

BOS Findings-Action on CCC Modifications

(Adopted at Marin Board of Supervisors Hearing may 16,2017)

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Key to text changes shown:

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

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

1-1. Fire Hazards and ESHA

Recommendation: Accept with Clarification

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.~~)

Findings

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. To achieve consistency with Program C-BIO-4.b, to maintain consistency with Coastal Act Section 30240, and to comply with the defensible space requirement of Public Resources Code Sect. 4291, the modified policy shall not be construed to prevent 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.

Commission staff 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.

Background

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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.

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., MCOSD, 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
- 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)

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 s~~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,~~ 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.

Findings

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. **C-PK-3 Mixed Uses in** 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

(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 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.

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 with Clarification

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.

Findings

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** 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

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 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, the County will interpret Policy C-PFS-4 to apply 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 consistent with 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

2-1 “As Necessary for”

Recommendation: Accept with Clarifications

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:

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

FINDINGS

Use of the phrase “appurtenant and necessary to” in C-AG-2.A.5 will be interpreted as a declarative statement meaning that agricultural product sales, agricultural processing facilities and not-for-profit education tours are “appurtenant and necessary to the operation of agriculture”, and therefore principally permitted, if a proposal for such uses meets the definition of “agriculture” in addition to the operational standards.

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