

BOS Workshop – Discussion of CCC Modifications

AMENDMENT 3 IPA Agriculture Provisions

3.1	Allowing Rancher/Farmer to receive pay for time providing Educational Tours	p. 2
3.2	“Necessary for Operation of Agriculture”	p. 3
3.4	Ongoing Agriculture	p. 6
	A. “Legally Established” Existing Agriculture	p. 9
	B. “Conversion of Grazing Areas to Row Crops”	p.10
	C. “Examples of activities that are NOT ongoing agricultural”	p.12

AMENDMENT 7 – All other sections of the IPA

7.1	Definitions of “Existing”	p.13
7-2	Definitions of “Legal Lot” and “Legal Lot of Record”	p.15
7.3	Piers and Caissons	p.16
7.4	Definition of Grading	p.17
7.5	Where No Bank, Ordinary High-Water Mark Establishes Streambank	p.18
7.6	Lowest Density Required for Widespread Areas of Any Hazard	p.19

Key to text changes shown:

1. The changes approved by the California Coastal Commission on Nov. 2, 2016 are shown in red.
2. The Coastal Commission staff letter of May 9, 2017 referenced below is provided as Attachment 3 to the May 20, 2018 Board Letter

AMENDMENT 3 IPA Agriculture Provisions

3-1. Allowing Rancher/Farmer to receive pay for time providing Educational Tours

Issue:

Farm tours intended to increase the public's understanding of agriculture and create a stronger connection to how their food is produced, the stewardship of the land, and how agricultural practices are evolving, were the subject of significant public discussion during the LCP process. The Coastal Commission (CCC) Modifications take the position "that educational tours are considered an agricultural use and are therefore principally permitted if no revenue is generated in excess of the reimbursement costs related to the educational tour, whereas tours that generate a profit are considered a commercial use that require an appealable coastal permit and a use permit." (pg. 31, CCC Revised Findings, emphasis added). The distinguishing aspect of the "Principally Permitted" land use designation is that permit decisions involving such uses are not appealable to the Coastal Commission, whereas "Permitted Uses" are subject to appeal (both "Principally Permitted" and "Permitted" land uses are subject to Coastal Permit requirements unless otherwise exempt or excluded). Thus, this issue is limited to how revenue collection for educational tours on agricultural land affects the potential for appeal of County decisions on permit requests, including the specific permit category the request is processed under.

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 Coastal Permit and a Use Permit [both appealable to the Coastal Commission] if revenue is generated in excess of reimbursement costs related to the educational tour.*

In the ongoing discussions with CCC staff, County planners requested specific details of how to interpret the term "reimbursement costs" and suggested 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 through such tours that are distributed to non-profit organizations such as MALT.

CCC May 9, 2017 Letter

In their May 9, 2017 letter, CCC staff wrote:

As also noted on page 54 of the November 2, 2016 Commission staff report findings, “if the owner/operator or third parties charge a fee that generates revenue, then the use is permitted because a tour that operates *for profit* [emphasis added] is a commercial use and does not qualify as principally permitted when the principally permitted use is agriculture in the C-APZ zoning district.” 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.

However, any such determination would be challengeable to the CCC under the provisions of Section 22.70.040 – Challenges to Processing Category Determination, by the applicant, the CCC, or any interested person.

For Discussion

The Board should consider accepting these modifications taking into consideration the clarification in the CCC 5/9/17 letter, and the extent to which the County can be assured about making reasonable and consistent decisions regarding which tours are “non-profit” based upon “reimbursement costs” including hourly rate charges taken by the operator or staff, fees for the use of the farm or its facilities, and revenues generated for non-profit organizations such as MALT through such tours.

3-2. “And Necessary” - IP

Issue:

According to the CCC findings below, 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. County staff has interpreted Policy C-AG-2 to mean 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 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 be interpreted as meaning that such uses should be subject to the project-specific test of necessity described above.

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:*

- 1. Agricultural Production...*
- 2. Agricultural Accessory Structures;*
- 3. Agricultural Accessory Activities;*
- 4. Agricultural Dwelling Units, consisting of...*
- 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*

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.*

CCC Findings

The CCC findings (pg. 24 [Revised findings 7.14.17](#)) explain:

“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.** This is affirmed by the following definitions.

22.130.030 – Definitions of Specialized Terms and Phrases

Agricultural Accessory Activities (land use). Activities *customarily* accessory and incidental to, in support of, compatible with, and, within the C- APZ zone, necessary for agricultural production, and which involve agricultural products produced on site or elsewhere in Marin County, including:... {long list}

Agricultural Accessory Structures (land use). Uninhabited structures that are *customarily* accessory and incidental to, in support of, compatible with, and, within the C-APZ zone, *appurtenant and* necessary for agricultural production, and that are for the storage of farm animals, implements, supplies or products, and that contains no residential use, are not accessory to a residential use, and are not open to the public, including:... {long list}

Agricultural Processing (land use). Agricultural Processing consists of the processing of harvested crops and other agricultural products, *appurtenant and necessary to the operation of agriculture,* including the following: { list}

Agricultural Retail Sales Facility/Farm Stand. A temporary or permanent structure used for the display and sale of agricultural products, *appurtenant and necessary 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. 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."

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 unequivocally 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.

For Discussion

If accepted by the Board, County staff intends to interpret the above sections as not requiring a project-specific test of necessity for the continued viability of and existing agricultural production operation. The affected land uses should, of course, be reviewed for conformance with the land use definition and applicable development standards.

County staff could further pursue clarifying revisions with the Coastal Commission through future amendments and request that such amendments be acted upon 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.

3-4. Ongoing Agriculture

Issues

- 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, the County's explicit prohibition of expanding ongoing agriculture into Environmentally Sensitive Habitat Areas (ESHAs) and ESHA

buffers, and Oak woodlands was deleted, presumably in reliance upon a separate C-APZ standard requiring development to avoid causing significant adverse impacts on environmental quality or natural habitats (Section 22.65.040C.1.c). 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

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, the Commission's subsequent Revised Findings suggest that these provisions should be taken into consideration when making determinations about exempting changes in agricultural activities in the field. In this regard, 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

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, the County has not 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 being contrary to the intent of removing “legally established” by stating that existing agricultural uses must be “legal and allowable,” and that this status could be contested, presumably by anyone, and that the burden of proof of legality is on the farmer/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; 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.

For Discussion

If accepted by the Board of Supervisors, 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.

B. "Conversion of Grazing Areas to Row Crops:"

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.

The Revised Findings also call out “grading” as an activity that would trigger the need for a coastal permit. This is discussed elsewhere in this report, but it should be noted that the above

terracing and land preparation criteria also act to limit grading. More importantly, the approved definition of grading makes a distinction between grading generally regarded as an engineering/ construction/ landscaping activity and routine agriculture:

Grading. – 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”).

For Discussion

The preceding discussion addresses the above issue.

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

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

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.

For Discussion

If the Board of Supervisors accepts this modification, County staff intends to rely upon the above definition of ongoing agriculture and specifically the list of agricultural production activities as a basis for determining whether a change in use qualifies for a permit exemption. In County staff's opinion, these activities have been sufficiently narrowed in scope to allow for consistent and effective administration. However, since the modifications list the key land use activities not exempt as ongoing agriculture under the rubric of examples, issues may arise regarding the applicability of the exemption related to other agricultural activities not included in the above definition.

The County could seek clarification after acceptance of the above modifications through a subsequent amendment pertaining to this specific issue. If the County rejects this modification, the rejection will apply to Amendment 7 in its entirety and the entire Amendment would need to be resubmitted if the County chose to pursue revisions to this section of its LCP.

AMENDMENT 7- All other sections of the IPA

7-1. Definitions of "Existing"

Issue: 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.

Additional discussion of the problematic nature of this definition is provided below.

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”.

CCC May 9, 2017 Letter

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

For Discussion

The County should seek to clarify definition of “existing” with the Coastal Commission staff and consider resubmitting County’s definition (for example, “existing at the time a particular Coastal Permit application is accepted for filing”). 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.

If the Board chooses to accept the above modifications, it should do so with the intent to submit clarifying amendments with a request that such amendments be acted upon by the Coastal Commission prior to or in conjunction with a decision on the Environmental Hazard Amendments. If the County rejects the above modifications, the rejection will apply to Amendment 7 in its entirety and the entire Amendment would need to be resubmitted if the County chose to pursue any revisions to this section of its LCP.

7-2. Definitions of “Legal Lot” and “Legal Lot of Record”

Issue: 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. ~~(See “Legal Lot of Record”)~~

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 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.

~~C. Government conveyance. The lot was created by conveyance to a government entity.~~

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.

CCC Findings

The Coastal Act does not define “legal lot” or “legal lot of record” and the CCC findings do not specifically address the modifications made to these definition by CCC staff.

CCC May 9, 2017 Letter

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”). However, the Coastal Commission letter appears to confirm that their intention was to state that a Coastal Permit is only required where necessary (i.e., for lots created after adoption of the Coastal Act).

For Discussion

Given the clarification in the Coastal Commission 5/9/17 letter, the Board should consider accepting these modifications with the intent to revise the definitions of “legal lot” and “legal lot of record” through a clarifying amendment to ensure that the definitions of these important terms are clear and consistent with State law. The County could request that such an amendment be acted upon prior to the Commission’s decision on the Environmental Hazard Amendments. Alternatively, if the County rejects the above modifications, the rejection will apply to Amendment 7 in its entirety and the entire Amendment would need to be resubmitted if the County chose to pursue any revisions to this section of its LCP.

7-3. Piers and Caissons

Issue: 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.

Coastal Commission Findings

The Coastal Commission findings do not address the definition of “shoreline protective device” as issues related to Environmental Hazards were deferred for later action.

CCC May 9, 2017 Letter

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 and acknowledges that, when the Commission considers the remaining LCP Environmental Hazards Amendments, the Commission can adopt new or additional modifications to related provisions that have already been acted on (such as the definition of "shoreline protective device") to ensure that all portions of the LCP Update are internally consistent.

For Discussion

Given the clarification in the Coastal Commission 5/9/17 letter, it appears that the Commission has acknowledged that the definition of "shoreline protective device" will be determined through future Environmental Hazards Amendments.

If the Board chooses to accept the above modifications, it should do so with the intent to submit clarifying amendments with a request that such amendments be acted upon by the Coastal Commission in conjunction with the Environmental Hazard amendments. Alternatively, if the County rejects the above modifications, the rejection will apply to Amendment 7 in its entirety and the entire Amendment would need to be resubmitted if the County chose to pursue any revisions to this section of its LCP.

7-4. Definition of Grading

Issue: 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 confusion.

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").

CCC Findings

Under Section 30106 of the Coastal Act, development subject to a Coastal Permit is defined to include grading. Accordingly, grading requires a Coastal Permit unless it is otherwise exempt or excluded.

Coastal Act Section 30106- Definition of Development

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

CCC May 9, 2017 Letter

In their letter of May 9, 2017, CCC staff express their concern regarding use of a numerical threshold to define grading and recommend that the appropriate mechanism to establish such a threshold would be through a new categorical exclusion. However, absent such an exclusion, Coastal Commission staff acknowledge that the County will need to evaluate project circumstances on a case by case basis, given specific site characteristics and unique project elements, to make a factual determination if an activity meets the definition of grading. In other words, Coastal Commission staff recognizes that local discretion can be used to determine whether a particular activity should be considered "grading."

For Discussion

In light of the Coastal Commission 5/9/17 letter, the Board should consider accepting the above modification. The County could further consider proposing a new categorical exclusion for grading in the future if lack of a specific threshold results in confusion and inconsistent determinations. Alternatively, if the County rejects the above modifications, the rejection will apply to Amendment 7 in its entirety and the entire Amendment would need to be resubmitted if the County chose to pursue any revisions to this section of its LCP.

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

Issue: 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.

Coastal Commission Findings

The Coastal Act does not define "stream bank" and the Commission findings do not specifically address the modifications made to this definition by CCC staff.

Coastal Commission May 9, 2017 Letter

Proposed modifications to the definition of "stream bank" are not addressed in the May 9, 2017 Coastal Commission letter.

For Discussion

The Board should consider accepting the above modifications on an interim basis and directing staff to resubmit the County-proposed definition of "stream bank" in a clarifying amendment referring to the stream's "thalweg" (instead of ordinary high-water mark) to facilitate determination of stream banks in cases where no discernible bank or riparian vegetation exists. The County could request that such an amendment be acted upon by the Coastal Commission prior to the Environmental Hazard Amendments. Alternatively, if the County rejects the above modifications, the rejection will apply to Amendment 7 in its entirety and the entire Amendment would need to be resubmitted if the County chose to pursue any revisions to this section of its LCP.

7-6. Lowest Density Required for Widespread Areas of Any Hazard

Issue: The Coastal Commission modifications would unreasonably restrict development by applying "lowest allowable" density and floor area restrictions to properties containing any hazardous areas and setbacks for commercial projects (Footnote 7 below), regardless of whether the hazards can be mitigated or addressed. In addition, exceptions to these restrictions for beneficial projects (i.e., land divisions resulting in affordable housing and other public benefits) cannot even be considered because of the mandatory nature of the regulation that development "will avoid all hazardous areas and hazard setbacks." This is a problem given the widespread nature of some hazard areas.

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.

Coastal Commission Findings

Section 22.64.030 of the IP 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 (shown above) 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 commercial 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.” This exception is really not an exception in that the standard mandates that the development avoid the hazard areas and setbacks, rendering it meaningless.

ATTACHMENT 1
Discussion of CCC LCPA Modifications

The Coastal Commission findings state that the Commission modifications did not change the exceptions outlined in the footnotes for projects that provide significant public benefits and only require that, when making a determination to allow density above the lowest allowable, ESHA and hazards on the site should be accounted for, consistent with other LCP policies, and the density should reflect the amount of land available to develop outside of appropriate ESHA and hazards and their related buffers. County staff concurs that the appropriate density or extent of development on a site must account for and be consistent with all LCP policies related to ESHA and hazards. However, the Commission modifications were written in a way that goes far beyond such policy consistency requirements by unreasonably restricting development to the “lowest allowable” density and floor area on properties containing any hazardous areas and setbacks, regardless of whether the hazard can be addressed or mitigated, and allowing exceptions **ONLY** where all hazardous areas and setbacks can be avoided (again, regardless of the type of hazard or the ability to address or mitigate that hazard).

Given the wide range and broad extent of potential environmental hazards in the coastal zone, staff is concerned that Commission modifications 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 in potentially hazardous areas due to a combination of seismic, flooding, fire, geologic other hazards. However rather than stating that development in these areas must comply with hazard policies, the CCC modifications would automatically restrict development to the lowest end of the density range solely because the property could be subject to hazards.

Perhaps more importantly, the “lowest allowable” floor area ratio for commercial development 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.

Finally, 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.

CCC May 9, 2017 Letter

In their letter of May 9, 2017, CCC staff recognize the County's position that density provisions in hazard areas should be addressed through the Environmental Hazards Amendments and acknowledges that, when the Commission considers the remaining LCP Environmental Hazards Amendments, the Commission can adopt new or additional modifications to related provisions that have already been acted on (such as density restrictions in hazard areas) to ensure that all portions of the LCP Update are internally consistent.

For Discussion

Given the clarification in their May 9th letter, it appears that the CCC has acknowledged that IP provisions related to Environmental Hazards, particularly those which would have the effect of significantly reducing allowable densities throughout widespread portions of the coastal zone, will be determined through future Environmental Hazards Amendments. If the Board chooses to accept the above modifications, it should do so with the intent to submit clarifying amendments with a request that such amendments be acted upon by the Coastal Commission in conjunction with the Environmental Hazard amendments. Alternatively, if the County rejects the above modifications, the rejection will apply to Amendment 7 in its entirety and the entire Amendment would need to be resubmitted if the County chose to pursue any revisions to this section of its LCP.