

**BOS Findings-Action on CCC Modifications**

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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.
2. CDA staff additions to the changes approved by the California Coastal Commission on Nov. 2, 2016 are shown in blue, underlined.
3. CDA staff ~~deletions~~ to the changes approved by the California Coastal Commission on Nov. 2, 2016 are in *blue, italicized, and ~~crossout~~.*

## 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

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.

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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., MCOSSD, 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

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

#### **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

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(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.

## **AMENDMENT 3 IPA Agriculture Provisions**

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

#### **Recommendation: Accept with Clarifications**

#### **As Modified**

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

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

#### **Findings**

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

### **3-2. “Necessary for Operation of Agriculture”**

#### **Recommendation: Accept with Clarification**

#### **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 the limited “Other Agricultural Uses” specified in 5.a (Agricultural product sales and processing of products) and 5b. (educational tours) are in fact deemed to be appurtenant and necessary to the operation of agriculture. The phrase “appurtenant and necessary” does not provide for any discretionary determination, rather it specifies that the enumerated uses are determined to be principally permitted.

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

#### **Recommendation: Accept with Clarification**

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

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

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

#### **Findings**

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

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

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

Orders E-81-2 and E-81-6, for example, exclude from coastal permit requirements barns, storage, equipment and other necessary buildings; dairy pollution project including collection, holding and disposal facilities; storage tanks and water distribution lines utilized for on-site, agriculturally-related activities; water impoundment projects not to exceed 10 acre feet; electric utility lines; and new fencing for farm or ranch purposes,

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provided no solid fence designs are used. In addition, Orders E-81-2 and E-81-6, also exclude all agriculture activities defined in the Orders as:

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

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

**Recommendation: Accept**

## AMENDMENT 7- All other sections of the IPA

### 7-1. Definitions of “Existing”

#### Recommendation: Correct Modification

#### As Modified by CCC

### 22.130 Definitions

Change from existing certified LCP.

**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~~.

*The “Existing Structure” reference should be deferred to the Environmental Hazards discussion given its relevance to policies for shoreline protective devices.*

*In addition, it is necessary to clarify the meaning and intent of “Extant on or after February 1, 1973” in the definition of “Existing” and whether both definitions are intended to solely apply to structures that have been removed.*

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

#### Recommendation: Correct Modification

#### As Modified by CCC

### 22.130 Definitions

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

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

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

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**Amendment 7-Other IPA sections**

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

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

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

**Analysis**

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

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

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

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

**7-3. Piers and Caissons**

**Recommendation: Correct Modifications**

**As Modified by CCC with CDA revisions**

**22.130 Definitions**

**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.

*This issue should be deferred to the Environmental Hazards discussion, and piers and caissons should be removed at this time to allow the Amendment to be completed.*

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

##### **Recommendation: Accept with Clarification**

(Note: waiting to hear back from CCC on this issue)

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

**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”).

#### **FINDING**

As modified by the Coastal Commission, determinations regarding the type and amount of earth movement that triggers a Coastal Permit will continue to be subject to judgment and discretion of staff rather than a specific threshold.

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

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

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

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

**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 ordinary high water mark.

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

### **Recommendation: Accept with Clarifications**

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

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

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

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~~nation, and within village limit boundaries only, visitor-serving uses and commercial recreation uses).~~

...

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

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

## **FINDING**

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

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

**Recommendation: Accept with Intent to Resubmit**

**As Modified by CCC with CDA revisions**

### 22.64.170(A)(3)

3. **Mixed uses in coastal village commercial/residential zones.** A mixture of residential and commercial uses shall be permitted in the C-VCR zoning district including a Commercial Core Overlay Zone for the central portion of each village that is predominantly commercial as follows:

Continue to permit a mixture of residential and commercial uses in the C-VCR zoning district to maintain the established character of village commercial areas.

a. Commercial shall be the principal permitted use within the C-VCR Overlay ~~within the mapped village commercial core area~~ of the C-VCR zone ~~and residential shall be allowed in the C-VCR zone subject to all other LCP standards the principal permitted uses in all other parts of the C-VCR zone in the village commercial area.~~ Residential uses shall be a permitted use and shall be limited to: (1.a) the upper floors, and/or (2.b) the lower floors if not located on the road-facing side of the property. within the commercial core Overlay Zone 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 that the development maintains and/or enhances the established character of village commercial core areas. ~~Replacement and m Maintenance and repair of any legal existing residential use shall be exempt from the above provision and shall be permitted.~~

b. Outside the Commercial Core Overlay zone residential uses shall be the principally permitted use. Commercial uses shall be a permitted use.

c. Existing legally established commercial and residential uses in the C-VCR zone on the ground floor and road-facing side of the property can be maintained, repaired, replaced and expanded subject to applicable LCP standards.

## FINDINGS

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

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

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

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

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

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

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

The County will pursue a rezoning process to vet the Commercial Core maps with village residents and the interested public, and re-instate the County's policies as previously submitted and described above, in order to replace the Modification at the earliest possible date.

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

**Recommendation: Reject with Intent to Resubmit**

**As Modified by CCC**

**Section 22.64.030 – General Site Development Standards**

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

(Footnote 6) The maximum residential density for proposed divisions of land for that portion or portions of properties with Environmentally Sensitive Habitat Areas and buffers, and properties that lack public water or sewer systems, shall be calculated at the lowest end of the density range as established by the governing Land Use Category, except for projects that provide significant public benefits, as determined by the Review Authority, or lots proposed for affordable housing, **and** if it can be demonstrated that the

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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.

## **Findings**

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

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

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

Finally, since policies and IP provisions related to environmental hazards have not yet been finalized, it is not appropriate to incorporate references to environmental hazard issues into other IP sections at this time, particularly provisions which would have the effect of significantly reducing allowable densities throughout widespread portions of the coastal zone without corresponding policy support.

For these reasons, staff intends to resubmit the relevant footnotes of Tables 5-4-a, 5-4-b, and 5-5 in IP Section 22.64.030 deleting language regarding environmental hazards.