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August 25, 2015

Marin County Board of Supervisors
3501 Civic Center Drive
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SUBJECT: Resubmittal of Local Coastal Program – Land Use Plan Amendments (LUPA) and Implementation Program Amendments (IPA) to California Coastal Commission.

Dear Board Members,

RECOMMENDATION:

Staff recommends the Board adopt a Resolution to resubmit to the California Coastal Commission Land Use Plan Amendments (LUPA) and Implementation Program Amendments (IPA) to the certified Marin County Local Coastal Program (LCP) based in part upon the Coastal Commission's action on the County LUPA and the Commission staff's recommendations on both the LUPA and its IPA, as set forth in Attachments 1, 2 and 3. As provided in the Resolution, the Amendments would not take effect until further action by the Board after Coastal Commission approval. As described further below, the Environmental Hazards Chapter of the LUPA and the IPA (excepting provisions related to Agriculture) are not recommended for resubmittal at this time.

Specifically, the recommended Resubmittal consists of the following Amendments:

Amendment 1: The following Chapters of the LUPA:

Introduction	Energy (EN)
Interpretation of the Land Use Plan	Housing (HS)
Biological Resources (BIO)	Public Facilities & Services (PFS)
Mariculture (MAR)	Transportation (TR)
Water Resources (WR)	Historical & Archaeological Resources (HAR)
Community Design (DES)	Parks, Recreation & Visitor-Serving Uses (PK)
Community Development (CD)	Public Coastal Access (PA)

Amendment 2: The Agriculture Chapter of the LUPA

Amendment 3: Specified Chapters and Sections of the Marin County Development Code comprising a portion of the IPA for the LUPA Agriculture Chapter.

It is important to note that none of the provisions contained in the recommended Resubmittal will take effect until subsequent action by the Coastal Commission on other elements to be resubmitted at a later date.

BACKGROUND:

On July 30, 2013, after a lengthy and through review process including more than 50 public meetings, 26 public workshops and hearings before the Planning Commission, and six Board of Supervisor hearings, your Board approved Amendments to the certified Marin County Local Coastal Program, including the Land Use Plan (LUP) and Implementation Program (IP), and authorized submittal of the proposed amendments to the California Coastal Commission. At the time of approval, it was recognized that a number of issues remained to be resolved, and that CDA staff would continue to work cooperatively with Coastal Commission staff to come to agreement on as many topics as possible.

In November 2013, the Board-approved LCPA Land Use Plan and Implementation Program were submitted to the Coastal Commission. However, due to time constraints and the volume of material involved, Commission staff subsequently recommended, and the County agreed, to process the two documents separately and defer action on the IP in order to concentrate on policies of the LUP. This approach had the advantage of allowing the Commission to consider the LUP at a local public hearing in Marin County, and provided the opportunity to establish a Commission-certified LUP, which could then be used as the standard of review for the subsequent IP Amendment.

Throughout the remainder of 2013 and the spring of 2014, County staff worked closely with Commission staff to resolve differences between the LUP policies approved by your Board and numerous modifications proposed by Commission staff. However, as the Coastal Commission hearing approached, disagreements still remained in several important policy areas, particularly agriculture and coastal hazards. The Coastal Commission considered the LUP at their hearing of May 15, 2014, held locally at the Inverness Yacht Club. Despite continued concerns from County staff on a number of issues, the Commission approved the LUP with a variety of significant modifications recommended by their staff. A more detailed description of the policy changes approved by the Commission is provided later in this report.

Following the Coastal Commission's action on the LUP, County and Commission staff efforts shifted to the IP portion of the LCP Amendment. In November 2014, Commission staff provided the County with a revised version of the 270 page IP document containing hundreds of proposed modifications. Since the IP had been developed to implement the LUP as originally written, many changes were proposed to reflect the policy revisions approved by the Commission in May, including the problematic agricultural and environmental hazard policies. Other substantive changes to IP provisions on issues such as Coastal Permit Requirements and Administration were also of considerable concern to County staff. Over the next several months, staff from both agencies continued to work cooperatively to reduce areas of disagreement and were able to resolve many concerns. However,

substantive differences remained, particularly on those issues that have proven challenging throughout the process, coastal hazards and agriculture.

On April 16, 2015, the Coastal Commission conducted a hearing to consider their staff's recommendations for modifications to the IP. However, during the deliberations, it was agreed that given the volume of material under review and the extent of proposed revisions being considered, additional time was needed to further narrow the scope of issues and ensure internal consistency. Accordingly, the IP was formally withdrawn by the County, with the understanding that work between County and Commission staff would continue and with the hope that the document could be brought back to the Commission later in the year for approval. It was also acknowledged that this approach would provide the County with an opportunity to propose changes to previously approved LUP policies where necessary for consistency with requested IP modifications.

Today, County and Commission staffs continue to work together and in consultation with interested parties towards resubmittal of the full IP. However, in the interim, and in acknowledgement of the limited availability of Coastal Commission staff in the coming months, staff recommends moving forward with a more targeted submittal consisting of: 1) all LUP Chapters excepting Environmental Hazards; 2) revised LUP and IP measures related to Agriculture; and 3) a very limited number of requested modifications to several policies related to Community Development, Public Facilities and Services, and Public Coastal Access as outlined in the remainder of this report and recommended in the attached Exhibits. This approach would allow continued progress toward final approval of the great majority of the LUP where agreement between the County and Coastal Commission has been achieved while also providing for targeted consideration of critical outstanding policy and development code provisions related to agriculture.

COASTAL COMMISSION ADOPTED MODIFICATIONS TO THE LUP

Accepted Substantive Changes

The Coastal Commission approved a variety of modifications to the LUP since its approval by your Board in May, 2013. Frequently, the changes were minor or stylistic in nature, or were proposed by Commission staff to improve clarity or more closely track language contained in the Coastal Act. However, the approved changes also included many substantive policy modifications throughout the document. Those substantive changes that have been found to be acceptable to staff are briefly summarized by topic on the following page (see Table 1). It should be noted that no substantive changes were made to policies related to Water Resources (WR), Energy (EN), Housing (HS) or Historical and Archaeological Resources (HAR), so those chapters are not shown in the table. In addition, the topics of Agriculture and Environmental Hazards are addressed elsewhere in this report. All revisions noted in Table One can be reviewed in their complete form and in context with other related policies in the document itself, which is provided in Attachment 2.

Table One – Summary of Substantive LUP Policy Changes Accepted by County

Biological Resources
<ul style="list-style-type: none"> • Clarify that only trails “fundamentally associated with the interpretation of the resource” can be allowed within ESHA (C-BIO-2) • Establish an absolute minimum buffer of 25 feet from terrestrial ESHA (C-BIO-3) • Limit application of buffer reductions only to wetlands which were legally created and have no habitat value (C-BIO-20) • Clarify that only “on-going” grazing or other agricultural activities may continue to be allowed within wetlands (C-BIO-14)
Community Design
<ul style="list-style-type: none"> • Clarify that designated height limits are maximums not entitlements, and that telecommunications facilities or similar structures may exceed such limits only where consistent with protection of significant views and community character (C-DES-4) • Clarify that exterior lighting shall minimize public view impacts (C-DES-5). • Strengthen language limiting brush clearing and fuel modification within ESHA and ESHA buffers (C-DES-11)
Community Development and Community Specific Policies
<ul style="list-style-type: none"> • Consider “potential impacts to coastal resources” as a criteria in setting village boundaries (C-CD-11) • Delete Policy C-CD-15 (discouraging conversion of residential to commercial uses in coastal villages) since it may conflict with Coastal Act provisions prioritizing visitor-serving commercial over residential uses • Clarify that night lighting of publicly-owned recreational facilities is permitted only if such lighting does not result in impacts to coastal resources (C-CD-20) • Reinsert a requirement that the County notify the Point Reyes National Seashore or the Coastal Conservancy of development on parcels identified for lot consolidation in the Paradise Ranch Lot Consolidation Plan (C-INV-3)
Transportation
<ul style="list-style-type: none"> • Clarify that improvements to Highway 1 should minimize encroachments into parklands and incorporate visual or landform restorations where appropriate (C-TR-2)
Parks, Recreation, and Visitor-serving Uses
<ul style="list-style-type: none"> • Clarify policy language that limits residential uses along street fronts within village commercial core areas (C-PK-3)
Public Coastal Access
<ul style="list-style-type: none"> • Clarify the County’s options when considering protection of prescriptive rights in the absence of a final court determination (C-PA-7) • Clarify that parking restrictions which affect public coastal access include changes in parking timing and availability and any signage reducing public access (C-PA-20)

Areas for Further Revisions

It was not possible to resolve all areas of disagreement prior to adoption of the LUP by the Coastal Commission in 2014. In particular, differences remained between Commission and County staff on policies and associated implementation measures related to agriculture and environmental hazards, which are discussed in more detail below.

Environmental Hazards

As noted previously, the Environmental Hazards Chapter of the LUP is not recommended for resubmittal to the Coastal Commission at this time. The Environmental Hazard policies approved by your Board in 2013 were intended to enhance the safety of residents in potentially hazardous areas, while allowing carefully designed and sited development that would not exacerbate hazards. These policies also acknowledged the need to further research and respond to environmental hazards related to climate disruption and sea level rise.

During their May 2014 hearing, the Coastal Commission approved a number of significant policy changes which address sea level rise with a heavy reliance on “managed retreat” through the imposition of highly restrictive regulations that could have the effect of discouraging investment over time. Although managed retreat may be an appropriate and necessary approach in many cases, regulations for development in coastal areas adopted as part of Marin’s LCP will provide a precedent for future regulations and should not preclude consideration of more flexible or nuanced adaptation strategies. Furthermore, the County is currently engaged in climate disruption adaptation planning through its C-SMART program (Collaboration: Sea-level Marin Adaptation Response), a multi-year participatory and science-based effort partially funded by the Coastal Commission, which is assessing the implications of sea level rise on the Marin Coast. The program is intended to develop a range of adaptation alternatives and strategies that are feasible, appropriate, and supported at the local level.

In order to ensure that Environmental Hazard policies ultimately reflect the findings of the C-SMART effort and provide clear, reasonable, and fair provisions for guiding development in areas subject to hazards, staff recommends that resubmittal of the Environmental Hazard chapter be postponed at this time. It should be noted that Commission staff have concurred that such a delay is acceptable given the on-going work of C-SMART, the evolving nature of the regulatory environment related to sea level rise adaption, and the critical impact of these policies to the future of the Marin coast.

Agriculture

The protection and preservation of Marin’s existing agricultural resources and family-owned and operated farms and ranches is one of the key goals of the Marin LCP. As approved by your Board, the agricultural policies of the LUP work together to strengthen the economic vitality and long-term protection of agriculture while deterring the conversion of agricultural land to non-agricultural uses. Throughout the LCP Amendment process, agricultural policies and regulations were of widespread

interest and generated extensive debate among staff, agricultural producers, and members of the public. Ultimately, County and Commission staffs were able to reach agreement on many challenging and contentious agriculture-related issues, including most provisions and development standards for the C-APZ zoning district, the coastal zone's most protective agricultural zone. Accomplishments include:

- Establishment of new provisions for “intergenerational homes” to support and facilitate multi-generational family farm operation and succession;
- Agreement on a cumulative 7,000 square foot size limit for agricultural dwelling units to discourage the conversion of agricultural land to “estate residential” use;
- Provisions to allow limited on-site agricultural product sales and processing without the need for Use Permit approval; and
- Strengthened clustering requirements to minimize the development of productive agricultural lands.

However, several key issues remain unresolved, which are described in more detail below along with recommended policy revisions to address remaining concerns. (The complete set of revised proposed policies within the Agriculture Chapter of the LUP is included in Attachment 2. A “tracked changes” version showing Coastal Commission Suggested Modifications to the Agriculture Chapter of the LUP with further staff recommendations is available on the County website at www.MarinLCP.org or upon request). In order to allow consideration of agricultural policies in context with their detailed implementing provisions, revisions to specific chapters and sections of the Development Code which would comprise a portion of the IP for the Agriculture Chapter of the LUP have also been prepared by staff for consideration by your Board and are provided in Attachment 3, with a corresponding “tracked changes” version as noted above..

1. Support for Agricultural Production: The success of agriculture in Marin County relies on a variety of elements which are functionally-related to agricultural production itself, ranging from barns and fences to homes for the farmer or rancher and agricultural workers. Historically, and throughout the LCP Amendment process, such uses and facilities were identified as principally permitted uses that are “accessory to, in support of, and compatible with agricultural production.” However, modifications to the LUP and associated IP provisions approved by the Coastal Commission instead utilize the phrase “accessory to, in support of, ~~and~~ compatible with, and necessary for agricultural production”. Although insertion of the term “and necessary for” might appear to be a minor change, it effectively creates uncertainty by implying that such uses or facilities may, in some cases, be unnecessary and that individual producers must demonstrate “necessity” on a case by case basis. To ensure that policy and development code language on this issue is unambiguous, staff is recommending reverting to the original language approved by your Board as further described in Attachment 1. (see Attachment 1, Part II, Section 1)

2. Agricultural Dwelling Units on Contiguous Lots in Common Ownership (i.e. the “Farm Tract”): As approved by your Board, LUP policies and associated IP provisions for the C-APZ zoning district specified the amount of development permitted per “legal lot” (for example, “one farmhouse per legal lot”). However, modifications to the LUP recommended by Commission staff and approved by the Coastal Commission tightened restrictions within the C-APZ zone by specifying that “all contiguous properties under the same ownership” would be considered as one land holding for purposes of development. In other words, to use the same example, “one farmhouse for each farm owner or operator, regardless of the number of legal lots owned”. Modifications that Commission staff later recommended for the IP went even further by extending restrictions from “contiguous parcels” to “all parcels owned in either total or partial fee ownership” regardless of adjacency or proximity, with the caveat that a “non-contiguous” property might be considered to be a separate farm (and therefore qualify for its own farmhouse, etc.) if it could be shown to be a wholly independent farming operation. As described by Commission staff, the intent of these modifications is to prevent the proliferation of agricultural dwelling units and encourage preservation of large agricultural properties by treating them as a single holding. However, throughout the process, staff raised concerns that these provisions may have the unintended consequence of creating an incentive to break up working farms and ranches by encouraging the sale of separate legal lots to realize their development potential. In an effort to achieve a compromise on this issue, staff is proposing further LUP and IP revisions which would consider allowed development on the basis of the “farm tract”, defined to include all contiguous legal lots under common ownership (consistent with the LUP language approved by the Commission) but also incorporating IP text proposed by Commission staff to clarify that the sale of legal lots comprising the farm tract is not prohibited, and that any restrictive covenants imposed as a condition of development would only apply to the legal lot within the farm tract on which the development is approved. (See Attachment 1, Part II, Section 2)

3. Agricultural Product Sales: LUP policy and IP provisions related to the on-site sale of agricultural products have been a subject of widespread interest during the LCP Amendment process, particularly in certain areas such as the East Shore community along Tomales Bay. As approved by your Board, the IP allowed limited on-site sales as a principally permitted use in the C-APZ zoning district, provided that: 1) the agricultural products are produced either on-site or on other properties in Marin County owned or leased by the sales facility operator, and 2) that the operator is directly involved in their production. As modified by the Coastal Commission, these provisions were expanded to allow an operator to sell products produced on lands they own or lease in a wider area (i.e. within the “farmshed”, defined to include both Marin and Sonoma Counties). However, siting restrictions were also added in the draft IP Modifications that would have made it difficult to establish a “roadside” retail farm stand by restricting sales facilities to a defined “clustered development area”. In order to clarify provisions related to agricultural product sales, staff is recommending simplified IP provisions which carrying over accepted restrictions related to the

source of products as well as appropriate performance standards regarding traffic, hours of operation and other related issues, while also allowing the establishment of “roadside” farm stands where such standards can be met. (See Attachment 1, Part II, Section 3)

4. Agricultural Processing Uses: As approved by your Board, the LCP also incorporated provisions to allow limited on-site agricultural processing as a principally permitted use in the C-APZ zoning district. As with requirements related to retail sales facility, concerns were raised regarding the source of the materials being processed. However, there was general consensus that, to create economies of scale and reduce the likelihood of a proliferation of processing facilities, it would be appropriate to allow small facilities to process products from multiple sources throughout the “farmshed”, not just those products produced on site. For example, it would be advantageous for a small cheese production facility to create cheese using milk from multiple local dairies. Accordingly, staff is recommending revised IP provisions which explicitly allow small processing facilities of less than 5,000 square feet to utilize products from throughout Marin and Sonoma Counties. (See Attachment 1, Part II, Section 4)

5. Securing Affirmative Agricultural Easements through Conditional Residential Development: Marin’s current certified LCP identifies single-family dwellings as a principally permitted use in the C-APZ zoning district. However, an important goal of the LCP Amendment process is to support the viability of coastal agriculture in part, by ensuring that agricultural lands are not converted to residential use. New LUP and IP provisions approved by both your Board and the Coastal Commission further this goal by allowing only “agricultural dwelling units” (i.e., farmhouses, intergenerational units and agricultural worker housing) and effectively prohibiting non-agricultural residences on C-APZ lands. However, the LUP also contains a policy (C-AG-10) which encourages consideration of other innovative techniques to permanently preserve agricultural lands. For example, there are precedential County and Coastal Commission decisions that have permitted limited residential development in order to secure “affirmative agricultural easements” (i.e. easements which not only require agricultural land to be preserved, but to actually be farmed or made available to others to farm). Accordingly, staff is recommending addition of a revised LUP Policy and a new Program which would allow staff to further explore and refine the use of affirmative agricultural easements as a tool for agricultural preservation. (See Attachment 1, Part II, Section 5)

6. Coastal Permit Requirements for “On-going Agriculture”: Marin’s many small-scale and family-owned farms are internationally recognized leaders in organic farming and locally sustainable food production and have demonstrated a legacy of environmental and agricultural stewardship. For generations, the vast majority of agricultural production and operations throughout the Coastal Zone have taken place without time consuming and expensive County permit processes. However, modifications to the LUP and associated IP provisions approved by the Coastal Commission would establish a requirement for Coastal Permit review and

approval for the conversion of existing agricultural land from grazing to crop production or a change, no matter how minor, to the intensity of the use of water. Regulations in the LCP affecting ongoing agricultural operations should accommodate rather than impede the ability of farmers and ranchers to diversify their operations while also ensuring that other important policy objectives of the Coastal Act are upheld. Accordingly, staff is recommending a revised definition of “on-going agriculture” which would exempt from Coastal Permit requirements all routine agricultural production and cultivation practices do not newly extend into natural areas, including Environmentally Sensitive Habitat Areas (ESHAs) or ESHA buffers, while also defining activities that warrant more careful review through the Coastal Permit process such as the terracing of land for agricultural production, the installation of new or expanded wells or irrigation systems, or agricultural activities on land with an average slope of more than 15 percent. (See Attachment 1, Part II, Section 6)

FISCAL/STAFFING IMPACT:

No fiscal or staffing impact as a result of the recommended Resubmittal is expected since the work to complete the LCP amendments is budgeted and included in the Department’s Performance Plan for the current fiscal year.

REVIEWED BY: (These boxes must be checked)

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

SIGNATURE:

Jack Liebster
Planning Manager

Attachments:

1. Staff Recommendation
2. Land Use Plan Amendments (LUPA) – all Chapter of the LUPA excepting Environmental Hazards
3. Implementation Program Amendments (IPA) - Specific Chapters and Sections of the Marin County Development Code comprising the specific IPA for the LUPA Agriculture Chapter
4. Resolution Approving Resubmittal of the Amendments to the Marin County Local Coastal Program to the California Coastal Commission

Please Note: In the interest of conserving resources, Attachments 1 through 4 are included only in the Board of Supervisor’s packet. Copies of the Appendices are available online at: www.MarinLCP.org. To request hard copies of this material, please contact the Marin County Community Development Agency.