption for certain temporary events authorized by the Coastal Act.

New provisions allow for proposed development that may otherwise be inconsistent with the LCP to avoid a taking of private property, subject to specific information and analysis requirements and project conditions.

## **AMENDMENT 7- All other sections of the IPA**

### **RECOMMENDATION: Do Not Accept**

The Coastal Act does not allow a local government to accept some of the parts of a Modified Amendment, but not others. Not accepting Amendment 7 as a whole will mean that all the Coastal Commission’s modifications as well as approvals in the entire Amendment will not take effect in the immediate future. The County can focus discussions on the limited number of remaining issues discussed below, and at a subsequent time resubmit a refined set of Amendments to seek resolution of these issues. In the meanwhile, Amendments #1, #2, and #6, which comprise the entire Land Use Plan, except for the deferred Hazards portion, and a substantial and important part of the Implementing Program would remain approved and preserved while the County and Coastal Commission continue to work on resolving other issues.

The remaining issues are discussed below.

## **7-1. Definitions of “Existing”**

### **Recommendation: Do Not Accept**

#### **As Modified by CCC**

#### **22.130 Definitions**

As modified by Coastal Commission, the IP contains conflicting and confusing definitions of “existing” and “existing structure.” It is unclear why the definitions reference two different dates. More importantly, use of the phrase “on **or** after” in the definition of “existing” essentially makes the date meaningless (i.e. things in existence on February 1, 1973 as well things in existence at any time after February 1, 1973 would include the entire universe of things in existence). Furthermore, under the Commission’s definition of existing, a building or use that existed in 1973 (or sometime after) would qualify as “existing” even if it was subsequently removed or destroyed.

**Existing**~~(coastal)~~ Extant on or after February 1, 1973.~~—at the time that a particular Coastal Permit application is accepted for filing.~~

**Existing Structure**~~(coastal)~~. A structure that is legal or legal non-conforming. For the purpose of implementing LCP policies regarding shoreline protective devices, a structure in existence since January 1, 1977 ~~May 13, 1982.~~

#### **CCC Findings**

The Coastal Act does not define “existing” or “existing structure” and the CCC findings do not specifically address the modifications made to these definitions by CCC staff. The term “existing” appears approximately 150 times in the LUP alone, and it used to qualify a wide variety of structures, objects, facilities, uses, and conditions (for example, existing character, existing zoning, existing wetlands, existing service capacity, existing water use, etc.). As noted above, since the Coastal Commission defines “existing” to mean extant on OR after February 1, 1973, any structure, object, facility, use or condition that existed on (or after) 1973, but has subsequently changed in some way would apparently still qualify as “existing”. This is unnecessarily confusing and could have unintended policy implications.

For example, it would be unclear whether a policy calling for “maintenance of the existing mix of residential and small scale commercial development” (such as Policy C-PRS-1 Community Character of Point Reyes Station and several others) is referring to the mix of uses that existed in PRS in 1973 or sometime after. Similarly, a policy calling for the protection of some type of “existing coastal resource” could mean that resource as it occurred in 1973, or its current condition, or at some point in between (since all those timeframes qualify as “existing”). And would a requirement to analyze “existing service capacity” or “existing water use” look at the capacity or use in 1973 or sometime later?

Finally, the definition of “existing” would introduce conflict with respect to IP provisions regarding Nonconforming Uses and Structures (Section 22.70.160) which apply to “existing and lawfully established” uses and structures. Specifically, Section 22.70.160(C) states that if a use is abandoned for 12 months or longer, that use is no longer nonconforming. However, according to the definition, any use that existed on (or after) 1973 would still meet the definition of “existing”, regardless of whether it was subsequently abandoned. This could put the County in the awkward position of arguing that a use which qualifies as “existing” under the definition has nevertheless lost its status as “nonconforming”.

Proposed modifications to the definitions of “existing” and “existing structure” are not addressed in the May 9, 2017 CCC letter.

## Conclusion

The County could seek to clarify definition of “existing” with the Coastal Commission staff in a resubmittal of Amendment 7 if the current modified Amendment is not accepted. The definition of “existing structure” should be revisited in connection with future ongoing work on resolving Environmental Hazard issues since it relates primarily to provisions for shoreline protective devices.

## 7-2. Differentiate between “Legal Lot” and “Legal Lot of Record”

### **Recommendation: Do Not Accept**

### **As Modified by CCC**

#### **22.130 Definitions**

As modified by Coastal Commission, the IP contains a confusing and duplicative definition of “legal lot” which implies that lots created prior to the Coastal Act are illegal. If left as is, extensive corrections will be needed throughout LCP (to replace “legal lot” with “legal lot of record”). In addition, some CCC modifications to the definition of “legal lot of record” appear to be inconsistent with the Subdivision Map Act.

**Legal Lot.** A lot that was lawfully created under both the Subdivision Map Act and the Coastal Act and has received the necessary Map Act approval and a Coastal Permit.

**Legal Lot of Record.** A parcel is considered to be a legal lot of record under the Subdivision Map Act if it was created in conformance with any of the following criteria:

- A. Recorded subdivision. The lot was created through a subdivision Final map or Parcel map recorded on or after January 1, 1930. Antiquated subdivisions ~~may~~ shall not be deemed to have created lots. A lot ~~depicted created~~ on a subdivision Final map or Parcel map recorded before January 1, 1930 may be considered a



legal lot only if it has been reconveyed subsequent to January 1, 1930—with references made to the original subdivision Final map or Parcel map.

- B. Individual lot legally created by deed. The lot was legally created by deed conveyance into separate ownership and was in compliance with the zoning and subdivision requirements that applied at the time of creation.

When historic lots were merged by agency action or pursuant to applicable state law, the merged historic lots comprise a single legal lot of record.

## Analysis

It appears that all lots created prior to the Coastal Act (1977) would not qualify as “legal lots.” This raises serious questions about the numerous references to legal lots in the LCPAs. For example, the Commission modified Land Use Plan Policy C-AG-2.A.4 defining what are Principally Permitted Uses in the Agricultural Zone as follows:

- a. One farmhouse or a combination of one farmhouse and one intergenerational home per farm tract, defined in this LCP as all contiguous legal lots under a common ownership within a C-APZ zoning district, consistent with C-AG-5, including combined total size limits;
- b. Agricultural worker housing, providing accommodations consisting of no more than 36 beds in group living quarters per legal ~~parcel~~ lot or 12 units or spaces per legal lot for agricultural workers and their households;

Since most large farm lots in the Coastal zone significantly pre-dated the Coastal Act, these would not qualify as “legal lots” under the modified definition, leaving their legal status under questions. For example, if a ranch under “a.” above was not “*created under both the Subdivision Map Act and the Coastal Act*” and therefore had not received a Coastal Permit, could it qualify for a farmhouse?

There are numerous such cases in the LUPA, and more than 40 in the IPA.

In their letter of May 9, 2017, Coastal Commission staff state that as conditionally certified by the Commission in the definition of legal lot, a Coastal Permit is only required where “necessary.” However, this is not how the definition actually reads. The definition uses the term “necessary” only in reference to the Map Act, not the Coastal Act (“a lot that...has received the necessary Map Act approval and a Coastal Permit”).

## Conclusion

Not accepting Amendment 7 will automatically prevent this provision from taking effect in the future. The County could in the future seek to clarify wording of this provision with Coastal Commission staff and prepare and submit an Amendment to clear up the uncertainty.

### **7-3. Piers and Caissons**

#### **Recommendation: Do Not Accept**

#### **As Modified**

#### **22.130 Definitions**

The definition of “shoreline protective device” has been modified by the Coastal Commission to include piers and caissons, which are commonly used in the construction of building foundations. Accordingly, foundation work mandated by FEMA and associated with elevating structures would trigger the stringent requirements associated with shoreline protective devices designed to reduce coastal erosion.

**Shoreline Protective Device.** ~~(coastal).~~ A device (such as a seawall, revetment, riprap, bulkhead, piers/caissons; or bluff retention device) built for the purpose of serving a coastal-dependent use, or protecting an existing structure or public beach in danger from erosion.

The Coastal Commission findings do not address the definition of “shoreline protective device” because issues related to Environmental Hazards were deferred for later action. In their letter of May 9, 2017, Coastal Commission staff recognize the County’s position that the definition of “shoreline protective device” should be addressed through the Environmental Hazards Amendments.

#### **Conclusion**

Given the clarification in the Coastal Commission May 9, 2017, it appears that the Commission has acknowledged that the definition of “shoreline protective device” will be determined through a future Environmental Hazards Amendment resubmittal.

### **7-4. Definition of Grading**

#### **Recommendation: Accept with possible resubmittal**

#### **As Modified by CCC**

The Coastal Commission modifications removed the quantitative trigger determining the amount of earth movement that requires a Coastal Permit. As modified, such determinations will be subject to the judgement and discretion of staff, which may result in inconsistencies and uncertainty.

**Grading.** ~~(coastal)~~ Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof ~~that exceeds 50 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 for ongoing agricultural operations (see “Agricultural Production Activities, Ongoing”).

In their May 9, 2017 letter Coastal Commission staff acknowledges it is appropriate to afford local planning staff discretion to evaluate project circumstances on a case-by-case basis, given specific site characteristics and unique project elements, to determine if an activity is defined as grading and subject to a Coastal Development Permit. For example, mulching activities recommended by the Marin Carbon Project to sequester CO<sub>2</sub>, laying rock at water troughs to reduce erosion, and digging holes to plant trees and native vegetation may not be considered grading.

## **Conclusion**

By not accepting Amendment 7, this provision will not take effect in the future. The Board could then consider whether a revision to the Coastal Commission modification is appropriate. Staff notes that relying upon a more subjective method of determining when grading requires a Coastal Permit, which is reflected by the Commission’s modification above, is similar to the County’s existing LCP.

## **7-5. Where No Bank, Ordinary High-Water Mark Establishes Streambank**

### **Recommendation: Accept**

#### **As Modified by CCC**

Within the definition of “streambank”, the Coastal Commission modifications replaced the “thalweg” (the line of lowest elevation within a watercourse) with “ordinary high-water mark” which is more complicated and costly to determine, particularly for a watercourse with no discernible bank

**Stream Bank.** The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernible bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. In areas where a stream has no discernible bank or riparian vegetation, the stream boundary shall be considered the stream’s ~~thalweg~~ ordinary high-water mark.

The Coastal Act does not define “stream bank” and neither the Commission findings nor the May 9, 2017 letter specifically address the modifications made to this definition.

## Conclusion

By not accepting Amendment 7, this provision will not take effect in the future.

## 7-6. 22.64.140 – Public Facilities and Services

### Recommendation: Do Not Accept

#### As Modified

This IP section is intended to carry out Land Use Plan policy *C-PFS-4 High-Priority Visitor-Serving and other Coastal Act Priority Land Uses* (see discussion under Amendment 1). However, as explained below the text of the IP section. **[bcc note: should this be a continuation of the sentence?]** The Commission rejected the County's implementing action, as submitted and then suggested the modifications shown below. However, Section 30513 sets out the standard for the Commission's review of and IP measure: *The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan.* By extending the reach of the modification beyond public facilities in the Land Use Plan to encompass individual private properties, the rejection and modification fails to conform to the Coastal Act's requirement.

**A. Public facility and service standards.** Development, as defined in Article VIII, shall be consistent with all Public Facilities and Services Policies of the LUP, including, but not limited to:

1. **Adequate public services.** Adequate public services (that is, water supply, on-site sewage disposal or sewer systems, and transportation, including public transit as well as road access and capacity if appropriate) shall be available prior to approving new development per Land Use Policy C-PFS-1...
  - b. An application for new or increased well production ~~to increase public water supply~~ shall include a report prepared by State Licensed Well Drilling Contractors, General (Class A License) Engineering Contractors, Civil Engineers, or Geologists which demonstrates, to the satisfaction of the Director, that:...
    - 1) The sustainable yield of the well meets the LCP-required sustained pumping rate (minimum of 1.5 gallons per minute) and must be equal to or exceed the project's estimated water demand.
    - 2) The water quality meets safe drinking water standards.
    - 3) The extraction will not adversely impact other wells located within 300 feet of the proposed well; adversely impact adjacent biological and hydrogeologically-connected resources including streams, riparian habitats, and wetlands that are located on the subject lot or neighboring parcels lots; and will not adversely impact water supply available for existing and continued agricultural production or for other priority land uses that are located on the subject parcel or served by the same water

~~source (i.e. coastal dependent uses, public recreation, essential public services, basic industries vital to economic health of the region, state, or nation, and within village limit boundaries only, visitor-serving uses and commercial recreation uses).~~

- e. Limited Public Service Capacity. Limited service capacity shall be defined as follows:
- 1) For water system operators, when projected demand for service based upon both outstanding water commitments to existing development and projected development exceeds available supply.
  - 2) For public/community sewer systems, when projected demand for service based upon both outstanding sewer commitments to existing development and projected development exceeds available capacity.

In areas with limited water service capacity, when otherwise allowable, new development for a non-Coastal Act and LCP priority use (i.e., a use other than agricultural production, coastal-dependent uses, public recreation, essential public services, and, within village limit boundaries only, visitor-serving uses and commercial recreation uses) shall only be allowed if adequate capacity remains for the above-listed priority land uses. In such limited service capacity areas, in order to minimize the reduction in service for and reserve capacity to priority land uses, applications for non-priority uses shall be required to offset their anticipated water usage through the retrofit of existing water fixtures or other appropriate measures within the same service area of the water system operator or the public/community sewer system of the proposed development, whichever is applicable....

## ANALYSIS

IP Section 22.64.140.A.1.b pertains to development served by a well. The Coastal Commission modifications include, among other things, a new requirement that applicants submit a report demonstrating that a proposed new or expanded well would not impact nearby biological resources and would not adversely impact available water supply for agricultural production or other priority land uses (such as recreation and visitor-serving commercial uses). In response, the County raised concerns that the requirement to analyze potential capacity for priority land uses is not supported by Coastal Act Section 30254. Thus, this type of report, which could be burdensome and expensive for applicants proposing new or expanded individual private wells, is not supported by the Act, which clearly requires consideration of service capacity for priority land uses in relation to new or expanded **public works** facilities (such as community water or sewage treatment facilities), not private individual water or wastewater disposal facilities. In order to bring this provision into conformance with the Coastal Act, the County's submittal of Amendment 7 revised the text to clarify that the requirements would apply to "an application for new or increased well production to increase public water supply...". Although this clarification was subsequently deleted by the Coastal Commission, the County continues to view a requirement that private individual well owners consider impacts to priority land uses as inconsistent with Coastal Act requirements.

## Conclusion

By not accepting Amendment 7, this provision will not take effect in the future. The Board may subsequently consider directing staff to resubmit a revised provision consistent with the approved land use policy.

### 7-7. 22.64.170 – Parks, Recreation, and Visitor-Serving Uses

#### Recommendation: Accept with Intent to Resubmit

#### As Modified

#### 22.64.170(A)(3)

3. **Mixed uses in coastal village commercial/residential zones.** A mixture of residential and commercial uses shall be permitted in the C-VCR zoning district as follows:

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. Commercial shall be the principal permitted use ~~within the mapped village commercial core area~~ of the C-VCR zone and residential shall ~~be allowed in the C-VCR zone subject to all other LCP standards. the principal permitted uses in all other parts of the C\_VCR zone~~ be allowed in the C-VCR zone subject to all other LCP standards. ~~In the village commercial core area, r~~ Residential uses shall be limited to: (a) the upper floors, and/or (b) the lower floors if not located on the road-facing side of the property within the commercial core area (i.e. the central portion of each village that is predominantly commercial).

Residential uses on the ground floor of a new or existing structure of the road-facing side of the property shall only be allowed ~~subject to a finding provided~~ that the development maintains and/or enhances the established character of village commercial core areas.

~~Replacement, m~~ Maintenance and repair of any legal existing residential use shall be exempt from the above provision and shall be permitted.

The Coastal Village Commercial Residential (C-VCR) zoning district and is implemented through IP Section 22.64.170(B)(3) allows a mixture of commercial and residential uses to maintain the established village character of the various village commercial areas.

The existing LCP designates both commercial and residential as principal permitted uses (PPU).

In the LCP Amendment, the County proposed a mapped overlay zone for the commercial core where commercial uses would be the PPU, with residential dwellings, including, but not limited to affordable homes, restricted to:

- (a) the upper floors, and/or
- (b) the lower floors if not located on the road-facing side of the property, AND
- (c) subject to a finding that such residential maintains and/or enhances the established character of village commercial core areas.

Outside the Commercial Core Overlay Area, residential use would remain the PPU.

The County intends to initiate a public process to work with residents in each village to achieve approval of maps of the commercial core area, establish a corresponding overlay zone and complete required rezoning as a future LCP Amendment.

The Commission's November 2016 Modifications specify that commercial be the principally permitted use for the entire C-VCR zone, with residential designated only as a permitted use for the entire zone. In addition, the Modification restricts residential uses to the limited cases prescribed in (a) (b) and (c) over the entire VCR zone, rather than just in the commercial overlay area as proposed by the County.

## Conclusion

The Commission staff letter of May 9, 2018 indicated an understanding of the problems created by the current wording of the modification to section 22.64.170(A)(3). However, the text cannot be corrected without submittal of a new amendment. If so directed by the Board County staff will pursue a rezoning process to vet the Commercial Core maps with village residents and the interested public, and re-instate the County's policies as previously submitted and described above, in order to replace the Modification at the earliest possible date.

## **7-8. Lowest Density Required for Widespread Areas of Any Hazard**

### **Recommendation: Do Not Accept.**

### **As Modified**

#### **Section 22.64.030 – General Site Development Standards Footnotes to Tables 5-4-a & 5-4-b (Coastal Zoning Development Standards) and Table 5-5 (Coastal –B Combining District Development Standards)**

**(Footnote 6)** The maximum residential density for proposed divisions of land for that portion or portions of properties with Environmentally Sensitive Habitat Areas and buffers, and properties that lack public water or sewer systems, shall be calculated at the lowest end of the density range as established by the governing Land Use Category, except for projects that provide significant public benefits, as determined by the Review Authority, or lots proposed for affordable housing, and if it can be demonstrated that the development will ~~can~~ avoid and protect all ESHA and ESHA buffers and will avoid all hazardous areas and hazard setbacks, and will be served by on-site water and sewage disposal systems.

**(Footnote 7)** The maximum non-residential and non-agricultural floor area for that portion or portions of properties with Environmentally Sensitive Habitat Areas and buffers, hazardous areas and setbacks, and properties that lack public water or sewer systems, shall be calculated at the lowest end of the density range as established by the governing Land Use Category, except for projects that provide significant public benefits, as determined by the Review Authority, or and where it can be demonstrated that the development will ~~can~~ avoid and protect all ESHA and ESHA buffers and will avoid all

hazardous areas and hazard setbacks, and will be served by on-site water and sewage disposal systems.

Analysis Section 22.64.030 establishes general site development standards (such as minimum lot area, maximum density, and setback requirements) for the various coastal zoning districts, which are shown in Table 5-4-a & 5-4-b (Coastal Zoning Development Standards) and Table 5-5 (Coastal –B Combining District Development Standards). However, footnotes to each table specify that otherwise allowable densities and floor areas must be reduced for residential land divisions and non-residential or non-agricultural development (such as commercial or recreational uses) in cases where a property contains ESHA and ESHA buffers or lacks public water or sewer systems. Specifically, the maximum residential density for land divisions (or the maximum floor area for non-residential/non-agricultural development) in these cases must be calculated at the lowest end of the allowable density or floor area range, unless it is determined that the project provides significant public benefits or affordable housing, and will be adequately served by on-site water and sewage disposal systems. Modifications proposed by the Commission (shown in track-changes) would further restrict development by applying these “lowest allowable” density and floor area restrictions to properties containing any hazardous areas and setbacks, and by specifying that exceptions to these restrictions (i.e., land divisions resulting in affordable housing and other public benefits) can only be considered where development “will avoid all hazardous areas and hazard setbacks.”

Given the wide range and broad extent of potential environmental hazards in the coastal zone, staff is concerned that Commission modifications which included “all hazardous areas and hazard setbacks” as a criteria for applying “lowest allowable” density/floor area restrictions and the further requirement that “all hazardous areas and hazard setbacks” must be *avoided* will have the effect of significantly restricting opportunities for affordable housing development as well as commercial development (including visitor-serving uses) within the coastal zone. For example, most developed areas along Marin’s coastline could be considered to be in potentially hazardous areas due to a combination of seismic, flooding, geologic, tsunami or other hazards. In addition, in the case of commercial development, the lowest allowable floor area ratio in common commercial land use categories such as General Commercial or Coastal Recreational Commercial is only five percent. Since many commercial properties, particularly in coastal villages, are already developed with floor area ratios well above 5 percent, the provision proposed by Coastal Commission staff to apply the lowest allowable density and avoid all hazardous areas could effectively prohibit ANY additional floor area, no matter how minor, and regardless of whether the particular hazard could be mitigated.

Furthermore, a requirement to “avoid all hazardous areas and hazard setbacks” is not practical, feasible, or logical in most cases. An ESHA is a defined biological resource area which would be disturbed or degraded by development. Therefore, it is logical to apply the lowest allowable density range to areas which support ESHA or ESHA buffers. However, environmental hazard areas are not a resource to be protected but rather an area subject to natural forces which, in many cases, can be addressed or mitigated by design, siting, or engineering techniques. While “avoidance” of certain hazards, such as a defined landslide, may be possible, the widespread nature of most other types of hazards, such as high fire hazard areas, flood, tsunami, or seismic zones, makes strict avoidance impossible. For example, taken literally, a requirement to avoid all areas potentially subject to seismic activity would render all of Marin undevelopable.

Finally, since policies and IP provisions related to environmental hazards have not yet been finalized, it is not appropriate to incorporate references to environmental hazard issues into



other IP sections at this time, particularly provisions which would have the effect of significantly reducing allowable densities throughout widespread portions of the coastal zone without corresponding policy support.

**Conclusion**

For the reasons cited above, staff recommends the Board not accept Amendment 7, thereby preventing these modifications from taking effect in the future. If the Board so directs, staff would prepare a new amendment correcting the relevant footnotes of Tables 5-4-a, 5-4-b, and 5-5 in IP Section 22.64.030 deleting language regarding environmental hazards.