



**STAFF REPORT TO THE MARIN COUNTY  
PLANNING COMMISSION**

**LOCAL COASTAL PROGRAM AMENDMENT**

**Recommendation:**            **Accept Report and Direct Staff to  
Provide Comments to the Board of  
Supervisors**

**Hearing Date:**                **Oct. 11, 2018**

Agenda  
Item:

Planning Staff:            Kristin Drumm, Senior Planner  
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Signature:

Environmental  
Determination:

Pursuant to Public Resources Code Section 21080.5, the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.) does not apply to activities and approvals by a local government for the preparation and adoption of a Local Coastal Program or amendment, and Section 15265 of the CEQA Guidelines (14 Cal. Code Regulations, Section 15000 et seq.), provides that the burden of CEQA compliance for Local Coastal Programs shifts from the County to the Coastal Commission's functional equivalent review procedure.

**SUMMARY**

The purpose of the current Planning Commission hearing is for the Commission to receive an update on the status of the County's Local Coastal Program (LCP) Amendments and to discuss a small number of policy issues that the Board of Supervisors withheld action upon at its last meeting on the LCP in April 2018. Resolution of these issues will allow the Board of Supervisors to review and act upon the measures herein, and if approved, submit them along with the previously Board-approved Implementation Program for Agriculture and other Implementing Program amendments for certification by the Coastal Commission. The hearing will also provide an opportunity for the Planning Commission to offer comments to the Board of Supervisors before the Board takes final action on the proposed LCP Amendments.

## BACKGROUND

The Local Coastal Program (LCP) has two components, the Land Use Plan (LUP) and the Implementation Plan. The LUP contains a description of the conditions and issues which exist in Marin County's Coastal Zone and presents land use and development policies designed to fulfill the intent of the Coastal Act at the local level. A coastal Implementation Plan (IP) consists of zoning ordinances and district maps, substantive and procedural standards to implement all coastal land use policies, specific requirements that apply to development projects, and detailed procedures for applicants to follow in order to obtain a coastal permit. The Coastal Act requires that an Implementation Plan be fully consistent with and adequate to carry out the certified coastal land use plan.

The County's LCP was originally certified in 1982. In view of changed conditions, and new issues (such as sea level rise) that have come about since then, the Board undertook a process of developing LCP Amendments (LCPAs) to address those issues and to provide for more efficient and effective management of coastal resources.

The Board of Supervisors adopted a full set of proposed Amendments to the existing LCP in July 2013 and has subsequently sought certification of those Amendments by the Coastal Commission.

On November 2, 2016 the Coastal Commission approved Marin County's Local Coastal Program (LCP) Amendments Number 1, 2, 3, 6 and 7 with Modifications (LCP-2-MAR-15-0029-1). Amendments 4 and 5 related to environmental hazards were continued to a date uncertain and subsequently withdrawn from consideration by County staff to allow for additional time to resolve differences over key issues. On April 24, 2018, the Board of Supervisors accepted Amendments 1 and 2, comprising the entire Land Use Plan (LUP) setting out the fundamental policies (except Hazards) for managing Marin's coast, as well as Amendment 6, *Coastal Permitting and Administration*, as modified by the Coastal Commission. The Board did not accept the Modifications to Amendments 3, the Implementing Program Amendments (IPAs) for the LUP Agriculture Chapter and Amendment 7, IPAs for other LUP policies, due to a limited number of issues in those Amendments.

On June 6, 2018, the Coastal Commission concurred with the Executive Director's determination that the action of the Marin County Board of Supervisor's accepting the Coastal Commission's certification of Amendments 1, 2, and 6 of the Local Coastal Program Amendment Number LCP-2-MAR-15-0029-1 is legally adequate. These separate Amendments addressed the following subjects:

Amendment 1: All Chapters of the LUPA, except for Agriculture and Hazards

Amendment 2: The Agriculture Chapter of the LUPA.

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

The certification of Amendments 1 and 2 means that, except for the deferred Hazards policies, the entire Land Use Plan has been completed and certified.

At the time of the Board's action on April 24, 2018, a small number of key issues still remained unresolved in both Amendment 3, the *Implementation Program Amendment (IPA) for Agriculture*, and Amendment 7, made up of certain sections of the IPA. Unfortunately,

Coastal Act procedures does not allow separating these important issues from the rest of the content of Amendments 3 and 7, causing the Amendments to be held over for further discussion with Coastal Commission staff, and with regard to C-PK-3/ Section 22.64.170(B)(3) *Mixed Uses in the Coastal Village Commercial/Residential Zone*, for additional public meetings, discussion and input. The intent of these discussions was to develop clarifications and refined language that would meet both the County's objectives to account for local conditions, and the requirements of the Coastal Act. Copies of the complete LCP Amendments are posted on the [www.MarinLCP](http://www.MarinLCP) website on the LCP Amendment page under the October 11, 2018 Planning Commission date. Staff recommends that, with the changes described herein, the balance of Amendments 3 and 7 should be approved and submitted to the Coastal Commission for certification.

County staff wishes to acknowledge the time, effort and consideration extended by the Coastal Commission staff over the past several months to work with County staff toward resolution for each of the issues identified below. We recommend the Planning Commission provide comments to the Board of Supervisors on the proposed changes if so desired.

This report exclusively addresses the Suggested Modifications that have been at issue. The wording of the Modifications adopted by the Coastal Commission on November 2, 2016 is shown below as the base text, with the changes now proposed indicated by ~~cross-out~~ and underline.

## POLICY ISSUES

### **AMENDMENT 3**

#### **3.1 Definition of Ongoing Agriculture**

The question of whether changes in agricultural production activities should require coastal permits, and if so, what the parameters of such requirements should be, was extensively discussed and debated in public workshops, meetings and hearings over a long period during the development of the LCP's agricultural policies and implementing provisions. Among the fundamental objectives of the revised language below is to provide farmers and ranchers with clarity and predictability in operating under the LCP. The definition of "ongoing agriculture" specifies coastal permitting exemptions for enumerated routine agricultural operations that do not extend into "areas never before used for agriculture." The definition includes certain activities that would not be considered ongoing agriculture (and thereby require a Coastal Permit), including one additional category of activity intended to provide the Community Development Agency Director with discretion to require a Coastal Permit where an agricultural activity will have significant impacts to coastal resources.

#### **Agriculture, ongoing**

*Agricultural production activities (including crop rotation, plowing, tilling, planting, harvesting, ~~and~~ seeding, grazing, and raising of animals,) which have not been expanded into areas never before used ~~areas for agriculture~~. 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 include but are not limited to:~~*

[In the context of development, the following types of activities are not considered ongoing agriculture.](#)

- 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%
- Other agricultural production activities that the Director of CDA determines will have significant impacts to coastal resources.

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.

Additionally, Section 22.68.050-Coastal Permit Not Required: Exempt Development in the portion of the LCP (Amendment 6) already certified by the Coastal Commission specifically support this approach by specifying that “ongoing agriculture” is exempt from Coastal Permits:

### **Section 22.68.030 – Coastal Permit Required**

A Coastal Permit is required for development in the Coastal Zone that is undertaken by any person, including a private entity or a state or local agency, unless the development is categorically excluded (per Section 22.68.040), **exempt (per Section 22.68.050)**, or qualifies for a De Minimis Waiver (per Section 22.68.070).*(emphasis added)*

### **Section 22.68.050-Coastal Permit Not Required: Exempt Development**

A. The following development shall be exempt from the requirements of Section 22.68.030 unless listed as non-exempt by Section 22.68.060...

12. **Ongoing Agricultural Activities.** See Chapter 22.130 for definition.

## **3.2 Allowing Rancher/Farmer reimbursement for time providing Educational Tours**

### **22.32.062 – Educational Tours**

The Coastal Commission-modified provision initially left some uncertainty in defining “reimbursement costs” for educational tours. However, Commission staff subsequently stated that the specific details of interpreting that term should be left to the County’s discretion. 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, and the County will take these factors into account in making determinations under this provision. This clarification has been added to Section 22.32.062 as shown in the proposed text below.

**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; educational tours require a Coastal Permit appealable to the Coastal Commission and a Use Permit if, as determined by the CDA Director, revenue is generated in excess of reimbursement costs related to the educational tour. For the purpose of this code section, revenue does not include the collection of charitable donations by non-profit organizations in connection with an educational tour.

### **3.3 “And Necessary for Operation of Agriculture”**

**Section 22.62.060 – Coastal Agricultural and Resource Related Districts** The category of “Other Agricultural Uses,” particularly agricultural product sales and processing, was the subject of extensive discussion before the Planning Commission, the Board and the Community. This engagement resulted in the Board adopting strict development limitations for these uses. At the same time, the Board’s intent was that proposals that met these conditions should be able to be approved relatively quickly, as is the case outside the Coastal Zone. When the CCC-Modified policies added the words “*and necessary*” so that the phrase became “if appurtenant and necessary,” there was concern that the language could subject such agricultural facilities to a project-by-project test to evaluate and determine if such uses were or were not necessary to continue the overall agricultural use of the land.

The Commission’s approved revised language clarifies the standard by removing the word “if” and stating positively that the listed uses are in fact “appurtenant and necessary to the operation of agriculture.” Staff recommends the additional clarifying language in Section 22.62.060.B.1.d. below.

#### **22.62.060 – Coastal Agricultural and Resource-Related Districts...**

**B. Purposes of zoning districts.** The purposes of the individual zoning districts are as follows.

##### **1. C-APZ (Coastal, Agricultural Production Zone) District...**

**d.** Other Agricultural Uses, limited to the following uses that are appurtenant and necessary to the operation of agriculture, limited to:

1. Agricultural product sales and processing of products grown within the farmshed, provided that for sales, the building(s) or structure(s), or outdoor areas used for sales do not exceed an aggregate floor area of 500 square feet, and for processing, the building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet;
2. Not for profit educational tours.

## **AMENDMENT 7**

### **7.1 Definitions of Existing Structure.**

As modified by Coastal Commission, the IPA contained conflicting and confusing definitions of “existing” and “existing structure,” referencing two different dates, and using an ambiguous phrase “on or after” in the definition of those dates. The proposed revised definition of “Existing” corrects those problems, while the definition of “Existing Structure” (which includes references to shoreline protective devices) is proposed to be deleted as it is more appropriately addressed through the Hazards Amendment.

**Existing** Extant ~~on or after February 1, 1973~~ at the time an application is filed with the County.

**Existing Structure** ~~A structure that is legal or legal non-conforming extant at the time a permit application is filed with the County. For the purpose of implementing LCP policies regarding shoreline protective devices, a structure in existence since January 1, 1977.~~

### **7.2 Definitions of Legal Lot and Legal Lot of Record.**

The Modified “Legal Lot” language required a lot to have a Coastal Permit to be legal, which is impossible for lots created before the Coastal Act, as Coastal Permits had not yet come in to existence. The Modified definition implies that lots created prior to the Coastal Act are not legal, a factual inaccuracy. Moreover “Legal Lot” as Modified excludes lots created prior to the Coastal Act. However, the term “Legal Lot” appears literally hundreds of times in the LCP Amendment to describe lots legally created both before and after the Coastal Act. Retaining the Modified language would require going through the entire LCP and replacing “Legal Lot” with “Legal Lot of Record” which would entail a massive Amendment, including but not limited to the parts of the LCP just recently certified by the Coastal Commission. The proposed revised text rectifies these problems, and in section “D” addresses the Coastal Permits requirement for lots created after the effective date of the Coastal Act.

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

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

- A. Recorded subdivision. The lot was created through a subdivision Final Map or Parcel Map recorded on or after January 1, 1930. Antiquated subdivisions shall not be deemed to have created lots. A lot depicted on a subdivision Final Map or Parcel Map recorded before January 1, 1930 may be considered a legal lot only if it has been re-conveyed subsequently to January 1, 1930 with references made to the original subdivision Final Map or Parcel Map.

Note that in instances when a deed that created a lot by conveyance listed multiple antiquated lot numbers consistent with the original Parcel Map or Final Map, the entirety of the areas covered by such lot numbers is considered a single legal lot of record, except for those individual antiquated lots that met the zoning and subdivision standards that were in effect at the time the initial conveyance legally created them.

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

C. Merged lots. Notwithstanding A through B above, 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.

C. Lot created after the effective date of the Coastal Act. After the effective date of Coastal Act regulation, a lot located within the Coastal Zone, lawfully created, and consistent with the requirements prescribed under A, B, or C above and also pursuant to an applicable Coastal Permit.

### **7.3 Piers and Caissons.**

With the concurrence of Coastal Commission staff, action on the definition of “Shoreline Protection Device” and its reference to “Piers and Caissons” is being set aside and proposed for deletion until the Hazards Amendment is considered. This definition is central to hazards policies addressing how best to regulate construction for future sea level rise, and should be considered in context with other hazards policies

~~**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.~~

### **7.4 Definition of Grading**

County staff had previously expressed concern that Coastal Commission approved modifications to the definition of grading (to remove the 50-cubic yard threshold) could be problematic from the implementation standpoint. The Coastal Commission Modifications removed the quantitative amount of earth movement that would trigger a Coastal Permit. Instead, in their May 9, 2017 letter (pg. 6) 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 make a factual determination if an activity meets the definition of grading” and is subject to a Coastal Development Permit.” For example, mulching activities recommended by the Marin Carbon Project to sequester carbon dioxide as a means to reduce greenhouse gas emissions, laying rock at water troughs to reduce erosion, and digging holes to plant trees and native vegetation may not be considered grading. This addresses staff’s original concern.

**Grading.** Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof ~~that exceeds 50 cubic yards of material.~~ As used in this Development Code, grading does not include plowing, tilling, harrowing, aerating, disking, planting, seeding, weeding, fertilizing or other similar routine agricultural cultivation practices for ongoing agricultural operations (see “Agricultural Production Activities, Ongoing”).

## **7.6 Service capacity analysis for private wells (Section 22.64.140)**

The County has expressed concerns that the Modifications to the domestic water standards would create a new rule subjecting even small projects to demanding and expensive studies out of scale with any potential impacts. Requiring evaluation of “streams, riparian habitats, and wetlands that are located on ... neighboring lots” could create an untenable situation where access is not granted by the neighboring land owner. Setting thresholds for the size or intensity of projects subject to the requirements makes the policy more equitable, workable and enforceable. The proposed amendment would clarify that the requirement for the additional report would apply to projects served by a public water supply, including projects where there will be an increase in the amount of water used by more than 50%.

**22.64.140.A.1.b.** An application for new or increased well production 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) For public water supply projects, projects proposing the subdivision or rezoning of land that would increase the intensity of use, and or projects on developed lots that would increase the amount of water use by more than 50%, 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 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.

## **7.7 22.64.170 – Parks, Recreation, and Visitor-Serving Uses**

Staff recommends bringing Land Use Policy C-PK-3 and its implementing provision, Section 22.64.170(A)(3), into conformity with one another while simultaneously editing them for clarity in response to the public comments and feedback received through the local workshops and meetings held this summer.

Land Use Policy C-PK-3 was still under discussion at the time that the other policies in Amendment 1 were ready to submit to the Coastal Commission. In consultation with Commission staff, it was determined that this one LUP policy should not hold up the

certification of the entirety of Amendment 1; rather that it could be brought back to the Commission as part of a subsequent amendment. The Commission-modified version of C-PK-3 was therefore certified, and changes to it need to be processed as an LUP Amendment. That is what the staff's recommended action would do.

At the same time, through public meetings and continued discussions with Commission staff, the need for clarifying revisions to C-PK-3 became evident. So too did the advantages of closer conformity in the language of C-PK-3 and its implementing measure IPA Section 22.64.170. The recommended amendments below are intended to achieve these objectives through (1) an Amendment to the certified LUP Policy C-PK-3 and (2) a submittal new Amendment to the 1982 Implementing Program.

For reference, the version of C-PK-3 ultimately certified by the Coastal Commission on June 6, 2018 is as follows:

**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 commercial. 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 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.

According to Coastal Commission staff<sup>1</sup>, changes incorporated into C-PK-3 were required to ensure commercial uses remain the primary use in the C-VCR zone's commercial core and that residential will only be allowed consistent with the requirements of Section 30222., which states:

“lands suitable for visitor-serving commercial recreation facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.”

Thus, the now-certified language was intended to clarify which lands are suitable for visitor-serving commercial recreation facilities designed to enhance public opportunities for coastal recreation.

Additionally, Coastal Commission staff have maintained that a zoning district should not have more than a single “principal permitted use” based upon Coastal Act Section 30603(a)(4). That Section says that “in coastal counties, development not designated in a zoning district as the principally permitted use is appealable to the Coastal Commission.” The Commission interprets this provision to mean that unless a zoning district identifies one single type of use

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<sup>1</sup> Coastal Commission Staff Report for W10a, Marin County Local Coastal Program Amendment Number LCP-2-MAR-15-0029-1, Prepared November 1, 2016 (for November 2, 2016 hearing), p. 94

as principally permitted, all development proposed in that zoning district is subject to appeal to the Commission. Currently in the existing certified LCP, both commercial and residential uses are designated principal permitted, and therefore Commission staff considers all development within the C-VCR zoning district to currently be appealable to the Commission.

The Coastal Commission-certified version of C-PK-3 would designate commercial uses as the principal permitted use and residential uses as only permitted throughout the C-VCR zone. It would further limit residential uses to upper floors and/or the lower floors if the residential use is not on the road-facing side of the property, and require residential uses proposed on the ground floor on the road-facing side of the property to make a finding that the development maintains and/or enhances the established character of the village commercial core.”

Designating commercial as the principal permitted use throughout the C-VCR zoning district would be a significant change from the existing certified LCP, where commercial and residential are both principal permitted uses. The broad application of this new policy may unintentionally impede residential uses in areas that are predominantly residential in character. Commission staff has agreed this was not the intent of the now-certified Modification. Given this zoning district has historically allowed a mix of uses, staff recommends amending Policy C-PK-3 and the C-VCR zoning district to reference a set of maps delineating the commercial core areas for the downtown areas within the communities of Stinson Beach, Bolinas, Olema, Point Reyes Station, East Shore / Marshall, and Tomales (Attachment 1). Revisions to the LUPA and IPA language are proposed below to clarify that within this commercial core area, commercial would be the principal permitted use, and outside the commercial core, residential would be the principal permitted use.

This change has been the subject of discussions between County and Commission staffs, and as noted, in a in the May 9, 2017 letter (Attachment 3), Commission staff support this approach. Further, Coastal Commission findings state: “it is appropriate to limit the required finding that ground-floor residential uses enhance the established character of village commercial core areas to development within the village commercial core.”<sup>2</sup>

The proposed County Amendments to Land Use Policy C-PK-3 and the revised Implementation Program Section 22.64.170(B)(3) are shown below. The language will also be incorporated into the Land Use Tables. See Attachment 3 for proposed amendments to Tables 5-3-c, 5-3-d, 5-3-e and 5-3-f in Section 22.62.080.

The proposed Amendment to the June 6, 2018 Coastal Commission-certified policy C-PK-3 is shown below in cross-out/underline format.

**C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone (Revised).**

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.

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<sup>2</sup> Coastal Commission Staff Report for W10a, Marin County Local Coastal Program Amendment Number LCP-2-MAR-15-0029-1, Prepared November 1, 2016 (for November 2, 2016 hearing), p. 94

Within the mapped village commercial core area of the C-VCR zone Commercial shall be the principal permitted use and Residential shall be a permitted use. In this 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. Residential uses on the ground floor of a new or existing structure on 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 areas

Outside of the village commercial core area of the C-VCR zone, Residential shall be the principal permitted use, and Commercial shall be a permitted use.

Maintenance and repair of any legal existing residential use shall be exempt from the above provision and shall be permitted.

The proposed changes to the Coastal Commission Suggested Modification to the Implementation Plan for the C-VCR zoning district are shown below.

### **Implementation Program Section 22.64.170(A)(3)**

#### **3. Mixed uses in coastal village commercial/residential zones.**

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.

Within the mapped village commercial core area of the C-VCR zone Commercial shall be the principal permitted use ~~of the C-VCR zone~~ and ~~Residential~~ shall be a permitted use allowed in the C-VCR zone subject to all other LCP standards. In this 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 on ~~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

Outside of the village commercial core area of the C-VCR zone, Residential shall be the principal permitted use, and Commercial shall be a permitted use.

Maintenance and repair of any legal existing residential use shall be exempt from the above provision and shall be permitted.

### **7.8 Lowest density/FAR required for widespread hazard areas**

The addition of “all hazardous areas and setbacks” to the restrictions limiting residential density and commercial floor area to the lowest end of the density range for the zoning district (**Footnotes to Tables 5-4-a & 5-4-b (Coastal Zoning Development Standards) and Table 5-5 (Coastal –B Combining District Development Standards)**) would severely limit allowable floor area and density throughout the coastal zone due to the broad and overlapping hazard zones. Instead, as shown below in Footnote 6 as recommended by staff, the appropriate development standards and mitigating measures

are set out in the ESHA and Hazard policies, consistent with the basic framework of the LCP.

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

Staff is also recommending removal of Footnote 7 (pertaining to commercial development) in its entirety since most commercial properties, particularly in coastal village areas, are already developed with floor area ratios well above the “lowest end” of the designated floor area ratio range and consideration of the issues noted in Footnote 7, such as adequate public services, potential ESHA impacts, and environmental hazards are already addressed elsewhere in the LCP and through the Coastal Permit process.

~~**(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, and where it can be demonstrated that the development will 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.~~

## **8.2 Amend the Land Use and Zoning maps**

A recent Amendment to the LCP Maps needs to be implemented. The LCP Land Use and Zoning Maps that are part of this current set of Amendments were submitted to the Coastal Commission prior to the separate consideration of the “Moonrise Kingdom” Redesignation Amendment (LCP-2-MAR-18-0027-1), which was certified by the Coastal Commission on July 12, 2018. The current LCP map amendments are updated consistent with the “Moonrise Kingdom” Redesignation and are shown in Attachment 4.

### **PUBLIC COMMENT**

Potential changes to the C-VCR zone created significant interest in the run-up to the Board’s April action on LCP Amendments and prompted additional discussions not only with Coastal Commission staff, but also a wide range of the public throughout the LCP area. In June 2018 staff made presentations to several community organizations, including the Point Reyes Village Association (June 14), Bolinas Community Public Utility District (June 20), East Shore Planning Group (June 21), Tomales Design Review Board (June 21), and met with representatives from the Stinson Beach Village Association. Concern was expressed regarding the prioritization of commercial and visitor-serving uses over the needs of local residents and impacts on historic village character, the potential implications of the new regulations limiting housing, particularly affordable housing, and confusion over what

standards are used to define the meaning of a community's "established character of the village commercial core area."

As noted<sup>3</sup>, the Coastal Commission's Suggested Modifications to C-PK-3 were required to ensure that visitor serving commercial uses are provided for in the C-VCR zone. Staff shared with the interested public the strategy of identifying a commercial core area largely reflecting existing use as a means of complying with Coastal Commission mandates. County staff worked with the public to help clarify which lands are suitable for visitor-serving commercial recreation facilities designed to enhance public opportunities for coastal recreation.

The distinction between principal permitted and permitted uses and the relationship with appealability has been the subject of confusion. This was not surprising since the framework of "principal permitted" uses is an arcane aspect of the Coastal Act that differs from the conventional distinction between permitted and conditional uses typical of zoning ordinances. The fact that commercial and residential uses are both principal permitted in the existing certified C-VCR zone added to the confusion. Moreover, the Coastal Commission maintains that all development within the C-VCR zoning district is currently appealable to the Commission because more than one use is designated principally permitted. Coastal Commission Suggested Modifications to Policy C-PK-3 would have made a significant change by designating commercial uses the principal permitted throughout the C-VCR zone (essentially the entirety of coastal villages) and relegating residential uses to merely a permitted status, where all residential uses would be appealable to the Coastal Commission. Staff sought to clear up these issues in the public meetings and resolve them in the changes being proposed herein.

Staff also pointed out that with regard to whether or not a use is appealable, "permitted" status is not the only triggering factor. Regardless of whether a use is designated principally permitted or permitted, any locally-approved Coastal Development Permit between the first public road and the sea; within 300 feet of a beach, mean high tide or bluff edge; within 100 feet of a wetland or stream; or on tidelands, submerged lands, or public trust lands, is appealable to the Coastal Commission. It should be noted that a significant number of C-VCR zoned properties are located within these appeal areas, including all areas of Bolinas. Finally, properties located on tidelands and public trust lands fall within the Coastal Commission Permit Jurisdiction and, thus, are under Coastal Commission permitting authority. Some C-VCR properties in the East Shore/Marshall area are located within this jurisdiction.

The staff mapping (Attachment 1) of the commercial core/residential areas in each coastal village essentially reflect existing conditions, which have generally remained stable. General support in favor of a mapped commercial core was expressed by the East Shore Planning Group, Stinson Beach Village Association, and Point Reyes Village Association.

## **ENVIRONMENTAL REVIEW**

Public Resources Code Sections 21080.5 and 21080.9 exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Coastal Commission's LCP review and approval program has been

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<sup>3</sup> Coastal Commission Staff Report for W10a, Marin County Local Coastal Program Amendment Number LCP-2-MAR-15-0029-1, Prepared November 1, 2016 (for November 2, 2016 hearing), p. 94

found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Coastal Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Coastal Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, as amended, does conform with CEQA provisions. The amendment does not propose any change in land use or any change in the allowable use of property within the Coastal Zone, or have any potential to impact, either individually or cumulatively, coastal resources. Therefore, the proposed amendment is consistent with Chapter 3 of the Coastal Act. Further, approval of the LCP amendment would not result in any significant adverse environmental impacts under the meaning of the California Environmental Quality Act.

## **PUBLIC NOTICE**

The Community Development Agency has provided public notice of the Planning Commission hearing to all property owners within 300 feet of the C-VCR zoning district.

## **RECOMMENDATION**

Staff recommends your Commission review the administrative record, conduct a public hearing, and, if so desired, offer comments to the Board of Supervisors on the policies and code sections addressed herein as staff-recommended Amendments to the certified LCP.

### Attachments:

1. Maps showing Proposed locations of the Village Commercial Core Area
2. Letter from the California Coastal Commission, dated May 9, 2017
3. Proposed Amendments to Section 22.62.080, Tables 5-3-c, 5-3-d, 5-3-e and 5-3-f.
4. Maps showing certified Moonrise Kingdom Redesignation

### Linked Attachments

5. [Marin County IP Amendment #3 with CCC Modifications: IPA for the LUP Agriculture Chapter](#)
6. [Marin County IP Amendment #7 with CCC Modifications: Remaining non-hazard IPA sections](#)