

COMMUNITY DEVELOPMENT AGENCY

March 20, 2018

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SUBJECT: Workshop on Modifications to the County's Local Coastal Program Amendments (excluding the proposed Environmental Hazards Amendments).

Dear Members of the Board:

Building and Safety
Environmental Health Services
Planning
Environmental Review
Housing
Sustainability
Code Enforcement
GIS
Federal Grants

RECOMMENDATION:

Conduct a public workshop focused on the remaining issues from the November 2, 2016 California Coastal Commission (CCC) decision to approve Modifications to the County's five Local Coastal Program Amendments as discussed in Attachment 1. These issues were initially presented in the staff report for the Board of Supervisors' May 16, 2017 public hearing, and are being brought back to the Board for further consideration following several staff level meetings between the County and Coastal Commission. No specific decisions are requested at this workshop, instead it is intended as an update and a precursor to a public hearing on April 24, 2018 when the Board will consider accepting or rejecting the modifications to each of the five LCP Amendments. The Land Use Plan (LUP) and Implementation Program (IP) Amendments to the Environmental Hazards sections are not before the Board at this time, and are expected to be addressed at a future public hearing.

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STATUS UPDATE

Your Board has previously submitted seven separate LCP amendment packages 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.

The Coastal Act provides that after the Coastal Commission approves amendments with modifications, a local government shall act to either accept or reject the Commission's Modifications within prescribed timelines. The deadline for County action on the non-Environmental Hazard Amendments is May 2, 2018. Because the Coastal Commission chose to defer action on the County's proposed Environmental

Hazard Amendments, 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 gauge 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 to accept LUP Amendments #1 and #2 comprising all of the LUP as modified by the Coastal Commission, except for the deferred Environmental Hazards Chapter. The remaining non-Environmental Hazard issues discussed in this report were initially presented in the staff report for the Board of Supervisors May 2016 hearing, although the Board was not being asked by County staff to accept them at that time.

Included in the May 2017 action was a Board Letter, 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. Although no procedural objections were raised regarding the inclusion of interpretations in the Board of Supervisors Resolution for the LUP Amendments prior to, or at, the Board of Supervisors May 16, 2017 hearing, Coastal Commission staff informed County staff several weeks later that because Coastal Act regulations do not allow for a conditional acceptance of the modified Amendments by local agencies, the Amendments should be re-accepted by the County without conditional language in the Resolution (this position was later affirmed in Coastal Commission correspondence received by the County in December 2017). Coastal Commission staff has further advised that re-acceptance of the LUP modifications is subject to the same May 2, 2018 deadline that applies to the IP modifications discussed in this report. Therefore, County staff will be recommending the Board also reaffirm their May 2017 decision to accept the non-Environmental Hazard LUP Amendments without conditional language in the resolution at the April 24, 2018 hearing. The findings from the May 16, 2017 staff report for the for the LUP modifications are in Attachment 4.

The two staffs returned to the process of discussion, negotiation and clarification of both the LUP and IP modifications. With the May 2, 2018 deadline for the County to accept or reject the modifications approaching, staff is now bringing the remaining issues forward for public input and Board discussion. In addition, staff intends to continue ongoing discussions with CCC staff about their willingness to address the County's issues with alternative language that would be processed through additional LCP Amendments.

SUMMARY:

This workshop is intended to promote a sufficient understanding of the potential implications of the key modifications and to provide an opportunity for public and Board discussion and input prior to the April 24, 2018 public hearing.

Attachment 1 addresses the remaining issues in each of the five separate Amendments that were acted upon by the Coastal Commission. Most of these issues stem from the modified language adopted by the Commission ([Links 12,13](#)), while some concern the Revised Findings ([Link 7](#)) adopted by the Commission related to those modifications.

As submitted to the Coastal Commission, each Amendment is to be acted upon by the Commission independently. However, under Coastal Commission regulations, all the modifications within each individual Amendment must be accepted by the Board - all or nothing - or the Amendment is considered rejected. If no action is taken on an Amendment by the Board by the deadline of May 2, 2018, that Amendment is also considered rejected. Rejection of the Amendments would leave the current certified LCP as the effective set of regulations in the coastal zone.

The Board could accept all the Modifications in each Amendment with the intent to resubmit a future new Amendment to substitute new language 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 5)

Most of the modifications approved by the Coastal Commission in November 2016 have either been accepted by the County (i.e., May 2017 Board hearing) or are acceptable in staff's view. It's also possible that like other extensive code revisions, the need for additional clean-up revisions will become evident as the new rules are implemented should the County eventually accept modifications in all the proposed Amendments. Attachment 1 sets out the issues that remain, taking into account the Commission's November 2016 action, the Commission staff letter of May 2017, the Revised Findings adopted by the Commission on July 14, 2017 to support their November 2016 action, and continuing discussions with Commission staff. These issues are summarized as follows:

Amendment 3 IPA Agricultural Provisions

3.4 “Agriculture Ongoing; Definitions IP Sec. 22.130.030 and Sec. 22.68.050.L

A. **“Legally Established:”** “Agriculture Ongoing” (hereinafter referred to as Ongoing Agriculture) is a County proposed exemption from Coastal Permit requirements for changes in traditional agricultural production activities in the county. Coastal Commission staff proposed to add “legally established” as a prerequisite to qualifying for the permit exemption. The County objected to this change since most of Marin’s agricultural producers have been allowed to change crops without first having to obtain a Coastal Permit. As part of its November 2016 decision, the Coastal Commission removed “legally established” from the approved definition of Ongoing Agriculture in response to the County concerns. However, the Revised Findings subsequently adopted by the Coastal Commission to support their decision indicate that existing operations should have obtained permits after 1982 (the adoption of the County’s first LCP and implementing coastal zoning regulations). This appears to raise the implication that agricultural producers having either initiated or changed crops since 1982 may not be considered legal merely because they have not been required to first obtain a Coastal Permit.

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.

AMENDMENT 7- All other sections of the IPA, except Ag. And Hazards 7-1. 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 ~~May 13, 1982.~~

7-2 IPA section 22.130: Definition of “Legal Lot” vs. “Legal Lot of Record”

It is unclear why two definitions are required as Modified especially since the definition of “legal lot” on its face could be construed to imply that lots created prior to the Coastal Act (applies to most lots in the Coastal Zone). The Coastal Commission May 9, 2016 letter states “In the Coastal Zone, a lot is only legal if it was lawfully created under both Coastal Act and the Subdivision Map Act.” Presumably, this means that even if a lot was legally created under the Subdivision Map Act prior to the adoption of the Coastal Act in 1977, the lot would not be considered legal until the approval of a Coastal Permit. The Coastal Commission staff’s May 9, 2017 letter also states that, “As conditionally certified by the Commission in the definition of legal lot, a CDP [Coastal Permit] is only required where *necessary*”, which 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. Without resolving the issue in the 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.

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 e-r-e-a-t-e-d~~ on a subdivision Final map or Parcel map recorded before January 1, 1930 may be considered a legal lot only if it has been reconvened subsequent to January 1, 1930 with references made to the original subdivision Final map or Parcel map.
- B. Individual lot legally created by deed. The lot was legally created by deed conveyance into separate ownership and was in compliance with the zoning and subdivision requirements that applied at the time of creation.
- ~~C. Government conveyance. The lot was created by conveyance to a government entity.~~

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

7-3; 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. (This definition is related to the Environmental Hazard Amendments which are still pending approval by the Coastal Commission.) 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 indicates 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. The staff letter goes on to point out that if the Board of Supervisors approves revisions to the definition (after its acceptance) for processing as an amendment, such revisions would be considered by the Coastal Commission at the time the Environmental Hazard Amendments are brought up for a decision by the Commission. Thus, if the Board were to accept the above definition, County staff strongly recommends that such acceptance be predicated on the intent to submit revisions for further consideration.

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.

7-6; 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, a zoning standard in Section 22.64.140.A.1.b of the IP, which is presumably intended to implement the above policy, is more expansive by 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).

7.7 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 extensive 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. CCC staff has indicated this language needs to be corrected.

7-8. 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 (See Attachment 2, 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.

NEXT STEPS

Staff is not requesting the Board vote to accept or reject any of the Coastal Commission modifications at the March 20, 2018 workshop. Rather, the workshop is intended to brief the Board and interested members of the public on the status of the County’s LCP Amendments and to prepare for the Board’s public hearing on April 24, 2018. Staff recommends the Board conduct a public hearing on April 24, 2018 to consider either accepting or rejecting the modifications approved by the Coastal Commission at the Commission’s November 2016 hearing. Staff recommends the Board focus its consideration to the list of issues presented in Attachment 1 of this report. The Board may also consider accepting certain modifications with the intent of resubmitting revisions to correct or clarify meaning and intent. Such revisions could be coupled with any future revisions that may come out of ongoing work to resolve Environmental Hazard issues.

Staff will continue to seek input from Coastal Commission staff to affirm or clarify further how the identified issues might be resolved. If possible, County staff will convey any additional input from the Coastal Commission staff to your Board in advance of the Board’s April 24, 2018 hearing.

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 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:

1. Analysis of Remaining Issues re CCC Modifications
2. Hazard Areas Map

3. Adopted 5.16.17 Board Findings re LUP Mods
4. May 16, 2017 BOS Resolution Accepting Marin Co. LUP Amendments #1 and #2 as Modified by CCC
5. CCC Staff Letter, May 9, 2017
6. CCC Staff Letter, Dec. 15.2017

Links

7. [CCC Revised Findings Staff Report and Addendum July 14, 2017](#)
8. [CDA Director Letter on CCC Revised Findings, July 10, 2017](#)
9. [Commission Chair Steve Kinsey Letter, July 13, 2017](#)
10. [Summary of changes to LUPA](#)
11. [Summary of changes to IPA \(informational\)](#)
12. [Full Text of Full Text of Modified Land Use Plan](#)
13. [Full Text of Modified Implementation Program](#)

Previous LCP documents are available on www.MarinLCP.org "Plans and Documents" page.

BOS Workshop – Discussion of CCC Modifications

AMENDMENT 3 IPA Agriculture Provisions

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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. The Coastal Commission staff letter of May 9, 2017 referenced below is provided as Attachment 3 to the May 20, 2018 Board Letter

AMENDMENT 3 IPA Agriculture Provisions

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

Issue:

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

22.32.062 – Educational Tours

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

In the ongoing discussions with CCC staff, County planners requested specific details of how to interpret the term "reimbursement costs" and suggested a reasonable interpretation of the term includes payments to the operator or staff for their time (e.g. hourly rate charges), charges for the use of the farm or its facilities for the educational purpose, and revenues generated through such tours that are distributed to non-profit organizations such as MALT.

CCC May 9, 2017 Letter

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

As also noted on page 54 of the November 2, 2016 Commission staff report findings, “if the owner/operator or third parties charge a fee that generates revenue, then the use is permitted because a tour that operates *for profit* [emphasis added] is a commercial use and does not qualify as principally permitted when the principally permitted use is agriculture in the C-APZ zoning district.” As long as the fees that are received are solely for reimbursement, the County will be able to make a factual determination that the revenue being generated is not for profit. That factual determination is to be made on a case- by-case basis, however, because there are circumstances in which the same type of charge would exceed reimbursement costs and circumstances in which it would not exceed reimbursement costs.

Given this statement, the County would make the determination that the revenue is or is not “for profit,” and thus whether the specific tour is a principal permitted use, or merely a permitted use, subject to appeal to the CCC.

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

For Discussion

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

3-2. “And Necessary” - IP

Issue:

According to the CCC findings below, agriculturally-related development designated as principally permitted in the C-APZ zone, including agricultural sales and processing designated as principally permitted in C-AG-2.A.5.a is defined as “necessary and appurtenant” to the operation of agriculture. County staff has interpreted Policy C-AG-2 to mean that agricultural uses in the C-APZ zone are predetermined to be accessory, incidental, in support of, compatible with and necessary for agricultural production operations as long as such uses meet applicable standards. In other words, these uses should not be subject to a project-by-project test to evaluate and determine if such uses are necessary for the agricultural use of the land to

continue in operation. However, Modifications to the implementing zoning (IP) added the words “and necessary” to section 22.62.060.B.1.d., so that the phrase reads “if appurtenant and necessary.” Inclusion of the word “if” could be interpreted as meaning that such uses should be subject to the project-specific test of necessity described above.

Policy C-AG-2

C-AG-2 Coastal Agricultural Production Zone (C-APZ) ... *Ensure that the principal use of these lands is agricultural, and that any development shall be accessory and incidental to, in support of and compatible with agricultural production.*

A. *In the C-APZ zone, the principal permitted use shall be agriculture, limited to the following:*

- 1. Agricultural Production...*
- 2. Agricultural Accessory Structures;*
- 3. Agricultural Accessory Activities;*
- 4. Agricultural Dwelling Units, consisting of...*
- 5. Other Agricultural Uses, appurtenant and necessary to the operation of agriculture, limited to:*
 - a. Agricultural product sales and processing of products grown within the farmshed, provided that for sales, the building(s) or structure(s), or outdoor areas used for sales do not exceed an aggregate floor area of 500 square feet, and for processing, the building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet;*
 - b. Not for profit educational tours*

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

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

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

d. *Other Agricultural Uses, if appurtenant and necessary to the operation of agriculture, limited to:*

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

CCC Findings

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

“Necessary” for Agricultural Production

As stated on page 52 of the staff report, C-AG-2 no longer includes the “and necessary for” language instead stating that in order to assure that the principal use of C-APZ land is agricultural, any development shall be “accessory to, in support of, and compatible with agricultural production.” However, C-AG-2 remains consistent with sections 30241 and 30242 of the Coastal Act because: (1) all development must still be “in support of agricultural protection;” (2) the proposed C-APZ zone would no longer include non-agricultural development as principally permitted as does the currently certified LCP; and (3) **the agriculturally-related development designated as principally permitted in the C-APZ zone is defined as development that is “necessary and appurtenant” to the operation of agriculture.** This is affirmed by the following definitions.

22.130.030 – Definitions of Specialized Terms and Phrases

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

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

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

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

The Revised Findings correctly describe the integrated, interdependent agricultural facilities, including accessory structures and activities, processing, and retail sales, that form the working fabric of the agriculture principal permitted use (pg. 42 [Revised Findings 7.14.17](#))

“Further, the principal permitted use of the C-APZ is agriculture, defined to include agricultural production, and the structures that truly support agricultural production

(agricultural accessory structures, agricultural dwelling units, agricultural sales and processing facilities). Allowing agricultural production and the facilities that support it as types of development designated as principally permitted in the commercial agricultural zone is Coastal Act consistent not only because sustainable agricultural operations are critical to the long-term viability of agriculture in Marin but also because development of such agriculture uses does not involve a conversion of agricultural land to a non-agricultural use. Finally, to classify development other than agricultural production itself as a principally permitted use of agricultural land, development must in fact be supporting agricultural production. Suggested modifications in the proposed LCP's IP definitions section discussed below, ensure that these permitted agricultural uses must meet all the following criteria "accessory and incidental to, in support of, compatible with agricultural production" to even be considered such agricultural uses under the LCP. These suggested modifications together will ensure that each new development on C-APZ lands will be in support of agricultural production."

Thus, consistent with the findings above, agricultural accessory structures, agricultural dwelling units, agricultural sales and processing facilities that are accessory and incidental to, in support of, compatible with agricultural production should unequivocally qualify as principally permitted uses subject to affirming the nature of the project is reasonably related to the definition itself and meets objective development standards.

For Discussion

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

County staff could further pursue clarifying revisions with the Coastal Commission through future amendments and request that such amendments be acted upon prior to or in conjunction with the Environmental Hazard Amendments. Alternatively, if the above modifications are rejected, the rejection would apply to Amendment 3 in its entirety and the entire Amendment would need to be resubmitted to the Coastal Commission if the County chose to pursue revisions in this section of its LCP.

3-4. Ongoing Agriculture

Issues

- A. "Legally Established" Existing Agriculture**
- B. "Conversion of Grazing Areas to Row Crops"**
- C. "Examples of activities that are NOT ongoing agricultural"**

The question of whether changes in agricultural production activities should require coastal permits, and if so, what the parameters of such requirements should be, was extensively discussed and debated in public workshops, meetings and hearing over a long period during the development of the LCP's agricultural policies and implementing provisions. The Marin Conservation League sponsored discussions on the topic with representatives of the environmental and agricultural communities, including the UC Cooperative Extension, Environmental Action Committee of West Marin, Marin Farm Bureau and others. While the parties did not reach a consensus on a single regulatory approach, the following zoning standards were, in part, an outgrowth of this collaboration.

22.68.050 – Coastal Permit Not Required: Exempt Development

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

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

Chapter 22.130...

Agriculture Ongoing (Coastal) means the following agricultural activities:

1. All routine agricultural cultivation practices (e.g. plowing, tilling, planting, harvesting, and seeding), which are not expanded into Environmentally Sensitive Habitat Areas (ESHAs) and ESHA buffers, Oak woodlands or areas never before used areas for agriculture, and
2. Conservation practices required by a governmental agency including, but not limited to, the State Water Resources Control Board or Regional Water Quality Control Board, in order to meet requirements to protect and enhance water quality and soil resources.

The following activities shall not be considered ongoing agriculture for the purposes of the definition of "Development" and constitute new development requiring a coastal permit consistent with Chapters 22.68 and 22.70, unless such development is categorically excluded by a Coastal Commission approved Categorical Exclusion Order.

1. Development of new water sources such as construction of a new or expanded well or surface impoundment.
2. Installation or extension of irrigation systems
3. Terracing of land for agricultural production;
4. Preparation or planting of land for viticulture, including any initial vineyard planting work as defined in Chapter 22.130;
5. Preparation or planting of land for growing or cultivating the genus cannabis.
6. Routine agricultural cultivation practices on land with an average agricultural slope of more than 15%.

Suggested Modifications in the staff report for the CCC Nov. 2016 hearing made critical changes to the Board-adopted provisions. For example, the County's explicit prohibition of expanding ongoing agriculture into Environmentally Sensitive Habitat Areas (ESHAs) and ESHA

buffers, and Oak woodlands was deleted, presumably in reliance upon a separate C-APZ standard requiring development to avoid causing significant adverse impacts on environmental quality or natural habitats (Section 22.65.040C.1.c). Proposed Modifications relating to the legal status of agriculture and restricting conversion of grazing land to crop use were added. These became a principal focus of public comment letters and testimony at the CCC hearing. Ultimately, the Coastal Commission adopted a motion to strike two modifications as shown below:

Agriculture, ongoing

~~Existing legally established agricultural~~ Agricultural production activities (including crop rotation, plowing, tilling, planting, harvesting, and seeding) which have not been expanded into never before used areas. Determinations of such ongoing activities may be supported by Marin County Department of Agriculture, Weights and Measures information on such past activities. ~~Examples of activities that are NOT considered ongoing agricultural activities include but are not limited to:~~

- ~~• Conversion of grazing area to crop production~~
- Development of new water sources (such as construction of a new or expanded well or surface impoundment)
- Installation or extension of irrigation systems
- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis
- Preparation or planting of land with an average slope exceeding 15%

A Coastal Development Permit will not be required if the County determines the activity qualifies for a de minimis waiver pursuant to the requirements Section 22.68.070, or is categorically excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.

CCC Findings

Following the Commission’s November 2016 decision to remove the “*legally established*” and the “*Conversion of grazing area to crop production*” criteria from the “Ongoing Agriculture” definition, the Commission’s subsequent Revised Findings suggest that these provisions should be taken into consideration when making determinations about exempting changes in agricultural activities in the field. In this regard, County staff is concerned that the Revised Findings may diminish the clarity and predictability of the definitive list of land use activities the County proposed and the Commission approved as the primary basis for making decisions on permit exemptions for ongoing agriculture.

Each of these three issues is addressed further below;

A. “Legally Established” Existing Agriculture

After hearing concerns raised by the County and agricultural community at the November 2016 hearing, the Coastal Commission removed the “legally established” phrase from the permit exemption for “Agriculture, ongoing” (hereafter referred to as “ongoing agriculture”). This change was viewed as a benefit to the County by clarifying that existing agricultural producers seeking to change crops would not be subject to a presumption of illegality simply because the County had not issued a Coastal Permit (historically, the County has not required Coastal Permits when, by way of example, a rancher converts grazing land to growing silage or other changes in agricultural use in the field). Without further explanation, the Commission’s Revised Findings could be interpreted as being contrary to the intent of removing “legally established” by stating that existing agricultural uses must be “legal and allowable,” and that this status could be contested, presumably by anyone, and that the burden of proof of legality is on the farmer/rancher.

(pg. 39, 40 [Revised Findings 7.14.17](#)):

...since certification in 1982, proposed changes in the intensity of the use of agriculturally zoned land, as well as agricultural grading into areas not previously farmed, required County-issued coastal permits. The Commission staff suggested modifications do not “establish” a new coastal permitting requirement for agricultural production in Marin County. Rather, such a permit requirement has existed in the C-APZ since 1982 when the Commission certified the County’s existing LCP and prior to LCP certification through Commission regulatory action (pg.39)

“...the Commission’s suggested modifications limit ongoing agriculture to existing agricultural production activities that are not expanding into never before used areas. It is important to note that existing agricultural production activities are only considered ongoing agriculture if they are legal and allowable uses on agricultural land. The Commission’s conditionally certified definition is not intended to allow the continuation of any unpermitted or illegal activity on agricultural land because it has previously been occurring....

...if the extent or legality of agriculture production activities were to be contested, ... determinations of ongoing agricultural activities may need to be supported with evidentiary information...(pg. 40)

Based on the Coastal Commission staff’s reading of the County’s existing LCP, the above Revised Findings indicate two criteria for requiring Coastal Permits as a means of establishing legal agricultural production activities: 1) proposed changes in the intensity of use; and 2) agricultural grading into areas previously not farmed. The Revised Findings go on to point out that agricultural activities will be considered for the permit exemption, available under the

definition of ongoing agriculture, only if the activities are existing and they meet the above two criteria for intensity of use and avoiding areas not previously farmed.

County staff has two principal concerns about the way the Revised Findings have been written. First, the findings stop short of connecting the determination on changes in intensity of use to the above list of criteria in the definition of ongoing agriculture (i.e., expanding into never before used areas, new water sources, terracing, etc.). These criteria would be central to the County's decision about whether a change in agricultural activity should or should not be exempt from a Coastal Permit. The lack of reference to the criteria in the Revised Findings raises questions about what, if any, additional criteria could disqualify a change in production activity from the permit exemption. Second, the Revised Findings explain that the Coastal Commission modifications limit ongoing agriculture, and therefore the permit exemption, to "existing agricultural production activities." County staff is concerned that placing a limit on the permit exemption to *existing* activities could preclude the exemption from being applied to *changes* in production activities, which is the whole purpose of the exemption.

For Discussion

If accepted by the Board of Supervisors, County staff would apply the permit exemption for ongoing agriculture to changes in existing agricultural production activities if such activities met all of the exemption criteria in the above definition. Meaning no exemptions would be granted for changes in the field that affect land never before used for agriculture, that require new water sources or extensive irrigation, terracing, planting of vineyards or cannabis, and grading on moderate to steep slopes. It's worth pointing out these criteria represent new regulations and thus, the permit exemption establishes a more structured and definitive approach as compared to current regulations. However, agricultural operations would not be disqualified from the exemption merely because the County has not required a permit in the past to graze cattle or grow crops.

The County could also submit clarifying amendments after acceptance of the above modifications and request the Coastal Commission act on the amendments prior to or in conjunction with the Environmental Hazard Amendments. Alternatively, if the above modifications are rejected, the rejection would apply to Amendment 3 in its entirety and the entire Amendment would need to be resubmitted to the Coastal Commission if the County chose to pursue revisions in this section of its LCP.

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

The proposed Coastal Commission Staff modifications added "Conversion of grazing area to crop production" to the list of activities NOT considered ongoing agriculture. In response to objections raised by the County and the agricultural community, the Commission deleted this provision. However, the Revised Findings state that "*those conversions [of grazing areas to row crops] that would intensify the use of land or water or require grading*" will require a Coastal Permit. As pointed out above, the Revised Findings provide no clear, objective or predictable

standard to determine when a conversion would constitute such intensification. Clarity and certainty are essential to the fair and effective administration of policies, and are vital to facilitating compliance by the ranchers and farmers being regulated by the County. That is why the County set out clear and measurable criteria for defining intensification in its policy:

“The following activities shall not be considered ongoing agriculture for the purposes of the definition of “Development” ...

The county’s policy directly addresses the two components of the definition of “development” discussed in the Findings. The “change in the intensity of use of water” is defined by “Development of new water sources,” while the “change in the intensity of use of land” is determined by four measurable, objective criteria: any “terracing of land for agricultural production; preparation or planting of land for viticulture; preparation or planting of land for cannabis; preparation or planting of land with an average slope exceeding 15%,” as shown below, with categories added.

Definition with deletions adopted by Commission Nov. 2, 2016

Agriculture Ongoing means the following agricultural activities:

~~Existing legally established a~~Agricultural production activities (including crop rotation, plowing, tilling, planting, harvesting, and seeding) which have not been expanded into never before used areas. Determinations of such ongoing activities may be supported by Marin County Department of Agriculture, Weights and Measures information on such past activities. Examples of activities that are NOT considered ongoing agricultural activities include but are not limited to:

- ~~Conversion of grazing area to crop production~~

[Intensifying the Use of Water]:

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

[Intensifying the Use of Land]

- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis
- Preparation or planting of land with an average slope exceeding 15%

A Coastal Development Permit will not be required if the County determines the activity qualifies for a de minimis waiver pursuant to the requirements Section 22.68.070, or is categorically excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.

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

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

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

For Discussion

The preceding discussion addresses the above issue.

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

The intent of the County’s use of “ongoing agriculture” was to provide farmers and ranchers greater predictability in the face of having to operate under a coastal permitting scheme that has at the least been rigorously implemented in the more than 45 years of the Coastal Commission’s existence. The list of activities and other criteria that were not considered ongoing agriculture was created by working extensively and intensively with a broad spectrum of stakeholders. Couching this definitive list in the context of “examples” opens the administration of this permit exemption to questions concerning which, if any, additional activities will not be considered ongoing agriculture

Agriculture, ongoing

~~Existing legally established agricultural~~ Agricultural production activities (including crop rotation, plowing, tilling, planting, harvesting, and seeding) which have not been expanded into never before used areas. Determinations of such ongoing activities may be supported by Marin County Department of Agriculture, Weights and Measures information on such past activities. **Examples of activities that are NOT considered ongoing agricultural activities include but are not limited to:**

- ~~• Conversion of grazing area to crop production~~
- Development of new water sources (such as construction of a new or expanded well or surface impoundment)
- Installation or extension of irrigation systems
- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis

- *Preparation or planting of land with an average slope exceeding 15%*

A Coastal Development Permit will not be required if the County determines the activity qualifies for a de minimis waiver pursuant to the requirements Section 22.68.070, or is categorically excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.

For Discussion

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

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

AMENDMENT 7- All other sections of the IPA

7-1. Definitions of "Existing"

Issue: As modified by Coastal Commission, the IP contains conflicting and confusing definitions of "existing" and "existing structure." It is unclear why the definitions reference two different dates. More importantly, use of the phrase "on **or** after" in the definition of "existing" essentially makes the date meaningless (i.e. things in existence on February 1, 1973 as well things in existence at any time after February 1, 1973 would include the entire universe of things in existence). Furthermore, under the Commission's definition of existing, a building or use that existed in 1973 (or sometime after) would qualify as "existing" even if it was subsequently removed or destroyed.

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

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

Existing Structure (coastal). A structure that is legal or legal non-conforming. For the purpose of implementing LCP policies regarding shoreline protective devices, a structure in existence since January 1, 1977 ~~May 13, 1982.~~

CCC Findings

The Coastal Act does not define “existing” or “existing structure” and the CCC findings do not specifically address the modifications made to these definitions by CCC staff. The term “existing” appears approximately 150 times in the LUP alone, and it used to qualify a wide variety of structures, objects, facilities, uses, and conditions (for example, existing character, existing zoning, existing wetlands, existing service capacity, existing water use, etc.). As noted above, since the Coastal Commission defines “existing” to mean extant on OR after February 1, 1973, any structure, object, facility, use or condition that existed on (or after) 1973, but has subsequently changed in some way would apparently still qualify as “existing”. This is unnecessarily confusing and could have unintended policy implications.

For example, it would be unclear whether a policy calling for “maintenance of the existing mix of residential and small scale commercial development” (such as Policy C-PRS-1 Community Character of Point Reyes Station and several others) is referring to the mix of uses that existed in PRS in 1973 or sometime after. Similarly, a policy calling for the protection of some type of “existing coastal resource” could mean that resource as it occurred in 1973, or its current condition, or at some point in between (since all those timeframes qualify as “existing”). And would a requirement to analyze “existing service capacity” or “existing water use” look at the capacity or use in 1973 or sometime later?

Finally, the definition of “existing” would introduce conflict with respect to IP provisions regarding Nonconforming Uses and Structures (Section 22.70.160) which apply to “existing and lawfully established” uses and structures. Specifically, Section 22.70.160(C) states that if a use is abandoned for 12 months or longer, that use is no longer nonconforming. However, according to the definition, any use that existed on (or after) 1973 would still meet the definition of “existing”, regardless of whether it was subsequently abandoned. This could put the County in the awkward position of arguing that a use which qualifies as “existing” under the definition has nevertheless lost its status as “nonconforming”.

CCC May 9, 2017 Letter

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

For Discussion

The County should seek to clarify definition of “existing” with the Coastal Commission staff and consider resubmitting County’s definition (for example, “existing at the time a particular Coastal Permit application is accepted for filing”). The definition of “existing structure” should be revisited in connection with future ongoing work on resolving Environmental Hazard issues since it relates primarily to provisions for shoreline protective devices.

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

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

Issue: As modified by Coastal Commission, the IP contains a confusing and duplicative definition of “legal lot” which implies that lots created prior to the Coastal Act are illegal. If left as is, extensive corrections will be needed throughout LCP (to replace “legal lot” with “legal lot of record”). In addition, some CCC modifications to the definition of “legal lot of record” appear to be inconsistent with the Subdivision Map Act.

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

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

- A. Recorded subdivision. The lot was created through a subdivision Final map or Parcel map recorded on or after January 1, 1930. Antiquated subdivisions shall not be deemed to have created lots. A lot ~~depicted created~~ on a subdivision Final map or Parcel map recorded before January 1, 1930 may be considered a legal lot only if it has been reconveyed subsequent to January 1, 1930 with references made to the original subdivision Final map or Parcel map.
- B. Individual lot legally created by deed. The lot was legally created by deed conveyance into separate ownership and was in compliance with the zoning and subdivision requirements that applied at the time of creation.

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

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

CCC Findings

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

CCC May 9, 2017 Letter

In their letter of May 9, 2017, Coastal Commission staff state that as conditionally certified by the Commission in the definition of legal lot, a Coastal Permit is only required where necessary. However, this is not how the definition actually reads. The definition uses the term “necessary” only in reference to the Map Act, not the Coastal Act (“a lot that...has received the *necessary* Map Act approval and a Coastal Permit”). However, the Coastal Commission letter appears to confirm that their intention was to state that a Coastal Permit is only required where necessary (i.e., for lots created after adoption of the Coastal Act).

For Discussion

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

7-3. Piers and Caissons

Issue: The definition of “shoreline protective device” has been modified by the Coastal Commission to include piers and caissons, which are commonly used in the construction of building foundations. Accordingly, foundation work mandated by FEMA and associated with elevating structures would trigger the stringent requirements associated with shoreline protective devices designed to reduce coastal erosion.

Shoreline Protective Device. ~~(coastal)~~. A device (such as a seawall, revetment, riprap, bulkhead, piers/caissons, or bluff retention device) built for the purpose of serving a coastal-dependent use, or protecting an existing structure or public beach in danger from erosion.

Coastal Commission Findings

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

CCC May 9, 2017 Letter

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

For Discussion

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

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

7-4. Definition of Grading

Issue: The Coastal Commission modifications removed the quantitative trigger determining the amount of earth movement that requires a Coastal Permit. As modified, such determinations will be subject to the judgement and discretion of staff, which may result in inconsistencies and confusion.

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

CCC Findings

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

Coastal Act Section 30106- Definition of Development

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

CCC May 9, 2017 Letter

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

For Discussion

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

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

Issue: Within the definition of “streambank”, the Coastal Commission modifications replaced the “thalweg” (the line of lowest elevation within a watercourse) with “ordinary high-water mark” which is more complicated and costly to determine, particularly for a watercourse with no discernible bank.

Stream Bank. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernible bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. In areas where a stream has no discernible bank or riparian vegetation, the stream boundary shall be considered the stream's ~~thalweg~~, ordinary high-water mark.

Coastal Commission Findings

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

Coastal Commission May 9, 2017 Letter

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

For Discussion

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

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

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

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

(Footnote 6) The maximum residential density for proposed divisions of land for that portion or portions of properties with Environmentally Sensitive Habitat Areas and buffers, and properties that lack public water or sewer systems, shall be calculated at the lowest end of the density range as established by the governing Land Use Category, except for projects that provide significant public benefits, as determined by the Review Authority, or lots proposed for affordable housing, and if it can be demonstrated that the development will ~~can~~ avoid and protect all ESHA and ESHA buffers and will avoid all hazardous areas and hazard setbacks, and will be served by on-site water and sewage disposal systems.

(Footnote 7) The maximum non-residential and non-agricultural floor area for that portion or portions of properties with Environmentally Sensitive Habitat Areas and buffers, hazardous areas and setbacks, and properties that lack public water or sewer systems, shall be calculated at the lowest end of the density range as established by the governing Land Use Category, except for projects that provide significant public benefits, as determined by the Review Authority, ~~or~~ and where it can be demonstrated that the development will ~~can~~ avoid and protect all ESHA and ESHA buffers and will avoid all hazardous areas and hazard setbacks, and will be served by on-site water and sewage disposal systems.

Coastal Commission Findings

Section 22.64.030 of the IP establishes general site development standards (such as minimum lot area, maximum density, and setback requirements) for the various coastal zoning districts, which are shown in Table 5-4-a & 5-4-b (Coastal Zoning Development Standards) and Table 5-5 (Coastal –B Combining District Development Standards). However, footnotes to each table (shown above) specify that otherwise allowable densities and floor areas must be reduced for residential land divisions and non-residential or non-agricultural development (such as commercial or recreational uses) in cases where a property contains ESHA and ESHA buffers or lacks public water or sewer systems. Specifically, the maximum residential density for land divisions (or the maximum floor area for non-residential/non-agricultural development) in these cases must be calculated at the lowest end of the allowable density or floor area range, unless it is determined that the project provides significant public benefits or affordable housing, and will be adequately served by on-site water and sewage disposal systems. Modifications proposed by the Commission (shown in track-changes) would further restrict development by applying these “lowest allowable” density and floor area restrictions to commercial properties containing any hazardous areas and setbacks, and by specifying that exceptions to these restrictions (i.e., land divisions resulting in affordable housing and other public benefits) can only be considered where development “will avoid all hazardous areas and hazard setbacks.” This exception is really not an exception in that the standard mandates that the development avoid the hazard areas and setbacks, rendering it meaningless.

ATTACHMENT 1
Discussion of CCC LCPA Modifications

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

Given the wide range and broad extent of potential environmental hazards in the coastal zone, staff is concerned that Commission modifications will have the effect of significantly restricting opportunities for affordable housing development as well as commercial development (including visitor-serving uses) within the coastal zone. For example, most developed areas along Marin’s coastline could be in potentially hazardous areas due to a combination of seismic, flooding, fire, geologic other hazards. However rather than stating that development in these areas must comply with hazard policies, the CCC modifications would automatically restrict development to the lowest end of the density range solely because the property could be subject to hazards.

Perhaps more importantly, the “lowest allowable” floor area ratio for commercial development in common commercial land use categories such as General Commercial or Coastal Recreational Commercial is only five percent. Since many commercial properties, particularly in coastal villages, are already developed with floor area ratios well above 5 percent, the provision proposed by Coastal Commission staff to apply the lowest allowable density and avoid all hazardous areas could effectively prohibit ANY additional floor area, no matter how minor, and regardless of whether the particular hazard could be mitigated.

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

CCC May 9, 2017 Letter

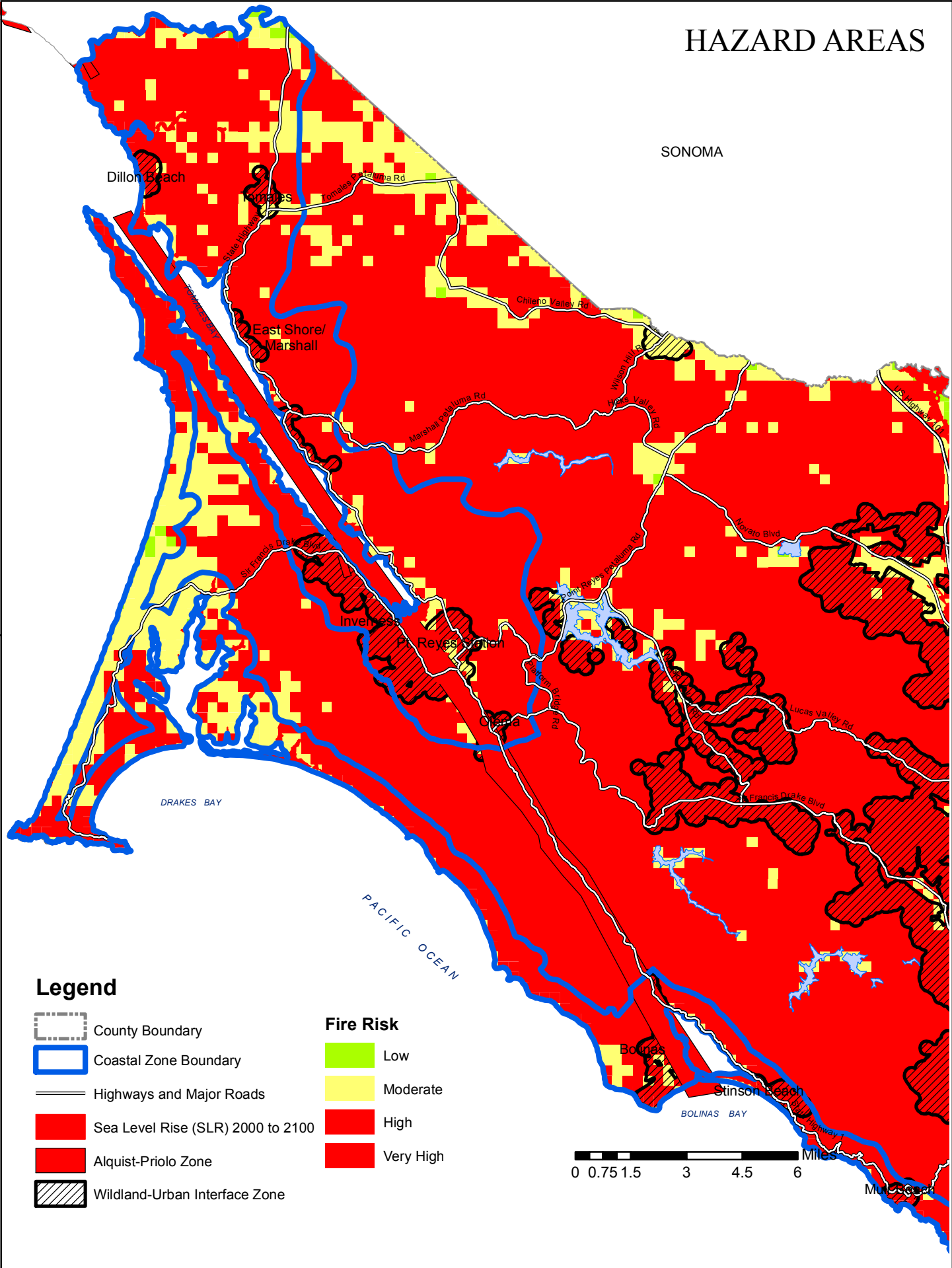
In their letter of May 9, 2017, CCC staff recognize the County's position that density provisions in hazard areas should be addressed through the Environmental Hazards Amendments and acknowledges that, when the Commission considers the remaining LCP Environmental Hazards Amendments, the Commission can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

For Discussion

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

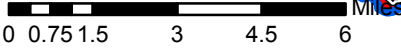
HAZARD AREAS

SONOMA



Legend

- County Boundary
 - Coastal Zone Boundary
 - Highways and Major Roads
 - Sea Level Rise (SLR) 2000 to 2100
 - Alquist-Priolo Zone
 - Wildland-Urban Interface Zone
- | Fire Risk | |
|-----------|-----------|
| | Low |
| | Moderate |
| | High |
| | Very High |



BOS Findings-Action on CCC Modifications

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

1. **AMENDMENT 1–Land Use Plan, without Agriculture, Hazard Chaps** p. 2
 - 1.1 Fire Hazards and ESHA p. 2
 - 1.2 C-PK-3 Mixed Uses in Coastal Village Commercial/Res. Zone p. 3
 - 1.3 Limited Service Capacity, Priority Uses p. 5

2. **AMENDMENT 2 LUPA Agriculture Chapter** p. 7
 - 2.1 “As Necessary for” p. 7

Key to text changes shown:

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

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

1-1. Fire Hazards and ESHA

Recommendation: Accept with Clarification

As Modified

C-BIO-4 Protect Major Vegetation. Require a Coastal Permit for the removal or harvesting of major vegetation other than for agricultural purposes. Such major vegetation removal shall avoid ~~adverse impacts to an~~ ESHA, ~~its~~ ESHA buffers, coastal waters, and public views, and shall not conflict with prior conditions of approval, ~~and shall be consistent with Policy C-DES-11 (Minimization of Fuel Modification).~~

Program C-BIO-4.b Integrated Planning for Fire Risk, Habitat Protection, and Forest Health. Develop a Coastal Permit process that protects coastal resources and allows for expedited review of projects related to the management or removal of major vegetation to minimize risks to life and property or to promote the health and survival of surrounding vegetation native to the locale.

C-DES-11 ~~Minimization~~Avoidance of Fuel Modification. Site and design new development to avoid required initial and future fuel modification and brush clearance in general, and to avoid such activities within ESHAs and ESHA buffers, in order to avoid habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas. (See also Policies C-BIO-3, C-BIO-~~1819~~ and C-BIO-~~2324~~ (ESHA, Wetland, Stream Buffers), C-BIO-4 (Protect Major Vegetation) and C-EH-~~9~~ (Standards for Development Subject to Fire Hazards); ~~Vegetation Management in Environmentally Sensitive Habitat Areas.~~)

Findings

The County acknowledges the priority the Coastal Act places on preventing significant impacts to ESHAs and adjacent areas. Therefore, the County accepts the modified language in Policy C-BIO-4 as stating the County's primary objective is to avoid removing major vegetation that may cause significant impacts to ESHA and ESHA buffers. To achieve consistency with Program C-BIO-4.b, to maintain consistency with Coastal Act Section 30240, and to comply with the defensible space requirement of Public Resources Code Sect. 4291, the modified policy shall not be construed to prevent the County or the Coastal Commission from permitting the removal of major vegetation when determined necessary to protect life and property from the risk of hazard as required by Coastal Act section 30253, and to comply with defensible space standards in Public Resources Code Section 4291.

Commission staff indicated the potential to clarify Program C-BIO-4.b to address ESHA as part of a concurrent "clean up" amendment when the Commission considers the Environmental Hazards chapters.

Background

MAY, 2017 ACTIONS ON LUP MODS
March 20, 2017 Attachment 2

The modifications to Policy C-BIO-4 may conflict with the implementation of Program C-BIO-4.b insofar as the program calls for creating an expedited review process for removal of major vegetation to address risks to life and property and to promote native vegetation.

Coastal Act Section 30240 addresses environmentally sensitive habitat areas (ESHAs) and adjacent developments by protecting against the *significant disruption* of ESHAs and preventing significant degradation from development in adjacent areas (i.e. ESHA buffers):

(a) Environmentally sensitive habitat areas shall be ***protected against any significant disruption*** of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in ***areas adjacent*** to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to ***prevent impacts which would significantly degrade*** those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The County added C-DES-11 to assure that new development will not encroach on ESHA or ESHA buffer areas. C-BIO-4 similarly provides such protection in the case of major vegetation removal. But the County is concerned that C-BIO-4 not be read to unduly limit the options to be explored under ***Program C-BIO-4.b, especially since any policy developed thereunder would require certification by the Commission.***

The County requested clarification from Commission staff regarding vegetation removal to meet fire safety requirements for existing structures. Commission staff indicated this type of clearance is considered maintenance of the existing structure. Under Coastal Act Section 30610(d), repair and maintenance activities that do not enlarge or expand a single-family residence are exempt from a Coastal Development permit, unless such repair and maintenance activities involve a risk of substantial adverse environmental impact and are located in an environmentally sensitive habitat area, per Public Resources Code Section 13252(a). LCPA Implementation Program Section 22.68.050, which carries out Coastal Act Section 30610(d), allows improvements to structures without a Coastal Permit, including landscaping.

Additional guidance on this issue is provided by Environmental Hazard Policy C-EH-9 (see full text below), which provides standards for both existing and new development subject to fire hazards. The policy allows removal of major vegetation adjacent to existing development for fire safety purposes as long as fuel modification and brush clearance are required in accordance with applicable fire safety regulations and are being carried out in a manner that reduces coastal resource impacts to the maximum extent feasible. Vegetation is often required by the fire department to be removed, thinned or otherwise modified in order to minimize the risk of fire hazard, and requires such activities be carried out in a manner which reduces coastal resource impacts to the maximum extent feasible. Under this scenario, the County asserts vegetation removal to meet defensible space requirements is considered maintenance when done for an existing structure. Accordingly, a Coastal Permit may be waived in compliance with a De Minimis Waiver per Section 22.68.070 as long as the fuel modification or brush removal activity has no potential for adverse effects on coastal resources.

Marin fire officials mitigate fires using hazardous fuel modification, which includes wide area defensible space projects and use of fuel breaks. Other programs encourage homeowners to prepare homes from the risk of wildfire, such as fuel reduction projects that involve cutting, clearing, and limbing understory vegetation around structures, fire roads, and evacuation routes,

and making a home fire safe and ignition resistant. These measures are consistent with California Public Resources code 4291.

The County has also amended the 2003 International Urban-Wildland Interface Code to apply more stringent building standards that requires the preparation of a Vegetation Management Plan for development within the Wildland-Urban Interface (WUI). The County has also amended the 2013 California Fire Code (CFC) Chapter 49 requirements for defensible space around existing homes such that the property line no longer limits the amount of defensible space required around structures. If the 100-foot defensible space/fuel modification zone extends from private to public lands, the defensible space stops at the property boundary. However, fuel modification/clearance may be permitted after an evaluation and issuance of approval from the public land management agency.

The Marin County Fire Department's "2016 Community Wildfire Protection Plan" identifies and prioritizes areas for fuel reduction strategies. Several key actions recommended in this document are excerpted below:

8.1.2 Articulate and Promote the Concept of Land Use Planning Related to Fire Risk

- Continue to promote the concept of land use planning as it relates to fire risk and hazard reduction and landowner responsibilities; identify the key minimum elements necessary to achieve a fire safe community and incorporate these elements into community outreach materials and programs.
- Continue to implement the structural ignitability activities
- Coordinate with county and local government staff to integrate Firewise approaches into planning documents and ordinances
- Continue to secure funding opportunities for dedicated defensible space inspectors
- Consider how to make the tree removal process less cumbersome and less expensive

8.1.3 Support and continue to participate in the collaborative development and implementation of wildland fire protection plans

- Work collaboratively with county, local, and regional agencies and landowners to develop fuel reduction priorities and strategies based on this CWPP, local CWPPs, and/or other regional plans.
- Support the development and implementation of local-scale CWPPs.
- Provide a collaboration mechanism between private property owners (and Home Owners Associations) and large land owners (i.e., MCOSD, MMWD, NPS)
- Consider the creation of transition zones (areas between developed residential areas and open space areas) where additional defensible space or additional vegetation clearance is needed.

8.1.4. Increase awareness, knowledge, and actions implemented by individuals and communities to reduce human loss and property damage from wildland fires

- Continue to implement the defensible space and outreach activities
- Educate landowners, residents, and business owners about the risks and personal responsibilities of living in the wildland, including applicable regulations, prevention measures and preplanning activities
- Continue to increase education and awareness about structural ignitability and defensible space

- Improve the ability to enforce defensible space compliance with absentee property owners

8.1.5 Integrate fire and fuels management practices

- Continue to implement the vegetation management and fuel reduction activities
- Continue to implement and maintain vegetation/fuel management projects along highly traveled roadways and access points into all public lands in order to minimize ignitions
- Develop a program to address fuel reduction on vacant properties
- Create transition zones to extend shaded fuel breaks between developed residential areas and open space areas.
- Identify and implement vegetation management projects in priority WUI communities throughout the county.
- Work to reduce regulatory barriers that limit hazardous fuels reduction activities (e.g., tree removal process).

Environmental Hazard Policy C-EH-9:

(The following policy shows modifications adopted by the Coastal Commission in red)

C-EH-9 Standards for Development Subject to Fire Hazards. In addition to other requirements that may apply (e.g., if it is also shoreline, blufftop, or bluff face development, and/or development subject to geologic hazards), the following standards apply to development subject to fire hazards:

C-EH-23-1) New Development and Fire Safety. ~~Coastal Permit applications~~New development shall ~~demonstrate that the development~~ meets all applicable fire safety standards. ~~and shall be s~~Sited and designed ~~new development~~ to minimize required initial and future fuel modification, and brush clearance in general, to the maximum feasible extent, and to avoid such activities within ESHA and ESHA buffers on site and on neighboring property, including parkland, where all such requirements shall be applied as conditions of approval applicable for the life of the development.

C-EH-25 2) Existing Development and Fire Safety. Removal of major vegetation ~~around adjacent to~~ existing development for fire safety purposes shall only be allowed ~~with a coastal permit waiver~~ upon a finding that fuel modification and brush clearance techniques are required in accordance with applicable fire safety regulations and are being carried out in a manner which reduces coastal resource impacts to the maximum feasible extent. In addition to the foregoing requirements, removal of ESHA, or ~~is~~ removal of materials in an ESHA buffer, shall only be allowed for fire safety purposes: if it is not already prohibited by coastal permit conditions; if there are no other feasible alternatives for achieving compliance with required fire safety regulations; and if all ESHA and related impacts are mitigated in a manner that leads to no net loss of ESHA resource value.

1-2. C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone

Recommendation: Accept with Intent to Resubmit

LUPA As Modified by CCC

C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone. Continue to permit a mixture of residential and commercial uses in the C-VCR zoning district to maintain the established character of village commercial areas. Principal permitted use of the C-VCR zone shall ~~be include commercial uses. In the village commercial core area, 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

(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.

RESOLUTION NO. _____

RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS
ACCEPTING CALIFORNIA COASTAL COMMISSION MODIFIED
AMENDMENTS TO THE MARIN COUNTY LOCAL COASTAL PROGRAM

SECTION 1: FINDINGS

WHEREAS, the Marin County Board of Supervisors hereby finds and declares the following:

1. **WHEREAS**, Section 30500 of the Public Resources Code requires each County and City to prepare a Local Coastal Program (LCP) for that portion of the coastal zone within its jurisdiction.
2. **WHEREAS**, the California Coastal Commission effectively certified Unit I of the Marin County Local Coastal Land Use Plan (LUP) on June 3, 1981, and Unit II on April 7, 1982. The total LCP was certified on May 5, 1982, and the County assumed permit-issuing authority on May 13, 1982.
3. **WHEREAS**, the Marin County Board of Supervisors in 2009 initiated a process to substantially amend the certified LCP, and specifically made provisions for extensive input from the public and interested agencies and organizations.
4. **WHEREAS**, in the process of developing a final set of LCP Amendments to submit to the Coastal Commission, the Marin County Planning Commission, Board of Supervisors and staff have held more than 50 workshops, meetings and public hearings to engage the public and interested agencies and organizations in the formulation of the LCP Amendments. All public review documents have additionally been made available to the public on the LCPA website at www.MarinLCP.org.
5. **WHEREAS**, following another public hearing on February 13, 2012, the Marin County Planning Commission approved the LCP Amendments and directed staff to submit to the Board the Planning Commission Approved Draft, Recommended to the Board of Supervisors, dated February 13, 2012. This draft document was mailed to interested parties, posted in all Marin County libraries, posted on the MarinLCP.org website, and available to the public at the Marin County Community Development Agency front reception desk.
6. **WHEREAS**, beginning on October 2, 2012, a series of public hearings were held by the Board of Supervisors to receive testimony on the LCPA and to provide the public and affected agencies and districts with the maximum opportunity to participate in the update to the LCPA, consistent with California Code of Regulations Sec. 13515 and Public Resources Code Sec. 30503.
7. **WHEREAS**, on July 30, 2013, after another public hearing, the Marin County Board of Supervisors approved the proposed LCPA amendments to the Marin County Local Coastal Program and directed they be submitted to the California Coastal

Commission for certification.

8. **WHEREAS**, on September 20, 2013 the LCPA was submitted to the Coastal Commission staff for informal review and advice as to the completeness of the document under Commission regulations prior to official submittal.
9. **WHEREAS**, after providing further clarification requested by Coastal Commission staff, the LCPA was officially submitted to the Commission on November 7, 2013.
10. **WHEREAS**, following a lengthy process of providing additional material at the request of the Commission staff, the Commission staff deemed the LCPA submittal complete on April 28, 2014.
11. **WHEREAS**, throughout the period from September 2013 through May 2014, County staff worked closely with Commission staff to resolve differences between the LUP policies approved by the Marin County Board of Supervisors and numerous "Suggested Modifications" proposed by Commission staff.
12. **WHEREAS**, citing time constraints and the volume of material involved, Commission staff subsequently recommended, and the County agreed, to separate the Land Use Plan Amendments (LUPA) from the Implementation Program Amendments (IPA) and proceed with action on the LUPA separately. After a public hearing the Coastal Commission approved the LUPA with Suggested Modifications on May 15, 2014.
13. **WHEREAS**, after continuing dialogue with County staff, in November 2014 the Commission staff then released a draft set of Suggested Modifications to the IPA containing hundreds of proposed changes from the version adopted by the County Board of Supervisors, prompting extensive additional discussions between the County and Commission staffs and interested members of the public. The Commission staff set out revised Suggested Modifications to the IPA in a staff report dated April 2, 2015, supplemented by an addendum staff report dated April 15, 2015. On the next day, April 16, 2015, the Coastal Commission conducted a hearing and took testimony on the Suggested Modifications proposed by the Commission staff. Due to the complexity of the issues raised by the modifications and the limited time available to craft solutions, County Staff withdrew the IPA from consideration by the Commission.
14. **WHEREAS**, the County subsequently reviewed the Suggested Modifications to the Land Use Plan adopted by the Coastal Commission, as well as the proposed modifications to the Implementation Program contained in the Commission staff's published recommendations; and conducted additional public discussions on the County's Land Use Plan and Implementation Program that incorporate the vast majority of the suggestions provided by the Coastal Commission.
15. **WHEREAS**, On August 25, 2015, after a cumulative total of 26 Planning Commission workshops and hearings, seven Board of Supervisor hearings, and numerous additional public staff meetings, the Board adopted three revised LCPA Amendments including all of the LUP except the Environmental Hazards Chapter and the Implementation Plan Amendments relating to Agriculture. These revised Amendments incorporated the vast majority of the Suggested Modifications specified by the Coastal Commission and the Commission staff.
16. **WHEREAS**, on September 30, 2015 the County timely filed these LCP Amendments 1-3 as described below, 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, for approval by the California Coastal Commission:

Amendment 1: The following Chapters of the LUPA: Introduction
Interpretation of the Land Use Plan (INT)
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)

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 as Specified in Attachment 3.

17. **WHEREAS**, on April 19, 2016, following further extensive discussions with the public and Coastal Commission staff and a public hearing, the Marin County Board of Supervisors adopted the following Amendments 4-7 to the certified Marin County Local Coastal Program, 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:

Amendment 4: The Environmental Hazards (EH) Chapter of the Land Use Plan Amendment (LUPA):

Amendment 5: Specified Chapters and Sections of the Marin County Development Code comprising a portion of the Implementation Program Amendment (IPA) for the LUPA Environmental Hazards Chapter.

Amendment 6: Coastal Permitting and Administration sections of the IPA Code (Chapters 22.68 and 322.70)

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

Amendments 4-7 complemented the separate Marin County Amendments 1-3 that were previously on file with the California Coastal Commission, comprising the full LCP Amendment Resubmittal.

18. **WHEREAS**, following a lengthy process of providing additional material requested by the Commission staff, the County's April 19, 2016 full LCPA resubmittal was deemed complete on July 1, 2016. Consultations between the County and Commission staffs continued.
19. **WHEREAS**, on October 21, 2016 and then on November 1, 2016 the Coastal Commission staff issued reports recommending rejection of the County's LCPAs and setting out revised Suggested Modifications. On November 2, 2016, the Coastal Commission conducted a hearing and took testimony on the Suggested Modifications, and voted to change the "Agriculture, Ongoing" provision, and continue to a future date action on provisions related to Environmental Hazards.
20. **WHEREAS**, pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations, the April 19, 2016 County resolution for resubmittal specified that the Local Coastal Program Amendments will require formal County adoption after the Commission approval, and that the County will exercise its authority to determine that the Resubmitted Amendments shall not become effective unless and until the Board of Supervisors takes further action to place them in effect.
21. **WHEREAS**, pursuant to Sections 15250 and 15251(f) of the California Environmental Quality Act (CEQA) Guidelines, the preparation, approval, and certification of a Local Coastal Program Amendment is exempt from the requirement for preparation of an Environmental Impact Report (EIR) because the California Coastal Commission's review and approval process has been certified by the Secretary of Resources as being the functional equivalent of the EIR process required by CEQA in Sections 21080.5 and 21080.9 of the Public Resources Code.
22. **WHEREAS**, the Marin County Board of Supervisors intends that the LCP shall be carried out in a manner fully in conformity with the Coastal Act consistent with Public Resources Code Section 30510.
23. **WHEREAS**, the Marin County Board of Supervisors has reviewed and considered the information in the Marin County Local Coastal Program Amendment administrative record and staff reports for consistency with the California Coastal Act.

SECTION 2: AMENDMENT TO THE MARIN COUNTY LOCAL COASTAL PROGRAM

NOW, THEREFORE, BE IT RESOLVED, that the Marin County Board of Supervisors makes the following findings:

1. The recitals above are true and accurate and reflect the independent judgment of the Board of Supervisors.
2. Notices of the Planning Commission and Board of Supervisor hearings on the LCPA were given as required by law, and the actions were conducted pursuant to the Planning and Zoning Law and California Code of Regulations Sec. 13515.
3. All individuals, groups, and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the LCPA. These opportunities for comment meet or exceed the requirements of the Planning and

Zoning law and California Code of Regulations Sec. 13515.4.

4. All comments submitted during their respective public hearings on the LCPA were provided to and considered by the Planning Commission and Board of Supervisors.
5. The Board of Supervisors were presented with all of the information described in the recitals and has considered this information in adopting this resolution.
6. The LCPA has been completed in compliance with the intent and requirements of California Coastal Act, and reflects the independent judgment of the County of Marin.
7. The Marin County Board of Supervisors certifies each Local Coastal Program Amendment is intended to be carried out in a manner fully in conformity with the policies and requirements of the California Coastal Act, and that it contains, in accordance with guidelines established by the California Coastal Commission, materials sufficient for a thorough and complete review.
9. Each of the separate Land Use Plan and Implementation Plan Amendments 1 through 7 approved by this Resolution shall not become effective unless and until the Board of Supervisors adopts the amendments pursuant to 14 California Code of Regulations Sec. 13551(b)(2) following California Coastal Commission approval, and the California Coastal Commission effectively certifies such amendments.

NOW, THEN, LET IT BE FURTHER RESOLVED that the action of the Marin County Board of Supervisors on the adopted April 19, 2016 Local Coastal Program Amendments with Suggested Modifications by action of the Coastal Commission on November 2, 2016 shall meet the requirements of and conform with the policies of Chapter 3 of the California Coastal Commission pursuant to the following provisions of the Public Resources Code:

1. Section 30004(a): the Legislature further finds and declares that (a) To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement; and
2. Section 30500(c): The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the Commission and with full public participation; and
3. Section 30512.1(a): The Commission's review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3 (commencing with Section 30200). In making this review, the Commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan; and
4. Section 30512.2(c): The Commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) only to the extent necessary to achieve the basic state goals specified in Section 30001.5.

NOW, THEN, LET IT BE FURTHER RESOLVED that the May 16, 2017 Board Letter and attachments set out the interpretations that the County shall apply to the items enumerated therein; and that based on these interpretations the Board of Supervisors accepts the following Amendments to the LUP as Modified as separate and independent Amendments, to be certified by the Commission individually, and to become effective when the Commission certifies, and the Board accepts, Implementing Program Amendments specifically applicable to them:

Amendment 1: The following Chapters of the LUPA:

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

Amendment 2: The Agriculture Chapter of the LUPA.

Adoption of each of the separate April 2016, Amendments as Modified and clarified, as Local Coastal Program Amendments are in the public interest and necessary for the public health, safety, and welfare of Marin County.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this 16th day of May, 2017, by the following vote:

AYES:

NOES:

ABSENT:

JUDY ARNOLD, PRESIDENT

BOARD OF SUPERVISORS

ATTEST: _____

Clerk to the Board of Supervisors

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5260
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May 9, 2017

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

SUBJECT: Marin County Board of Supervisors' Consideration of the Coastal Commission's Conditional Certification of the Marin County Local Coastal Program Update with Suggested Modifications

Dear Board President Arnold and Honorable Supervisors:

At the November 2, 2016 Coastal Commission meeting in Half Moon Bay, the Commission acted on proposed Marin County Local Coastal Program (LCP) Amendment Number LCP-2-MAR-15-0029-1 (Marin County's proposed LCP Update, made up of County numbered amendments 1 through 7). As discussed and agreed to at the hearing with the County's Director of Community Development, Brian Crawford, and at the request of then Commissioner/County Supervisor Steve Kinsey, the Commission continued the hearing on the portion of the proposed LCP Update relating to environmental hazards (i.e., amendments 4 and 5), then first denied and then conditionally certified with suggested modifications the remainder of the LCP Update (i.e., amendments 1,2,3,6 and 7). The current deadline for the Commission to act on the County-submitted environmental hazards portion of the LCP Update is September 29, 2017, and we are working with your staff on resolving the issues relating to hazards.

Pursuant to the Commission's regulations, the County has until May 2, 2018¹ to accept the Commission's conditional certification of the non-hazard portions of the LCP Update. If the County has not accepted and agreed to the Commission's suggested modifications by that time, then the modifications expire, and only the Commission's denial stands. Since the November 2, 2016 Coastal Commission hearing on the proposed LCP Update, Commission and Marin County staffs have continued to work closely together on all aspects of the County's Update, including both in terms of the November 2, 2016 Commission's conditional certification as well as the hazards components that were continued to a future Commission hearing. In terms of the former, we have had multiple discussions with your staff about the Commission's November 2, 2016 action. Your staff has presented their take on those discussions in their published staff report to you. Commission and County staffs have also discussed potential future implementation issues

¹ The original deadline was May 2, 2017, but the County requested, and the Commission granted, a one-year extension of that deadline to May 2, 2018 on March 8, 2017.

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and potential future LCP improvements to address issues that could be pursued by the County through future LCP amendment requests to improve the ease of implementation. Finally, Commission and County staffs have also discussed the pending County environmental hazards amendments. On this last point, we have also acknowledged how future Commission action on the County hazard amendments could result in new suggested modifications to related provisions in the non-hazard LCP amendments in order to ensure that all portions of the LCP Update are internally consistent at the time the County LCP Update in its entirety goes into effect.

Unfortunately, even though Commission and County staffs have identified possible additional LCP changes that the County could pursue through future LCP amendments, and even though both staffs have discussed the potential to address any other internal inconsistency issues when the LCP hazards amendments are acted on by the Commission, County staff is recommending that the Board accept only the Commission's conditional certification of the non-hazard portions of the Land Use Plan (LUP) (i.e., amendments 1 and 2), and defer action on the remaining non-hazards portion of the LCP Update (i.e., the Implementation Plan (IP) amendments (i.e., amendments 3, 6 and 7)). We are not in agreement with your staff on this point.

We strongly believe that all of the concerns expressed by County staff in their proposed findings to you have already been addressed through our discussions over the last five months, and/or can be addressed through County submittal of future LCP amendments, and/or through future action by the Commission and the Board on the remaining hazards amendments. As such, we recommend that the Board of Supervisors take action on *all* of the non-hazard amendments as acted upon by the Commission at this hearing. We have collectively spent many years on these topics, and the Commission has already acted. If the County does not accept the non-hazard IP sections as acted upon by the Commission in November 2016, then if the County resubmits these IP sections again to the Commission, this will mean that *all* of those IP amendments will be before the Commission for yet *another* action, which would be the third time this has occurred (the County withdrew their submitted IP amendments in total right before the April 16, 2015 Commission hearing, and the decision by the Commission this past November was on the *resubmitted* IP amendments as a result of the County 2015 withdrawal). This is on top of the County also resubmitting the LUP amendments at the same time as the resubmitted IP amendments even after the Commission had already acted on them on May 15, 2014. We simply cannot continue to focus our limited staffing resources on additional Marin County resubmittals when the Commission has already acted, in this case multiple times. We respectfully request that we all close this chapter of the LCP Update so we can all focus our efforts on moving forward toward actually using the updated LCP as opposed to rehashing old issues over and over again.

In any case, if the Board accepts the Commission's November 2, 2016 action on the LCP Update, then we will report that acceptance to the Commission. At that point, the conditionally certified non-hazard portions of the LCP Update accepted by the Board would typically become certified and the County would be clear to start issuing CDPs under the updated LCP. However, as stated by the Commission's Chief Counsel to the Commission before their November 2, 2016 action, and 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

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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. We strongly recommend that you accept all of the non-hazard components of the LCP Update as acted upon by the Commission so we can focus our limited time and resources on finaling the submitted hazards update components and allowing for the LCP Update to finally be implemented.

As detailed below, this letter serves to acknowledge: 1) the portions of the Commission’s November 2, 2016 action discussed by County and Commission staffs; 2) your staff’s further interest in, and Commission staff’s support of, working together on future LCP amendment packages related to certain specific issues; and 3) that once the Board accepts the Commission’s suggested modifications to the non-hazard LCP update amendments and once those amendments are certified, the Commission can adopt additional suggested modifications if there is a need to in order to avoid the creation of any hazard-related inconsistencies at the same time the hazard amendments are acted on by the Commission. Of course, any newly suggested hazard-related modifications, to any portion of the Update, will need to be acted on and approved by the County Board of Supervisors in order to take effect.

1. The Commission’s November 2, 2016 action

a) Fire maintenance and environmentally sensitive habitat areas

County staff expressed concern that the Commission approved modifications to LCP Policy C-BIO-4 may conflict with future implementation of LCP 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 this removal program may be therefore limited in areas where environmentally sensitive habitat areas (ESHA) exist.

As stated on page 64 of Exhibit 3² of the Coastal Commission staff report dated October 21, 2017:

Fire safety is an important consideration for both existing and proposed new development. Generally, difficulties arise when fire safety requirements impinge on ESHA areas. For new development, the policies need to clearly state that development, including its fire safety requirements, needs to be sited and designed in such a way as to avoid ESHA, per the Coastal Act’s ESHA requirements. For existing development, it must be clear 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 impacts to the maximum feasible extent. In addition, removal of vegetation that constitutes ESHA, or is in an ESHA, or is in an ESHA buffer, for fire safety purposes may only be allowed if there are no other

² Marin Land Use Plan Update staff report prepared May 2, 2014.

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feasible alternatives for achieving compliance with required fire safety regulations and all ESHA and related impacts are appropriately mitigated, preferably as near as possible to the impact area and in a manner that leads to no net loss of ESHA resource value.

As such, the Commission's suggested modifications to C-BIO-4 would not limit the implementation of Program C-BIO-4(b) in ESHAs for either existing development safety needs or for future new development safety needs as these situations are already provided for in the Commission's adopted findings above. In addition, we continue to recommend similar language for these situations, including the not yet certified environmental hazards LUP Policy C-EH-9.³

b) Implementation of "necessary for" agriculture language

County staff raised concern that use of the term "necessary" in various LUP policies and development code provisions creates uncertainty by implying that various agricultural uses or facilities may, in some cases, not be necessary, or that the "necessity" of various uses or facilities may need to be demonstrated on a case by case basis. County staff findings in Attachment 1 state that use of the phrase "appurtenant and necessary to" will be interpreted as a declarative statement that such uses 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. Commission staff would like to clarify this interpretation consistent with the Commission's November 2, 2016 action.

Any allowable use needs to meet the definition and development standards for that use outlined in the LCP. In cases where the term "necessary" falls within the definition or development standard, it is important to read the term "necessary" within the context of the entire specific definition and/or development standard within which it lies. The language within the entire definition and/or development standard will assist the County in its determination that the use meets the definition as "necessary" for agriculture. For example, while the definition of agricultural processing facilities in LCP Section 22.130.030 includes the term "necessary" it also defines these facilities as those which process harvested crops or other agricultural products, and provides examples. This language and the enumerated examples will enable the County to make a factual determination of whether or not the use meets the applicable definition.

c) Defining reimbursement costs for educational tours

County staff expressed the need for further clarifications on how reimbursement costs will be interpreted for the purposes of determining whether a farm educational tour is a permitted or principally permitted use in the C-APZ zone and has provided some examples including payments to the operator or staff for their time (e.g., hourly rate charges), charges for the use

³ County staff findings in Attachment 1 incorrectly note that C-EH-9 has been adopted by the Coastal Commission. Please note that these modifications were part of the environmental hazards portion of the County's submittal that was continued at the November 2, 2016 hearing and are not yet certified.

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of the farm or its facilities for the educational tours, and revenues generated for non-profit organizations through the educational tours.

First, and to be clear, the question is not about whether educational tours are allowed on agricultural land under the LCP, because they are allowed in all cases per the Commission's action. Rather, the question raised by your staff pertains to whether such tours are principally permitted or simply permitted (i.e., the question is essentially related to how such tours are considered and processed). As conditionally certified by the Commission, whether or not a tour generates revenue beyond reimbursement costs provides an objective threshold for such a determination. As stated in LCP Section 22.32.062 "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." As also noted on page 54 of the November 2, 2016 Commission staff report findings, "if the owner/operator or third parties charge a fee that generates revenue, then the use is permitted because a tour that operates *for profit* [emphasis added] is a commercial use and does not qualify as principally permitted when the principally permitted use is agriculture in the C-APZ zoning district." As long as the fees that are received are solely for reimbursement, the County will be able to make a factual determination that the revenue being generated is not for profit. That factual determination is to be made on a case-by-case basis, however, because there are circumstances in which the same type of charge would exceed reimbursement costs and circumstances in which it would not exceed reimbursement costs.

d) Agricultural development categorically excluded from CDP requirements

The County requested clarity on agriculturally-related development that is excluded from CDP requirements consistent with the language in the existing County categorical exclusion orders. As detailed in the Commission's adopted staff report addendum findings dated November 1, 2016:

*These exclusions apply to specified parcels zoned Agriculture at the time of the exclusion orders' adoption that are located outside the areas prohibited by Coastal Act section 30610.5(b) as well as outside of the area between the sea and the first public road or a half-mile inland, whichever is less. Also, such excludable development must still be found consistent with the zoning in effect at the time of the orders' adoption (meaning the approved April 1981 zoning). For example, the Commission issued the County Categorical Exclusion Orders E-81-2 and E-81-6, **which exclude from coastal permit requirements agriculturally-related development, including production activities, barns and other necessary buildings, fencing, storage tanks and water distribution lines, and water impoundment projects.** Per Categorical Exclusion Order E-81-2[and E-81-6], agriculturally related development is defined to include 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*

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feet; electric utility lines; new fencing for farm or ranch purposes, provided no solid fence designs are used. (emphasis added)

Thus, and as specified in more detail in the exclusion orders themselves, agricultural production and related activities, including agriculture as defined in both of the specified categorical exclusion orders as “*tilling of the soil, the raising of crops, horticulture, viticulture, livestock, farming, dairying, and animal husbandry, including all uses customarily incidental and necessary thereto*”, that meet the terms and conditions of the exclusion orders do not require a CDP.

e) Identifying grading thresholds for CDPs

County staff expressed concern that, per the Commission conditionally certified definition of grading, any form of excavation, cutting, filling or stockpiling of soil material will require a CDP, even that below 50 yards. Commission staff would like to clarify County staff’s statement regarding grading in Attachment 1 consistent with the Commission’s action.

Commission staff is concerned with using a ‘numerical threshold’ to determine what does and does not need a CDP. The Coastal Act (Section 30106) determines when a CDP must be obtained for development, and unless exempted or categorically excluded, defines development to include any amount of grading without reference to a specific numerical threshold. If the County wishes to adopt a specific threshold for purposes of determining when a CDP will be required, as we have informed County staff for many years, the appropriate mechanism is to propose such a threshold through a new categorical exclusion. Absent an exclusion, the LCP that was conditionally certified by the Commission addresses grading in the same way as the Coastal Act. That being said, Commission staff acknowledges that the County will 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 (i.e., is it really excavation, cutting, filling or stockpiling of soil) for purposes of LCP implementation.

f) CDP exemptions

County staff has inquired whether or not there would be a deadline to challenge County determinations on County-issued CDP exemptions. This has been a topic of much discussion with your staff over the past four years, was discussed at length before the Commission took action in November 2016 and we continue to question how imposing a deadline would be appropriate if the exemption determination made by the County was not subject to appropriate noticing requirements so that all concerned public receives notice and can voice any concerns to the County or the Commission. As we have previously discussed with your staff, we are open to identifying deadlines for challenges in the LCP if the exemption determinations can be effectively noticed, but to date, such notice action has not been supported by County staff. Thus, the language conditionally certified by the Commission does not include challenge deadlines.

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In any event, we believe that effective noticing can help to better provide transparency in the County permitting process, and providing early notice to the Commission allows for early review and collaboration to help resolve any potential disputes that may arise. Our experience in similar LCP situations with other LCP entities without such deadlines indicates that it is a very, very small number of cases where determinations have been challenged, and these cases are generally resolved quickly when there is effective County and Commission staff coordination early in the process.

Further, the Coastal Commission staff report addendum dated November 1, 2016, previously responded to County staff claims that exemptions are not regulated under the Coastal Act as put forth in Attachment 3 of the County staff report (Memorandum by Steven H. Kaufmann, dated October 31, 2016) as follows:

The County has expressed concern over the Commission staff suggested process for exemption noticing and challenges and goes as far as to assert that exemptions are not regulated under the Coastal Act. Commission staff disagrees. As explained in the staff report, the provision of public notice for exemption decisions is especially critical because Section 30625 of the Coastal Act grants the Commission appellate jurisdiction to hear an appeal of a decision rendered by a local government on either a coastal development permit or a claim of exemption from Coastal Act permitting requirements. Further, public comments received by the Commission have repeatedly asserted the critical importance of adequate and effective noticing of CDP exemption determinations made by the County. Section 30006 of the Coastal Act provides that “the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.”

g) Legal lot definitions

County staff have raised concerns that the way ‘legal lot’ and ‘legal lot of record’ are defined could imply that lots are not considered legal unless they have a CDP. 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). A “legal lot of record” is a SMA term connoting that a lot has affirmatively been determined to be legal under the SMA through the issuance of a certificate of compliance. As conditionally certified by the Commission in the definition of legal lot, a CDP is only required where *necessary*. This definition is also consistent with LCP Section 22.70.190(A) which states that “A conditional certificate of compliance issued pursuant to Government Code section 66499.35 shall include a condition that requires *any necessary* [emphasis added] Coastal Permit.”

In summary, Commission staff believes that the Commission’s action on the LCP update already addresses and takes care of County staff expressed concerns regarding fire safety and ESHA requirements, ‘necessary for’ agriculture language, educational tours, categorical exemptions,

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legal lot definitions, grading, and exemption noticing and deadline requirements. We do not agree that the County should postpone action on acceptance of Commission action on LCP amendments 3, 6 and 7 with regard to the above concerns. In fact, we again note that if the IP amendments conditionally certified by the Commission last November are not accepted by the County, then we will find ourselves in an endless resubmittal loop that is not a good use of our collective time and resources. We again strongly recommend the Board's acceptance of the Commission's November action.

2. The Potential for future LCP amendments

a) Implementation of Land Use Plan Policy C-PK-3 in the Coastal Villages

County and Commission staff discussed the suggested modifications adopted by the Commission for LUP Policy C-PK-3, and requested confirmation that Commission staff will support a future LCP amendment to include maps that specifically depict a village commercial core area and add a corresponding overlay zone. As your staff is aware, we have long supported implementation of Policy C-PK-3 in this manner, but the County was not able to develop this as part of the LCP Update submitted to the Commission. As a result, and based upon discussion on this point with your staff before the Commission's November hearing, the Commission's modifications to LUP Policy C-PK-3 instead implement the policy by defining the village commercial core area as "the central portion of each village that is predominantly commercial." As described in the Coastal Commission staff report findings dated October 21, 2016 on page 94 and 95,

In addition, proposed Policy C-PK-3 must be modified to define the core commercial areas within the C-APZ zone wherein residential uses will only be allowed on the ground floor of a new or existing structure on the road-facing side of the property and where a finding must be made that the development maintains and/or enhances the established character of village commercial areas. Unless application of the proposed policy is limited to a defined commercial core area, it would apply to all areas designated C-VCR in the commercial areas of Stinson Beach, Bolinas, Olema, Point Reyes Station, Marshall/East Shore, and Tomales. Since the intent is to govern the commercial core of the villages, which does not necessarily include all areas designated C-VCR, it is appropriate to limit the required finding that ground-floor residential uses enhance the established character of village commercial areas to development within the village commercial core.

As conditionally certified by the Commission, the restrictions to residential development in C-PK-3 will apply to the village core commercial areas defined as "the central portion of each village that is predominantly commercial" not the entire VCR zoning district as stated in County staff report findings in Attachment 1. In addition, Commission staff supports the County's desire to work together on a future LCP amendment package to include maps that specifically depict the village core commercial areas and add a corresponding overlay as an alternative method of implementing this LUP Policy.

b) Regulation of private wells

County staff has raised concern with potential implementation difficulties associated with analyzing the coastal resource impacts of new or expanded private water wells, including that it may be burdensome and expensive for applicants. They have also put forth the position in County staff report findings in Attachment 1 that LCP Policy C-PFS-4 will only be interpreted to apply to public services as distinguished from individual water and wastewater disposal facilities. This interpretation is not consistent with the Commission's action. However, Commission and County staff have discussed alternative ways that associated LUP policies and IP standards could be drafted, and Commission staff supports the County's desire to work together on a future LCP amendment package designed to implement the relevant LCP policies and standards in another Coastal Act consistent manner.

3. Potential environmental hazard related issues

County staff expressed concern that the definitions of "existing" and "existing structure," including references to being "extant on or after February 1, 1973" affects and is affected by the environmental hazards portion of the LCP Update that is awaiting action because of its relevance to policies for shoreline protective devices. In addition, County staff believes that the definition of shoreline protective device should be addressed through the environmental hazards amendment action, and requests that piers and caissons not be considered as shoreline protective devices. Finally, County staff continues to suggest that given the wide range and broad extent of potential environmental hazards existing in the coastal zone, Commission modifications which identified "all hazardous areas and hazard setbacks" as a criteria for applying the "lowest allowable" density/floor area restrictions and the further requirement that "all hazardous areas and hazard setbacks" be avoided will have the effect of significantly restricting opportunities for new affordable housing development as well as commercial development (including visitor-serving uses) within the coastal zone.

As we have discussed with your staff, Commission staff cannot make changes to Commission-approved language that was conditionally certified on November 2, 2016. However, while changes cannot be made to the conditionally certified language approved by the Commission, if the amendments are accepted by the Board and become certified, when the Commission considers the remaining LCP hazards amendments, the Commission can adopt new suggested modifications to related provisions in those already acted upon and certified amendments at the same time it acts upon the postponed environmental hazards portions of the LCP update. This will ensure that all portions of the LCP Update are internally consistent at the time the LCP Update in its entirety goes into effect. We would be happy to work through the identified issues – and any others – that arise during the Commission's consideration of the hazards component of the LCP Update.

In conclusion, thank you again for the opportunity to provide our input as you consider your staff's recommendation on the Coastal Commission's conditional certification of the non-hazard components of the County's LCP Update. We have worked diligently with your staff for many, many years on your update, including considerable effort over the past five months, and look

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forward to resolving remaining issues so that the County has a fully certified LCP Update that can take effect as soon as possible. We do not believe the existing County staff concerns should delay Board action on the Commission's conditional certification. We hope that you will accept the entirety of the Commission's November 2016 action so that we can focus our collective efforts on finaling the hazards component of the Update so that the County can finally start using the updated LCP. Your action today is an important step and milestone in that process, and we urge your acceptance of the Commission's conditional certification.

Please feel free to contact me at (415) 904-5290 or by email at nancy.cave@coastal.ca.gov if you have any questions or would like to discuss these matters further.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Cave".

Nancy Cave
District Manager, North Central Coast District
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

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December 15, 2017

Brian Crawford, Director
Marin County Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
(415) 473-6278
bcrawford@marincounty.org

Subject: Marin County Local Coastal Program Update Status

Dear Mr. Crawford:

Thank you for a productive meeting on Thursday, December 7, 2017 regarding the development of a new LCP amendment submittal for the hazards section of the Marin LCP update. We look forward to continued progress as you develop an amendment for Board consideration (and ultimately Coastal Commission consideration) and appreciate the collaborative efforts by you and your staff.

As we also discussed (and have conveyed to your staff previously), the deadline for the Marin County Board of Supervisors to accept the Coastal Commission's suggested modifications pursuant to the Commission's conditional approval in November of 2016 of the majority of the LCP update is May 2, 2018, and that deadline cannot be further extended.¹ If the County has not accepted the Commission's suggested modifications by that date, then the conditional approval expires and the County would need to start over with any proposed LCP update or amendments thereto. To avoid expiration of the conditional approval, the Board would need to take final action to accept the Commission's suggested modifications prior to the May 2, 2018 deadline. That would enable the Commission's Executive Director to review and present the Board's action, assuming it is legally adequate (see also below on this point), to the Commission for final certification. Barring objection by a majority of Commissioners that the Board's action does not conform to the Commission's conditional approval action, those parts of the LCP update would be then fully certified. However, based on the way the LCP update was originally submitted and acted upon by the Commission in 2016, such newly certified parts of the LCP would not become effective for the purposes of issuing coastal development permits unless and until the hazards portions of the LCP are certified.² Until that time, the existing LCP will continue to serve as the standard of review for development in the Marin County coastal zone.

¹ The original deadline was May 2, 2017, but, per Marin County's request, the Coastal Commission extended that deadline by one-year to May 2, 2018 as allowed for by the Coastal Act (per Section 30517). The Act and the Commission's regulations do not allow any further extensions of that deadline.

² The County's proposed LCP Update was submitted and heard by the Commission with this requirement.

Brian Crawford
Marin County LCP Update Status
December 15, 2017

With respect to legal adequacy, and as we have previously informed you, the Board's action on May 16, 2017 to accept the Commission's suggested modifications on the LCP was not legally adequate because it was itself based on a series of specific interpretive findings that were not consistent with the Commission's action.³ The Board needs to accept the Commission's modifications as is, without express caveats, to be considered legally adequate. Our suggestion continues to be that the Board rescind or supersede its May 16, 2017 action on the Commission's modifications on the LCP, and accept all the conditionally-approved LCP prior to the May 2, 2018 deadline. To the extent that the County at that point would like to pursue further LCP changes, you are welcome to pursue other amendments that address the Board's specific concerns.⁴ As discussed at last week's meeting, we encourage you to submit any such additional proposed amendments to the LCP update at the same time as you submit the hazards components of the LCP for Commission consideration so that the entirety of the proposed updated LCP would be in front of the Commission at one time in that scenario.

In closing, please be cognizant of the upcoming May 2, 2018 deadline. It would be a shame to see the Commission's conditional approval expire, particularly considering the significant resources that both our agencies have committed to getting to that point over these many years. In addition, and as you are well aware, the North Central Coast District office has severe staffing constraints and is involved with a series of other LCP updates from other local governments, and thus our ability to work with you on a whole new LCP update submittal (should the County miss the deadline) is fairly limited, and you need to be aware of that fact as you consider options.

In conclusion, thank you again for the diligent work by you, your staff, and the County on the LCP update. We hope to move forward and preserve what has been accomplished so far. If you have any questions or would like to discuss these matters further, please contact me at (415) 904-5290 or by email at Nancy.Cave@coastal.ca.gov.

Sincerely,



Nancy Cave
District Manager, North Central Coast District
California Coastal Commission

cc: Judy Arnold, President
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

³ Including as we informed the Board prior to its action via letter dated May 9, 2016.

⁴ Again, as we previously advised in our May 9, 2016 letter to the Board, including wherein we identify our take on the County's then potential proposals to that effect.