



# COMMUNITY DEVELOPMENT AGENCY

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April 24, 2018

Marin County Board of Supervisors  
3501 Civic Center Drive  
San Rafael, CA 94903

**BOARD CONDUCTED PUBLIC  
HEARING AND ADOPTED  
RESOLUTION NO. 2018-41**

**APRIL 24, 2018**

**SUBJECT:** Consideration of Local Coastal Program Amendments 1,2,3,6 and 7  
as modified by the California Coastal Commission

Dear Members of the Board:

## **RECOMMENDATION:**

Conduct a public hearing to consider the five separate Local Coastal Program Amendments (LCPAs) approved with modifications by the California Coastal Commission (Coastal Commission or CCC) on November 2, 2016. At the close of the hearing the Board should act to accept or reject each of the separate Amendments. Staff recommends the Board accept Amendments 1 and 2, which comprise the entire Land Use Plan setting out the fundamental policies for managing Marin's coast (except the Hazard policies deferred by the Coastal Commission) as well as Amendment 6 (Administration) as modified by the CCC, and not accept modified Amendments 3 and 7. The contents of these Amendments are as follows:

### **Amendment 1: The following Chapters of the Land Use Plan (LUP):**

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

### **Amendment 2: The Agriculture Chapter of the LUP**

### **Amendment 3: Sections of the Implementing Program Amendment (IPA) for the LUP Agriculture Chapter**

### **Amendment 6: Coastal Permitting and Administration sections of the IPA (Chapters 22.68 and 22.70)**

### **Amendment 7: All remaining Chapters and Sections of the IPA\***

\*The Land Use Plan (LUP) and Implementation Program (IP) Amendments #4 and #5 concerning Environmental Hazards are not before the Board at this time, as they were not acted upon by the CCC.

## **BACKGROUND**

Your Board has previously submitted seven separate LCP amendments to the Coastal Commission to update policies in the LUP and implementing zoning standards and procedures in the IP. The Coastal Commission approved five of the seven amendments with numerous revisions to the County's proposal (hereinafter referred to as "Modifications") at its hearing in Half Moon Bay on November 2, 2016, and deferred a vote on Amendments #4 and #5 addressing the Environmental Hazards sections of the LCP to allow additional time to resolve differences.

County staff wishes to acknowledge the considerable time and effort invested by the Coastal Commission staff and the public collaborating together over the last eight years to achieve the goal of updating and improving the LCP. CDA staff is committed to achieving certification of LCP amendments that implement the Coastal Act in a manner appropriate to local conditions as soon as possible. Many of the LCP amendments will further protect Marin's coastal resources, enhance the County's agricultural economy, respond to sea level rise, and provide clarity about policies and requirements for residents, permit applicants, and coastal users. Commission and County staff have successfully reached agreement on hundreds of issues in each of the 5 Amendments before your Board today. In Amendments 1, 2 and 6, the collaborative process has brought the Amendment close enough to agreement that staff can recommend those be accepted. In addition to agreeing on the complete rules for permit processing and administration encompassed in Amendment 6, The the acceptance of Amendments 1 and 2 will, except for the deferred Hazards policies, mean that the entire Land Use Plan will be completed and certified, securing the policies that will be the "Constitution for the Coast" for years to come.

A small number of key issues do remain unresolved as detailed below and elaborated in Attachment 2. Unfortunately, Coastal Act procedures prevent separation of these key issues from the rest of the content of the affected Amendments, numbers 3 and 7. In order to continue discussions and reach agreement in a spirit of mutual respect and in-depth understanding of the perspectives of all involved, staff recommends Amendment 3 and 7 not be accepted.

As the Coastal Commission approved the non-Environmental Hazard Amendments with Modifications on November 2, 2016, the County must act to either accept or reject the Commission's Modifications by May 2, 2018. Because the Coastal Commission chose to defer action on the County's proposed Environmental Hazard Amendments, which were consequently withdrawn by the County, these sections are not subject to a mandatory timeline for action by the County.

Since the November 2, 2016 Coastal Commission hearing, Coastal Commission and County staffs have continued to work closely to clarify the meaning and intent of some Modifications currently up for consideration and to discuss the willingness of Coastal Commission staff to support possible corrections or revisions through future Amendments.

In the interest of resolving some of those issues and making meaningful progress toward completing the County's LCP update process, your Board held a public hearing on May 16, 2017, and accepted LUP Amendments #1 and #2, based on policy interpretations that reflected how the Amendments should be implemented at the local level. This comprised all of the LUP as modified by the Coastal Commission, except for the deferred Hazards Chapter. The remaining non-Hazard issues discussed in this report were initially presented in the staff report for that May 2017 hearing, although the Board was not asked by County staff to accept them at that time.

The May 2017 action adopted a Resolution and attachments that set out the interpretations the County would apply in implementing the Modifications and the statement that the Board was accepting the Modified Amendments based on those interpretations discussed in the staff report. As noted at the Board's March 20, 2018 workshop, Coastal Commission staff informed County staff several weeks later that they interpreted Coastal Act regulations to not allow for a conditional acceptance of the modified Amendments by local agencies, and advised that the Amendments should be re-accepted by the County without conditional language in the Resolution, subject to the same May 2, 2018 deadline noted above (this position appears to rely upon the Commission staff finding that the Coastal Act does not expressly allow local agencies to accept Modifications by way of resolution based on local interpretations). Therefore, as provided in the proposed Resolution (Attachment 1) staff recommends that the Board reaffirm your May 2017 decision to accept Amendments 1 and 2, but without conditional language in the Resolution. A new analysis of Amendments 1 and 2 taking into account discussions with Coastal Commission staff since the Board's last action is included in Attachment 2. As noted, together the acceptance of **Amendments 1 and 2** complete the action on the entire Land Use Plan, except the deferred Hazards Amendments.

Attachment 2 also addresses the three other separate Amendments (3, 6 and 7) for which the Coastal Commission adopted Modifications. As described in the attachment staff recommends acceptance of **Amendment 6**, the Coastal Permitting and Administration sections of the IPA. in its entirety.

Attachment 2 also describes a number of Modifications that were previously the subject of concern. Based upon additional correspondence and discussion with Coastal Commission staff, and in the interest of reducing areas of disagreement as much as possible, Attachment 2 details the individual policies staff would recommend accepting. These are of course in addition to the hundreds of changes recommended by Commission staff that were incorporated into the Amendments previously submitted to the Commission.

However, staff recommends that the Board not accept the modifications to **Amendments 3**, the implementing program for the agriculture provisions of the amended LUP, **and 7** for the reasons summarized further below and expanded upon in Attachment 2. Staff has purposefully limited these issues to a very small number with a very high level of importance.

## LCP AMENDMENT PROCESS

As submitted to the Coastal Commission, each Amendment is to be acted upon by the Commission independently. The Amendments were submitted as two separate groups, with Amendment 1, 2, and 3 sent to the Commission on October 6, 2105 and Amendments 4, 5, 6 and 7 sent April 22, 2016. The submission of separate Amendments is consistent with Section 30514 of the Coastal Act:

### Section 30514 Program amendment;

(b) Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513, except that the commission shall make no determination as to whether a proposed amendment raises a substantial issue as to conformity with the policies of Chapter 3 (commencing with Section 30200) as would otherwise be required by Section 30512. In no event shall there be more than three of these submittals of proposed amendments in any calendar year. **However, there are no limitations on the number of amendments included in each of the three submittals.** *(emphasis added)*

Consistent with this Coastal Act provision, the County did in fact submit “a number of amendments” as detailed in the Resolutions of submittal, which explicitly identified each Amendment submitted to be processed “as a separate and independent amendment to the LUP and IP.” For example, Resolution 2016-33 States in part:

28. **WHEREAS**, the Marin County Board of Supervisors on September 30, 2015 timely filed the following Local Coastal Program Amendments 1-3 to the certified Marin County Local Coastal Program for approval by the California Coastal Commission, **each of which deals with a different subject matter and is intended to be processed as a separate and independent amendment to the LUP and IP:**
30. **WHEREAS**, the Marin County Board of Supervisors intends to file the following **Amendments 4-7** to the certified Marin County Local Coastal Program, as listed below, for approval by the California Coastal Commission, **each of which again deals with a different subject matter and is intended to be processed as a separate and independent amendment to the LUP and IP:**

County staff additionally sent a color-coded version of the submittal compiled to show the separate amendments in different colors for the purpose of separate action but combined for the convenience of the Coastal Commission staff’s review. The County’s June 3, 2016 response to the Coastal Commission staff’s request for additional filing information again reiterated that each Amendment is separate and independent:

"As you know, the County's complete LCP Update is comprised of the seven Amendments listed below, which were filed for approval by the Coastal Commission on September 30, 2015 (Amendments 1 through 3) and April 22, 2016 (Amendments 4 through 7) respectively: (emphasis in original)

**Amendment 1: The following Chapters of the LUPA:**

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

**Amendment 2:** The Agriculture Chapter of the LUPA.

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

**Amendment 4:** The Environmental Hazards (EH) Chapter of the LUPA.

**Amendment 5:** Chapters and Sections of the Marin County Development Code comprising a portion of the IPA for the LUPA Environmental Hazards Chapter.

**Amendment 6:** Coastal Permitting and Administration Sections of the IPA (Chapters 22.68 and 22.70).

**Amendment 7:** All remaining Chapters and Sections of the Marin County Development Code comprising the IPA for the LUPA.

We are also providing with this letter a complete copy of the LUP and IP in the format that you requested following the issuance of the May 6, 2016 Commission staff response to the County's filing of April 22, 2016. We understand this information was requested by Commission staff outside of the Commission's filing response and the governing regulations to facilitate your staff's review of the County's proposed amendments."

### **Options**

While each Amendment may be acted upon by your Board with regard to acceptance or rejection, the same is not true of the contents of each separate Amendment. Coastal Commission regulations provide that modifications within each individual Amendment must be accepted or rejected as a whole by the Board - all or nothing. If your Board does not take action on an Amendment by the deadline of May 2, 2018, that Amendment is considered rejected. Rejection of the Amendments would leave the current certified LCP as the effective set of regulations in the coastal zone.

Alternatively, the Board could accept all the Modifications in each Amendment with the stated intent to subsequently approve and resubmit a future new Amendment or Amendments to substitute new language seeking to correct the issues the Board may have with the Modifications. However, if the Coastal Commission does not choose to accept such changes to its current positions, the Commission's November 2016 Modifications will continue in effect.

In addition, the Chief Counsel to the Commission has taken the position that *"based on the resolutions submitted to the Commission by the County, the certified amendments will not go into effect in this case until after there is "a total amendment to the Implementation Plan which supersedes the existing certified Implementation Plan." As such, certification of the hazards portion of the LCP Update is required to put the LCP Update in its entirety into effect once the non-hazard portion of the LCP Update is accepted by the County."* (Attachment 10)

While the Modifications approved by the Coastal Commission deviate to varying degrees from the policies and standards approved by your Board after the County's extensive and inclusive public process, staff recommends the vast majority of the numerous modifications specified in the Coastal Commission's November 2016 action be accepted by your Board. As provided in the proposed Resolution (Attachment 1), these include the entirety of Amendments 1 and 2, comprising the entire LUP Amendments (without the Hazard Chapter), and Amendment 6 (Permitting and Administration IPA).

However, staff recommends your Board not accept Amendments 3 and 7 as certain Modifications imposed therein are in County staff's opinion inconsistent with long established practice or fundamental principles under the Coastal Act, impermissibly infringe upon local zoning control, are inconsistent with local County of Marin policies, practices, and customs, lack sufficient precision to allow clear and consistent implementation, or are beyond the reasonable application of the Act. These problems are summarized below and addressed in additional detail in Attachment 2, which sets out the issues that remain, taking into account the Coastal Commission's November 2016 action, the Coastal Commission staff letter of May 2017, the Revised Findings adopted by the Coastal Commission on July 14, 2017 to support its November 2016 action, and the numerous prior and continuing discussions with Coastal Commission staff. These issues are summarized as follows:

### **Amendment 3, Agriculture IPA Provisions**

#### **1. Definition of "Agriculture Ongoing"; IP Sec. 22.130.030 and Sec. 22.68.050.L**

The modified Definitions in Amendment 7 include a new category: "Agriculture Ongoing" (hereinafter referred to as Ongoing Agriculture). In 1981, the Coastal Commission adopted guidance that stated in part:

The Commission determined that expansion of agricultural uses into areas of native vegetation constitute a “change in the intensity of use of the land” this decision concerns only that vegetation removal which changes the basic use of land from essentially natural to a cultivated agricultural use. Changes from one agricultural use to another, such as crop rotation, removal of agricultural vegetation (e.g. old orchards or windbreaks) or modification of small areas of vegetation, the edge of cultivated areas are not within the scope of the Commission’s assertion.

The Commission advised us all to proceed cautiously and to assert jurisdiction only in those situations where it is quite clear that significant coastal resources are threatened.

Presumably, this guidance is why there has been to staff’s knowledge little or no history of requirements for coastal permits for allowing ongoing operations or merely changing agricultural production activities (as opposed to facilities or infrastructure). Moreover, most Marin ranches are under “Ranch Plans” administered by the Regional Water Quality Control Board to assure watershed protection. However, during the early review stages of the County’s amendments, modifications were proposed that would restrict the ability of agricultural producers to change crops in the field without first obtaining Coastal Act authorization. These have been among the most vigorously debated issues in the LCP process and are not unique to Marin.

The County’s definition was largely developed on the basis of discussions fostered by the Marin Conservation League and informed by input from representatives of the environmental and agricultural communities, including the Environmental Action Committee of West Marin, UC Cooperative Extension, Marin Farm Bureau and others. (see Attachment 2).

At the Coastal Commission hearing in November 2016, the Commission approved significant revisions to modifications to the Board-adopted definition proposed by Coastal Commission staff, resulting in the following:

**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.*

The above words in red and crossed out font were Commission staff recommendations the Commission itself deleted as a result of public testimony at its November 2, 2016 hearing. These are each discussed below.

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

The findings go on to state “that existing agricultural production activities are only considered ongoing agriculture if they are legal and allowable uses on agricultural land”. Without further explanation, this statement creates uncertainty as to whether the absence of permits for engaging in routine and traditional production activities, such as grazing cattle or planting crops, during the time periods described above could thus raise the issue of whether they are legal uses. Finally, the finding that “if the extent or legality of agriculture production activities were to be contested, ... determinations of ongoing agricultural activities may need to be supported with evidentiary information” may create a cloud of uncertainty and sense of trepidation among the agricultural community that anyone could allege illegality, and place what may be an onerous burden of proof on the rancher or farmer. The implication that agricultural producers having either initiated or changed crops since 1973 may not be considered legal merely because they have not been required to first obtain a Coastal Permit and must bear the consequences is not consistent with the intent of the Commission’s deletion of the words “legally established,” and, more importantly, would deviate from the County’s longstanding policy. For this reason, County staff recommends the Commission findings be clarified and fleshed out to enable the County to fully understand the Commission’s position before the County can make an intelligent decision.

B. **“Conversion of Grazing Areas to Row Crops:”** Coastal Commission staff had recommended this activity be added to the list of activities NOT considered Ongoing Agriculture. After considering objections raised by the County and representatives of Marin’s agricultural community, the Coastal Commission removed this provision from their decision to approve the exemption for Ongoing Agriculture. However, the Coastal Commission’s 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. The Revised Findings do not make specific reference to objective criteria proposed by the County, and approved by the Commission, describing

intensification of land and water that would disqualify production activities from the Ongoing Agriculture permit exemption (such as extending farming or ranching into never before used areas, the need for a new water well, or terracing for vineyards). This lack of clarity about if and what type of other unspecified agricultural production activities could be considered may eventually lead to uncertainty and disagreement about compliance with the County's permit exemption (a process that should be as straightforward and predictable as possible).

**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 a new and more regulated coastal permitting scheme. The list of activities that would not be considered ongoing agriculture was created by working extensively with stakeholders from both the environmental and agriculture communities. Framing this definitive list in terms of “examples” may diminish the predictability the County sought to provide in the regulatory process by opening the regulation to additional unspecified criteria. More importantly, one of the central functions of an LCP is to take the broad policies of the Coastal Act and tailor them to local conditions (hence *Local* Coastal Program). In this case the definitive list provided in the unmodified definition serves to give concrete meaning to the general phrases in the Coastal Act, where intensifying the use of water is clearly defined by the widely-encompassing but understandable specifications of:

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

Similarly, the following specific list of activities define a comprehensive but comprehensible LCP standard for intensification of 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%

What is missing in the Coastal Commission findings is a thorough explanation of any additional specific criteria (or the most relevant examples of such criteria) the Coastal Commission would expect the County to consider or adhere to in making decisions about whether a change in crops would be intense enough to trigger the need for a coastal permit or other Coastal Act authorization.

## **Amendment 7, IPA Provisions**

### **1. Definitions of “Existing” and “Existing Structure”**

The Modifications specify conflicting and confusing definitions of “existing” and “existing structure”. It is unclear why the definitions reference two different dates, February 1, 1973 which presumably represents the effective date of Proposition 20,

the Coastal Act's precursor, and January 1, 1977 which is the effective date of the Coastal Act itself. 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 both prior to and after the LCP Amendment becomes effective). Furthermore, under the Coastal Commission definition of existing, a building or use that existed in 1973 (or sometime after) would qualify as "existing" even if it was subsequently removed or destroyed.

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

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

Finally, the definition of Existing Structure "For the purpose of implementing LCP policies **regarding shoreline protective devices**, a structure in existence since January 1, 1977" should be held over for the work on the Environmental Hazard provisions.

## 2. IPA section 22.130: Definition of "Legal Lot" vs. "Legal Lot of Record"

**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")~~

Presumably, this definition means that even if a lot was legally created under the Subdivision Map Act prior to the adoption of the Coastal Act in 1977 or the Coastal Conservation and Development Act of 1972, the lot would not be considered legal until the approval of a Coastal Permit. While the Coastal Commission May 9, 2016 letter restates the modified language above: "In the Coastal Zone, a lot is only legal if it was lawfully created under both the Coastal Act and the Subdivision Map Act (SMA)" it goes on to say "As conditionally certified by the Commission in the definition of legal lot, a CDP is only required where *necessary*." This appears to acknowledge that a lot created prior to the Coastal Act could not have received a Coastal Permit at the time of its creation, since the Coastal Permit process was not yet in existence. However, this is not how the definition actually reads. Moreover, the definition as modified simply does not say "a CDP is only required where *necessary*." "*Necessary*" only applies to Map Act approval, "*and a Coastal Permit*" stands alone.

This may simply be a drafting error. What we believe this definition may have been intended to say is something like the following:

**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, after the effective date of Coastal Act regulation, a Coastal Permit. (See “Legal Lot of Record”)

However, only the Commission itself can change or rewrite a modification, which could be done after the Amendment is not accepted by the County. Without resolving the issue in this definition, County staff sees the need to make extensive corrections in the LCP (to replace “legal lot” with “legal lot of record”). In addition, some modifications to the definition of “legal lot of record” may be inconsistent with the Subdivision Map Act.

### **3. IPA section 22.130: Piers and Caissons re “Shoreline Protective Device”**

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 sea walls, breakwaters, groins and other shoreline protective devices designed to reduce coastal erosion. (In addition, this definition is related to the Environmental Hazard Amendments which are still pending.) This modification essentially removes the regulatory distinction in the proposed County Amendments between a commonly used building foundation type and shoreline armoring structures. Considering the advanced age of many homes in our coastal communities, the inclusion of piers and caissons in the above definition means that single-family remodel projects, as well as new construction, would be subject to the same extensive submittal requirements, standards and conditions of approval as a proposal to construct a new sea wall.

The Coastal Commission staff’s May 9, 2017 letter affirms that because the Coastal Commission already approved the above definition at their November 2016 meeting, the definition cannot be changed prior to the County either accepting or rejecting it. If the Amendment is not accepted by the County, a revised definition could be resubmitted.

**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.

### **4. IPA section 22.64.140 – Public Facilities and Services**

LUP Policy C-PFS-4 regulates community water or community sewage treatment facilities by requiring that expansion of such systems demonstrate capacity for priority Coastal Act uses (e.g., visitor serving) and, in areas with limited service capacity, new development for a non-priority use shall only be allowed if adequate capacity remains for visitor-serving and other Coastal Act priority uses. However, the modified zoning standard in Section 22.64.140.A.1.b of the IP, which is presumably intended to implement the above policy, is more encompassing, restricting private wells and on-site sewage disposal or sewer systems in a similar fashion. The required report for an

individual domestic well could not only be disproportionately expensive for individual property owners, but also may be beyond the ability of an individual applicant to achieve since access to “neighboring lots” is required to accomplish the study. The modification also goes beyond the LUP policy and Coastal Act Section 30254 upon which it is apparently based (Coastal Act Section 30254 requires new or expanded public works facilities retain service capacity for coastal dependent land uses, essential public services and visitor serving uses).

#### **5. Section 22.64.170 – Mixed Uses in VCR Zone; Parks, Recreation, and Visitor Serving Uses**

This modification restricts the Principal Permitted Use in the VCR zone to Commercial, while the existing LCP zoning code reflects actual conditions - a mix of residential with commercial. Making residential a “permitted use” makes all residential coastal permits in the VCR zone subject to appeal to the Coastal Commission and may reclassify existing homes to legal, non-conforming status. It is unclear whether the restriction of new or **existing** residential uses to the second floor and ground floor applies throughout the VCR zones. Coastal Commission staff has indicated this language needs to be corrected.

#### **6. Lowest Density Required for Widespread Areas of Any Hazard**

The Modifications would apply “lowest allowable” density and floor area restrictions to properties containing any hazardous areas and setbacks, regardless of whether the hazards can be mitigated or addressed, which is the normal practice. Exceptions to these restrictions for beneficial projects (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 widespread nature of some hazard areas (Attachment 3, for example, high fire severity zones, tsunami zones, steep/unstable slopes, etc.) flexibility in density and floor area standards would be precluded for affordable housing and other beneficial projects throughout most of the Coastal Zone.

### **SCHEDULE**

At the March 20, 2018 workshop, your Board requested a timeline for resubmittal of all or specific Amendments, including Amendments 4 and 5 governing Environmental Hazards.

If the Board approves the recommendations set out above, it would be staff’s intent to immediately turn its attention to preparing amendments on the items enumerated above and in Attachment 2. This would include working with the Coastal Commission staff to the degree they are available, and of course engaging with the public. Staff’s goal would be to hold Planning Commission and Board hearings on these amendments, and submit them to the Coastal Commission in late 2018. Coastal Commission staff has expressed willingness to work with the County on amendments, but the actual schedule for when the amendments would be heard by the CCC would be affected by the CCC’s staffing and workload. While staff will concurrently try to make progress on the two Environmental Hazards Amendments, a

more realistic timeframe would include completion of that work for resubmittal to the CCC in 2019.

## **EFFECTS OF REJECTION OF ALL AMENDMENTS**

At the March 20, 2018 workshop, your Board asked staff to provide notable differences between the proposed amendments and the existing LCP. Attachment 4 provides a summary of the key differences. Examples of the features of the revised LCP that would result from a favorable resolution of issues discussed in this report, and a final agreement on the current Amendments include:

- Allowing up to three Intergenerational Housing Units per an owner's contiguous parcels to accommodate multiple generations and the ability to retire on the land, while discouraging non-agricultural estate homes
- More flexibility in siting agricultural worker housing
- Strict controls for all types of ESHA, with limited adjustments in the buffer area if appropriate to protect the habitat value of the resource
- More effective controls of polluted runoff and sedimentation
- Increased opportunities for affordable housing
- Master Plan requirements have been integrated into the Coastal Permit process, speeding process and lowering fees
- De Minimis Coastal Permit Waiver and hearing waivers available for small projects with no coastal impacts

## **ACTION**

Staff recommends the Board conduct a public hearing to consider either accepting or rejecting the modifications approved by the Coastal Commission as discussed above and in the Resolution, Attachment 1 to this report. Staff recommends the Board accept Amendments 1, 2, and 6 as modified by the CCC, and not accept modified Amendments 3 and 7 to allow further work with the Coastal Commission on resolving issues discussed in this report.

## **FISCAL/STAFFING IMPACT:**

No fiscal or staffing impact as a result of the recommended Resubmittal is expected since the work to complete the LCP amendments is budgeted and included in the Department's Performance Plan for the current fiscal year. The cost of complying with the proposed LCP Amendments would be borne by property owners or applicants in the form of user fees and requirements for technical studies demonstrating compliance with updated LCP standards.

**REVIEWED BY: (These boxes must be checked)**

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

**SIGNATURE:**


Brian C. Crawford  
Agency Director

Jack Liebster  
Planning Manager

**Attachments and Links:**

1. Resolution Accepting Marin Co. LCP Amendments #1, #2, and #6, and not accepting Amendments #3 and #7
2. Staff Analysis of Modifications to LCP Amendments
3. Hazard Areas Map
4. Summary Contrasting LCP Amendments and Current Certified LCP

**Please Note:** In the interest of conserving resources the following documents are available on the online at the LCP website - [www.MarinLCP.org](http://www.MarinLCP.org).

To request hard copies of this material, please contact the Marin County Community Development Agency.

5. Marin County LUP Amendment #1
6. Marin County LUP Amendment #2 (Agriculture)
7. Marin County IP Amendment #3: IPA for the LUP Agriculture Chapter
8. Marin County IP Amendment #6: Permitting and Administration
9. Marin County IP Amendment #7: Remaining non-hazard IPA sections
10. California Coastal Commission Letter, dated Dec. 15, 2017
11. Letters received as of April 17, 2018

Previous LCP documents are also available on [www.MarinLCP.org](http://www.MarinLCP.org) "Plans and Documents" page.