

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5260
FAX: (415) 904-5400
WEB: WWW.COASTAL.CA.GOV



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Prepared June 23, 2017 (for July 14, 2017 hearing)

To: Coastal Commissioners and Interested Persons

From: Dan Carl, North Central Coast District Director
Nancy Cave, North Central Coast District Manager
Jeannine Manna, North Central Coast District Supervisor

Subject: **Marin County Local Coastal Program Amendment Number LCP-2-MAR-15-0029-1 Revised Findings (Marin LCP Update Revised Findings).**

STAFF NOTE

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action on November 2, 2016 to approve with suggested modifications five of the seven amendments comprising Marin County Local Coastal Program (LCP) Amendment Number LCP-2-MAR-15-0029-1 (also known as the Marin County LCP Update). At the November 2, 2016 Commission hearing, the Commission continued the hearing on the two amendments containing the Land Use Plan (LUP) and the Implementation Program (IP) provisions addressing environmental hazards. In its action on the other five amendments, the Commission approved the entirety of staff's recommendation except for two revisions made by the Commission at the hearing relating to the IP definition of ongoing agriculture. The Commission's two revisions to the staff recommended definition of ongoing agriculture triggered a need for revised findings for Commission consideration and adoption.

The County-proposed definition of ongoing agriculture identified six types of agricultural activities that would require a coastal development permit (CDP). Commission staff agreed with the County that the six enumerated activities would require a CDP. However, Commission staff did not agree that these six enumerated activities comprised the universe of activities requiring a CDP. Commission staff therefore recommended that the Commission both convert the enumerated listing to a listing that was illustrative and add a new example. While the Commission agreed with its staff that the enumerated listings were not exclusive, the Commission simplified the definition recommended by Commission staff by deleting two staff recommended modifications. First, the Commission deleted the per se requirement that every applicant establish that their ongoing agricultural production activities are "existing, legally established" activities as part of a CDP application process. Second, the Commission omitted "conversion of grazing area to row crop" as an example of an activity that would always require a CDP. These changes to the staff recommended definition of ongoing agriculture made by the

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Commission were intended to assist the agricultural community by minimizing the upfront burden of proof for farmers seeking permit approvals for agricultural operations and acknowledging that the conversion of grazing areas to row crops will not always require a CDP.

Taking into account the two aforementioned deletions to the staff recommended definition of ongoing agriculture, the Commission-adopted definition of ongoing agriculture reads as follows:

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:

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

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

The motion and the resolution to adopt the revised findings are found on page 8 below, and the proposed revised findings follow starting on page 9. The *only* findings subject to change are those related to ongoing agriculture, as discussed above and found on pages [31-42](#). The underlined text represents text that has been added to the Commission's adopted findings and the ~~strike-through~~ text represents text that has been deleted from the Commission's adopted findings to reflect the Commission's November 2, 2016 action.

Staff notes that the purpose of these revised findings and the public hearing on July 14, 2017 is **only** to consider whether the revised findings accurately reflect the Commission's action on November 2, 2016. The purpose of the hearing is **not** to reconsider the merits of any part of that action, and all public testimony will be limited accordingly.

The Commissioners on the prevailing side of the November 2, 2016 action were Commissioners Bochco, Cox, Groom, Kinsey, Luevano, McClure, Mitchell, Shallenberger, Uranga, and Vargas, and these are the only Commissioners eligible to vote on the revised findings.

SUMMARY OF COMMISSION ACTION

Marin County has been in the process of comprehensively updating its LCP, including all aspects of the LCP's LUP and IP, for many years. The existing LCP was originally certified, with the County assuming CDP authority, in May of 1982. In 2008, the County embarked on this current LCP update effort, and following nearly five years of local public involvement, hearings, and extensive deliberation by both the Marin County Planning Commission and Board of Supervisors, the County submitted that update for Coastal Commission consideration. In May of 2014, the Commission conditionally certified the LUP portion of the update following a public hearing in Inverness. During the April 2015 hearing in San Rafael at which the Commission was to consider the IP portion of the update in order to complete the LCP update, the County withdrew its proposed IP update so that both the County and the Commission staffs could spend more time resolving issues relating to Commission staff's recommendations on the updated IP.

Ultimately, the County chose to submit a revised LCP update (i.e., both a revised LUP Update, different from that conditionally certified by the Commission in 2014, and a revised IP Update, different from that previously proposed and withdrawn in 2015) for Commission consideration. The Marin County Board of Supervisors held two additional public hearings on the newly revised LCP Update (on August 25, 2015 and April 19, 2016) before transmitting their revised LCP Update proposal to the Commission in three different submittals (on October 8, 2015, April 22, 2016 and April 25, 2016). Commission staff analyzed the new submittal, and ultimately prepared a staff recommendation for Commission action at the Commission's November meeting in Princeton-by-the-Sea in San Mateo County. That staff recommendation – as had previous staff recommendations – benefitted greatly from public comment received from interested stakeholders and community groups on issues raised by the County's submittal and the Commission's previous actions. In addition, Commission staff worked extensively and inclusively with County staff prior to that hearing, as it has throughout this update process. Commission staff has also worked closely with members of the public, including meeting with stakeholder groups to understand their particular concerns, and to solicit public comments on draft LCP amendment language. The result of this public outreach culminated in Commission staff recommended modifications to the County's revised proposed Update that attempted to address the issues raised by a broad swath of Marin County constituents, including agricultural interests, environmental groups, property owners, and Marin County Community Development Agency staff, among others, in a manner that was consistent with the Coastal Act.

At the November 2, 2016 Coastal Commission meeting in Princeton-by-the-Sea, the Commission denied, and then partially approved if modified by the County pursuant to the Commission's suggested modifications, the County's revised proposed LCP Update. All amendments in the LCP Update package were acted upon by the Commission at that time except for the two amendments related to environmental hazards, which the Commission voted to continue to a future date. Unless the County withdraws the environmental hazards portion of the Update, the Commission must act on the two hazard-related amendments by September 29, 2017. Below is a summary of key aspects of the County's submittal and the Commission's November 2, 2016 conditional certification.

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Background

Marin County contains approximately 106 miles of coastline stretching from the Sonoma County border in the north to Point Bonita near the Golden Gate Bridge in the south. The coastal zone totals roughly 128 square miles (82,168 acres) of the County's 520 square miles of total land area. Of this coastal zone total, approximately 53 square miles (33,913 acres) are owned and managed by the federal government, contained mostly within either Point Reyes National Seashore or the Golden Gate National Recreation Area. The remaining 75 square miles (48,255 acres) comprise the County's LCP jurisdiction. Marin's coastal zone is incredibly rich in coastal resources, including a thriving agricultural economy dominated by existing family farming operations; a rich tapestry of sensitive biological resources including dunes, woodlands, open meadows, bluffs, and riparian areas; extensive visitor-serving uses that provide both vital recreational (e.g., trails, parks, beaches) and commercial (e.g., walkable commercial districts and visitor accommodations) opportunities for the nearly eight million residents of the greater San Francisco Bay Area and visitors from around the world; and broad swaths of land subject to coastal hazards, including development protected by structural armoring, low-lying areas subject to flooding, and bluffs susceptible to erosion, all exacerbated by the effects of sea level rise.

Coastal Hazards

As indicated above, the Commission's consideration of the submitted LUP Environmental Hazards Chapter and the IP Environmental Hazards Section has been continued to a future Commission hearing date. Unless the County withdraws this portion of the Update, the Commission must act on the two hazard-related amendments by September 29, 2017.

Agriculture

Nearly two-thirds of the Marin County coastal zone is zoned Coastal Agricultural Production Zone (C-APZ), the LCP's primary agricultural zoning designation. This single zoning district contains the vast majority of Marin's existing agricultural lands, much of which is used primarily for livestock grazing because Marin's coastal zone contains little prime agricultural land suitable for row crop farming, and has limitations on water supply availability. Thus, the LCP's policies addressing agricultural protection, including allowable land uses on C-APZ zoned land and the applicable resource protection standards that development must meet, are of paramount concern and importance in ensuring development within Marin's coastal zone is consistent with the Coastal Act.

A fundamental concept in the Commission's 2014 conditionally-certified LUP was the allowance for one farmhouse, or a combination of one farmhouse and up to two intergenerational homes, per "farm," as opposed to per "legal lot." In 2014, the Commission found that allowing a farmer with multiple legal lots to have multiple farmhouses on each of those legal lots in the agricultural production zone would frustrate the agricultural production purpose of the C-APZ zoning, especially since there are other agricultural zones within the County wherein residential development could be concentrated in order to maintain the maximum amount of land in agricultural production. In the time since the Commission took action in 2014, the number of agricultural dwelling units per farm has been refined to per "farm tract," defined as all contiguous legal lots under common ownership. The County's revised LCP Update accordingly allows as a principally permitted use within C-APZ one farmhouse or a combination of one farmhouse and one intergenerational home per farm tract. In order to be consistent and to

establish the standard of review, suggested modifications recommended by the Commission add the definition of “farm tract” to Policy C-AG- 2 and C-AG-5 and conforms the references to “legal lot” and “legal parcel” with “farm tract,” where appropriate, throughout the LUP and IP.

Another area of significant discussion has been related to agricultural activities, including what activities are considered ongoing, what activities are considered new, and what activities require CDPs. Significant comments were received because the Coastal Act defines “development” to include any changes in use, changes in intensity of use, and grading, including that related to agriculture. The proposed Update describes these activities as ongoing agricultural production activities (such as crop rotation, plowing, tilling, planting, harvesting, seeding, etc.) when these production activities have not been expanded onto land never before used for agricultural, and indicates that no CDP is required for these activities. Other activities, such as preparation of or actual planting of land for viticulture, would require CDP review. As such, the vast majority of existing agricultural activities that are occurring in the County’s coastal zone will fall into the category of ongoing agricultural activities that do not require any coastal permitting. For those activities that wouldn’t fall into that category, the LCP would include a series of tools to ensure that CDP requirements are not overly burdensome, including a waiver process and a minor development approval process that will significantly streamline coastal permitting in the County. Further, many agricultural activities would already be excluded from CDP requirements by the County’s Categorical Exclusion (previously adopted for the County by the Commission).

In short, the suggested modifications related to agriculture refine the concepts originally certified by the Commission in 2014, and are designed with the unique attributes of agriculture in Marin in mind (e.g., the concept of allowing intergenerational homes). The County and the County’s LCP have long protected this critical resource, and every indication is that the County and its agricultural community will continue this long history of stewardship moving forward. The updated LCP should serve to support and encourage this critical way of life in Marin for now and into the future.

Biological Resources

The proposed LCP includes a detailed set of policies that define ESHA, specify the uses allowed within it, specify the required buffers from ESHA and the allowed uses within those buffers, identifies biological assessment requirements, and also identifies the process for obtaining a buffer reduction. Specifically, the LCP protects the County’s significant sensitive habitats primarily through updated and refined designation and protection of ESHA, including limiting allowed uses consistent with the Coastal Act, and requiring ESHA buffers (a minimum of 100 feet for streams and wetlands and 50 feet for other types of ESHA). Importantly, the Commission-certified LUP from 2014 allows buffers to be reduced (to an absolute minimum of 50 feet for wetlands and streams and 25 feet for other types of ESHA), provided the reduced buffer meets stringent conditions, including that it adequately protects the habitat, and that the project creates a net environmental improvement over existing conditions. With fairly minor modifications required by the Commission, the LCP should function to appropriately protect biological resources.

CDP Procedures

Although the proposed LCP offers a detailed set of CDP procedures, the Commission’s

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conditional certification included suggested modifications relating to the process by which certain notices will be distributed to the public and the Commission, which is a very important step in ensuring that the Commission and interested stakeholders are properly noticed and can weigh in on County permit category determinations and CDP decisions. Accordingly, recommended suggested modifications clarify and enhance hearing and noticing procedures as well as the ability of interested persons to track and if necessary challenge or appeal County decisions. Other modifications to the CDP procedures address emergency permits, temporary events, principally permitted use definitions, land divisions, and nonconforming structures. As modified, the LCP's procedural provisions adequately define the process by which it will carry out its LCP, including by specifying the different types of CDPs and their corresponding hearing and noticing requirements, and allows for a meaningful program of challenge and appeal, all with the goal of maximizing public participation consistent with the LUP and Coastal Act.

Other

In addition to the agriculture, biological resources, and coastal development permit procedures provisions summarized above, the proposed LCP also implements important Coastal Act considerations related to the provision of adequate public services, visual resource protection, public recreation, public access, and other coastal resource concerns. In general, most of the Commission's suggested modifications clarify terms and requirements, and refine concepts certified by the Commission in 2014.

In conclusion, Marin County prepared and submitted a significant update to the LCP, one that has been evaluated at the local level through dozens of public forums over the past nine years. Commission staff has worked closely with County staff over the course of this time, including providing directive comments and input at critical junctures, and has continued to work closely with both the County and with the public after the proposed updated LCP was submitted to the Commission for consideration. Ultimately, the Commission conditionally certified all amendments in the County's LCP Update package except for the two amendments related to the LUP Environmental Hazards Chapter and the IP Environmental Hazards Section, both of which have been postponed for future action.

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ATTACHMENTS

- [Attachment A: Summary of Marin County Zoning Districts](#)
- [Attachment B: Summary of Marin County Hearing Process](#)

EXHIBITS

- [Exhibit 1: General Location Maps](#)
- [Exhibit 2: General Photos of Marin County](#)
- [Exhibit 3: Commission-certified LUP findings](#)
- [Exhibit 4: Commission staff-suggested IP findings](#)
- [Exhibit 5: County Proposed LUP¹](#)
- [Exhibit 6: County Proposed IP²](#)
- [Exhibit 7: County Proposed LCP Appendices](#)
- [Exhibit 8: County Proposed LCP Maps](#)
- [Exhibit 9: County Supplemental “Potential Sea Level Rise” Maps³](#)
- [Exhibit 10: County Supplemental Visual Impact Analysis⁴](#)
- [Exhibit 11: Build-out Analysis](#)
- [Exhibit 12: LUP suggested modifications in strikethrough and underline⁵](#)
- [Exhibit 13: IP suggested modifications in strikethrough and underline⁶](#)
- [Exhibit 14: LUP Hazards Chapter and IP Hazards Section suggested modifications⁷](#)
- [Exhibit 15: LCP Maps suggested modifications](#)
- [Exhibit 16: Correspondence](#)
- [Exhibit 17: Agricultural Permitting Flowchart](#)

¹ The LUP environmental hazards chapter is not shown because the Commission did not act on it at the November 2, 2016 hearing.

² IP Section 22.64.060 (Environmental Hazards) and the definition of Redevelopment in Section 22.130.030 are not shown because the Commission did not act on them at the November 2, 2016 hearing.

³ The “Potential Sea Level Rise” map is not shown because it solely relates to the proposed LCP environmental hazards sections and the Commission did not act on it at the November 2, 2016 hearing.

⁴ The visual analysis is not shown because it solely relates to the proposed LCP environmental hazards sections and the Commission did not act on it at the November 2, 2016 hearing.

⁵ The suggested LUP modifications regarding environmental hazards are not shown because the Commission did not act on them at the November 2, 2016 hearing.

⁶ The suggested modifications regarding Section 22.64.060 (Environmental Hazards) and the definition of Redevelopment in Section 22.130.030 (that was expressly incorporated into the hazards amendments by the County) are not shown because the Commission did not act on them at the November 2, 2016 hearing.

⁷ The suggested modifications regarding environmental hazards are not shown because the Commission did not act on them at the November 2, 2016 hearing.

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I. MOTIONS AND RESOLUTIONS

Staff recommends a **YES** vote on the following motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings, that being Commissioners Bochco, Cox, Groom, Kinsey, Luevano, McClure, Mitchell, Shallenberger, Uranga, and Vargas.

***Motion:** I move that the Commission adopt the revised findings in support of the Commission's action on November 2, 2016 concerning LCP-2-MAR-15-0029-1, and I recommend a yes vote.*

***Resolution:** The Commission hereby adopts the findings set forth below for LCP-2-MAR-15-0029-1 on the grounds that the findings support the Commission's decision made on November 2, 2016 and accurately reflect the reasons for it.*

II. SUGGESTED MODIFICATIONS

The Commission suggests that the following changes to the submitted County of Marin LCP are necessary to make the requisite findings of consistency with the Coastal Act.

1. **Modify LUP.** Amend the proposed Land Use Plan as shown in [Exhibit 12](#) (changes shown in ~~strike-out~~ are to be deleted, and changes shown in underline are to be added).
2. **Modify IP.** Amend the proposed Implementation Plan as shown in [Exhibit 13](#) (changes shown in ~~strike-out~~ are to be deleted, and changes shown in underline are to be added).
3. Amend the policies of the LCP Maps as shown in [Exhibit 15](#).

III. FINDINGS AND DECLARATIONS

A. Description of Proposed LCP Amendment

1. 2014 Commission conditionally-certified LUP and Commission staff-suggested modifications to the IP

In May of 2014, the Commission conditionally-certified the LUP portion of the Marin County LCP update. In April of 2015, the Commission conducted a public hearing to consider the County's updated IP. Commission staff recommended approval of the updated IP, subject to suggested modifications, in order for the IP to conform with and adequately carry out the Commission's conditionally approved updated LUP. However, citing the need for additional time to consider the proposed IP modifications, the County withdrew the submitted IP prior to the Commission taking a vote on the submittal. Ultimately, the County chose to resubmit a modified LCP update proposal (i.e., both a revised LUP, different from that conditionally certified by the Commission, and a revised IP, different from that previously proposed) for Commission consideration. On August 25, 2015 and April 19, 2016, the Marin County Board of Supervisors held two additional public hearings, concluding with approval of the modified, LCP Update in 2016 and subsequent submittal to the Commission for consideration on October 8, 2015 and April 22 and 25, 2016. This report is focused on the resubmittal of the conditionally-certified LUP portion of the update, as well as the new IP portion of the update.

The 2014 conditionally-certified LUP suggested modifications to provisions related to the protection of agriculture, ESHA, and wetland areas, public recreational access, and visual resources; adequacy of public services (including transportation, water, and wastewater capacities, particularly for Coastal Act priority land uses); and coastal hazards protection policies, including for both new development by requiring hazards issues to be studied and addressed in the siting and design of new development and existing development (e.g., defining what types of improvements to existing structures constitute new development and therefore require adherence to all applicable LCP policies). These modifications ranged from targeted revisions needed to ensure that the objectives of the Coastal Act are clearly articulated (e.g., the modifications to shoreline hazards protection as stated above), to minor changes, such as clarifying that certain development standards (for example, height and density) are maximums and not entitlements. Before the original IP Update was withdrawn by the County, the

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Commission staff recommended suggested modifications to conform the IP to the conditionally-certified changes to the LUP.

See [Exhibit 3](#) for the 2014 Commission conditionally-certified LUP and adopted LUP findings and [Exhibit 4](#) for the Commission staff-recommended IP and the findings.

a) Proposed LUP Resubmittal

In its resubmittal, the County incorporated the vast majority of the 2014 conditionally-certified LUP suggested modifications, made minor changes to some approved modifications and also replaced certain suggested modifications with alternative language that achieves the same goals and objectives that were intended by the Commission's suggested modifications. However, other standards have been proposed again, deleted or significantly modified. For example, the County substantially updated the Environmental Hazards chapter to reflect the outcomes of the Collaboration – Sea-Level Marin Adaptation Response Team Vulnerability Assessment and Adaptation Report planning process, as well as the Federal Emergency Management Agency's updated Flood Insurance Rate Maps. The proposed LUP Update resubmittal is explained in more detail, below.

As provided in the Resolution, the Amendments would not take effect until further action by the Board after Coastal Commission approval. Specifically, the revised LCP Update consists of the following Amendments:

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

Amendment 2: The Agriculture Chapter of the LUPA

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

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

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

i) Environmental Hazards

The Commission's consideration of the submitted LUP Environmental Hazards Chapter and the IP Environmental Hazards Section has been continued to a future Commission hearing date. Unless the County withdraws this portion of their update, the Commission must act on the two hazard-related amendments by September 29, 2017.

ii) Other

The proposed LUP resubmittal includes proposed revisions to other chapters, including modifications to agricultural, community development, public access and public facilities and services policies. With regard to the agricultural policies, the resubmittal clarifies that one farmhouse or a combination of one farmhouse and up to two intergenerational home is allowable per farm tract, rather than per legal lot in C-AG-2 and -5; restores Program C-AG-2.b, which acknowledges that the County will evaluate the efficacy of permitting limited non-agricultural residential development within the C-APZ zone ; and includes clarifications to C-AG-7 regarding the requirements for clustered development areas. In the community development chapter, the resubmitted LUP restores Policy C-CD-15 discouraging the conversion of residential to commercial uses in coastal villages. In the Public Facilities Chapter, the resubmitted LUP also eliminates the conditionally-certified modification to Policy C-PFS-4 requiring that new development for non-priority uses in areas with limited service capacity shall only be allowed if adequate capacity is reserved for visitor-serving and other Coastal Act priority land uses, such as agriculture. .

The resubmitted LUP also includes maps and an Appendix, which contains nine documents, including the County's three Commission-adopted Categorical Exclusion Orders. With the exception of Appendix 9 and 7a, all of the documents within the Appendix are carried over from the existing certified LCP, and, with the exception of the Inventory of Visitor Serving Facilities (which has been updated to reflect existing conditions), none of these documents have been amended in the resubmitted LUPA.

The Appendix consists of the following documents:

- Appendix 1: List of Recommended Public Coastal Accessways
- Appendix 2: Inventory of Visitor-Serving, Commercial, and Recreation Facilities in the Coastal Zone
- Appendix 3: Coastal Village Community Character Review Checklist (Local Coastal Program Historic Review Checklist)
- Appendix 4: Design Guidelines for Construction in Areas of Special Character and Visitor Appeal and For Pre-1930's Structures
- Appendix 5: Seadrift Settlement Agreement
- Appendix 6: 1977 Wagner Report "Geology for Planning, Western Marin County"
- Appendix 7: Categorical Exclusions Orders and Maps
 - a. Zoning in effect in Marin County on May 5th, 1981 (Date of approval of E-81-2)
- Appendix 8: Certified Community Plans:
 - a. Dillon Beach Community Plan

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b. Bolinas Gridded Mesa Plan

Appendix 9: Hillside Subdivision Design Ordinance (Marin County Development Code Section 22.82.050)

The County has three Commission-adopted Categorical Exclusion Orders: E-81-2, E-81-6, and E-82-6. Generally speaking, the Orders exclude certain types of development from needing a coastal development permit, some coastal zone-wide and others within specified boundaries, subject to meeting specified standards. For example, Orders E-81-2 and E-82-6 exclude certain agriculturally-related development, including barns, fences, and electric utility lines on land zoned C-APZ. The exclusion applies throughout the entire coastal zone, except for the area between the sea and first public road paralleling the sea, or a half-mile inland from the sea, whichever is less, and except for the areas proscribed by Section 30610.5(b) of the Coastal Act. These Orders are not being amended.

Finally, the proposed LUP includes 28 sets of maps showing the location of the coastal zone, protected agricultural lands, vegetation communities and special-status species, wetlands and streams, flood zones, categorical exclusion areas, and land use policy maps. These maps are meant to be illustrative and solely for general informational purposes. They are not intended to, for example, show precisely where ESHA is located, or which parcels will be inundated by sea level rise. They are also not meant to show where a particular Categorical Exclusion applies; only the maps adopted by the Commission per the Orders themselves are the official exclusion maps. The LUP resubmittal does not propose to re-designate the land use of any coastal zone parcel.

See [Exhibit 5](#) for the County-adopted proposed LUP, [Exhibit 7](#) for the County-adopted Proposed LCP appendices and [Exhibit 8](#) for the County-adopted proposed LCP maps.

b) Proposed IP Update

Although the Commission conducted a public hearing to consider the County's updated IP in April of 2015, the County withdrew the submitted IP prior to the Commission taking a vote on the submittal, citing the need for additional time to consider the proposed IP modifications. Thus, the proposed IP has not been voted on by the Commission. However, the County chose to use the Commission-staff suggested modifications as the basis for their proposed IP update with additional modifications. Similar to the LUP resubmittal, the County incorporated the vast majority of the Commission-staff IP suggested modifications, made minor changes to some suggested modifications and also replaced certain suggested modifications with alternative language that achieves the same goals and objectives that were intended by the Commission's suggested modifications. However, other standards have been restored, deleted or significantly modified.

The proposed IP includes zoning district maps and nine chapters:

- Chapter 22.32 (Standards for Specific Land Uses)
- Chapter 22.60 (Purpose and Applicability of Coastal Zone Regulations)
- Chapter 22.62 (Coastal Zoning Districts and Allowable Land Uses)
- Chapter 22.64 (Coastal Zone Development and Resource Management Standards)

- Chapter 22.65 (Coastal Zone Planned District Development Standards)
- Chapter 22.66 (Coastal Zone Community Standards)
- Chapter 22.68 (Coastal Permit Requirements)
- Chapter 22.70 (Coastal Permit Administration)
- Chapter 22.130 (Definitions)

The proposed IP is structured in such a way as to list the allowable land uses for each of the coastal zone's fourteen zoning districts (specified in Chapter 22.62, with the uses defined in Chapter 22.130), with a progression of required resource protection and development standards applicable to all allowable development coastal zone-wide (Chapter 22.64), additional standards particular to the coastal zone's nine designated coastal villages (Chapter 22.66), standards applicable to each zoning district (Chapter 22.65), and standards applicable for particular land uses (Chapter 22.32). Chapters 22.68 and 22.70 specify the different types of CDPs, and the hearing and noticing specifications required for the particular CDP type.

Each of the proposed IP chapters are located in Title 22 (Development Code) of the Marin County Municipal Code, which describes and implements the land use planning and development standards throughout the County. Within Title 22, there are eight "Articles." Article V, titled "Coastal Zones—Development and Resource Management Standards," includes proposed IP Chapters 22.60-22.70 and is meant to serve as the primary location for the IP's requirements and lists the standards that solely apply to development within the coastal zone. Chapter 22.32 lists the standards for particular land uses and applies throughout the County, both coastal and inland, and is located within Article III—Site Planning and General Development Standards. Finally, Chapter 22.130 is located in Article VIII—Development Code Definitions, and again applies to development throughout the County, coastal and inland alike.

Each of the nine chapters is explained in more detail, below.

i) Chapter 22.32 (Standards for Specific Land Uses)

Chapter 22.32 describes the development standards applicable to 32 individual land uses. This chapter represents an entirely new Chapter when compared to the existing certified IP, which lists general development standards applicable to all uses throughout the coastal zone, but does not include additional use-specific provisions. The 32 listed uses in proposed Chapter 22.32 are either commonly proposed and/or offer their own particular set of impacts/issues, including agricultural dwelling units and solar energy systems.

The standards provide additional details on required development parameters specific to the particular use, specify in which coastal zoning district the use is allowed, and/or identify additional performance standards/permit requirements, including other local permits and authorizations that a particular use/development may need (in addition to a CDP in the coastal zone), such as Design Review approval, Use Permit authorization, or a Second Unit Permit. Many of the development standards repeat and build upon applicable Land Use Plan policies specific to those uses.

Additionally, Chapter 22.32 includes provisions to ensure implementation of and compliance with corresponding LUP requirements, such as recordation of a restrictive covenant and

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licensing/reporting requirements from the State Department of Housing and Community Development to ensure that all agricultural worker housing is maintained and operated for its permitted use (including, for example, being occupied by agricultural workers). Other provisions for particular uses in Chapter 22.32 go beyond traditional land use parameters (e.g., height, density, permitting status) and instead specify required operating standards. These include requirements for Home Occupations that specify an allowance for a maximum of one nonresident employee and prohibit such uses from creating fumes, glare, light, noise, odor, or other such public nuisances.

ii) Chapter 22.60 (Purpose and Applicability of Coastal Zone Regulations)

Chapter 22.60 is the introductory chapter of the LCP's IP, setting forth the County's intention that all development within the coastal zone must be consistent with the Marin County LCP in order to carry out the statutory requirements of the California Coastal Act. Chapter 22.60.020 also states that while all policies and regulations specified in the Marin County Development Code apply in the coastal zone (including, for example, non-CDP permit requirements and standards for particular land uses (including those specified in Chapter 22.32)), in the event of any perceived conflict between those standards and the ones specifically required of Article V (i.e. Chapters 22.60-22.70), Article V shall control.

iii) Chapter 22.62 (Coastal Zoning Districts and Allowable Land Uses)

Chapter 22.62 divides the coastal zone into fourteen zoning districts, includes the list of allowable land uses and their corresponding permitting status for each of those zoning districts, and cross-references the required development standards applicable for those listed uses. This structure is similar to that of the existing certified IP, which also divides the coastal zone into the same fourteen zoning districts. The proposed Chapter describes the intent of each of the zoning districts, lists their allowable land uses, and then lists the permitting category of those uses. The Chapter divides the allowable land uses into five permit categories: categorically excluded for which no CDP is required (denoted with "E"), principally permitted (noted with "PP"), permitted ("P"), conditional ("U"), and use not allowed ("_").

Chapter 22.62.040 describes the five uses, where categorically excluded projects ("E") are those that are specified in applicable Coastal Commission-certified Categorical Exclusion orders as not requiring a CDP, development denoted "PP" is only appealable to the Coastal Commission if located within the geographic appeals area or if the project constitutes a major public works project or major energy facility, "P" uses that meet the definition of development require a coastal permit that is appealable to the Coastal Commission, "U" uses are conditional uses requiring both a County Use Permit and, if it meets the definition of development, a CDP which is appealable to the Coastal Commission, and "_" uses are not allowed in the zoning district. The fourteen zoning districts, their intended purpose, and some of their proposed allowed land uses, are set forth in Attachment A.

Chapter 22.62 includes Tables 5-1, 5-2, and 5-3, which list each of the fourteen zoning districts and lists the land uses allowable in each. The tables categorize land uses into eight types, as follows:

- Agriculture, Mariculture: including agricultural accessory activities, agricultural production,

agricultural worker housing, farmhouse, and mariculture.

- Manufacturing and Processing Uses: including cottage industries, boat manufacturing and sales, and recycling facilities.
- Recreation, Education, and Public Assembly Uses: including campgrounds, equestrian facilities, libraries and museums, and schools.
- Residential Uses: including single-family dwellings, home occupations, affordable housing, and residential second units.
- Resource and Open Space Uses: including nature preserves, mineral resource extraction, timber and tree production, and water conservation dams and ponds.
- Retail Trade Uses: including grocery stores, bars and drinking places, restaurants, and farmer's markets.
- Service Uses: including hotels and motels, offices, warehousing, banks and financial services, and construction yards.
- Transportation and Communications Uses: including harbors, marinas, telecommunications facilities, and transit stations and terminals.

The proposed IP does not include any parcel rezonings. However, the IP does propose to revise some of the uses allowed within existing certified zoning districts by adding/deleting certain uses from particular zoning districts, and/or revising the required permitting status of those listed uses (e.g., where a development that was previously classified as a conditional use is now proposed to be principally permitted, and vice versa). Specifically, within the C-APZ zone, which is the LCP's primary agricultural zoning district, the IP proposes newly allowable land uses such as Intergenerational Homes (which is defined as a type of agricultural land use meant to house members of the farm owner's or operator's immediate family), Group Homes (defined as a dwelling unit providing non-medical 24-hour care for persons who are not disabled, and includes drug abuse recovery centers), and Educational Tours (defined as interactive excursions for groups to experience the unique aspects of a property, including agricultural operations). Other uses within the C-APZ have different permitting standards, including Agricultural Processing Uses and Agricultural Product Sales, both of which are classified as conditional uses in the existing certified IP, but are now proposed to be principally permitted uses so long as they meet certain criteria (including sizing requirements).

Within the Coastal Visitor Commercial Residential Zone (C-VCR), which is the IP's primary zoning district along the commercial streets within the coastal zone's nine designated villages, a broad swath of land uses are proposed as allowable, ranging from Recycling Facilities, Cemeteries, and Seafood Processing and Sales facilities (all proposed as conditional uses) to new principally permitted uses, such as Affordable Housing. Other zoning district changes include Public Buildings and Equestrian Facilities as allowable uses within the Coastal Single Family Planned district (C-RSP), Recycling Facilities and Affordable Housing as newly allowable in the Coastal Resort and Commercial Recreation district (C-RCR), and allowing Farmers' Markets and Vehicle Repair and Maintenance facilities in the Coastal Limited Roadside Business district (C-H1).

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iv) Chapter 22.64 (Coastal Zone Development and Resource Management Standards), Chapter 22.65 (Coastal Zone Planned District Development Standards), and Chapter 22.66 (Coastal Zone Community Standards)

These proposed three IP chapters provide the standards for proposed development, including those that apply throughout the coastal zone, those that are specific to a particular zoning district, and those that are specific to a particular community. Sections 22.64.030 and 22.64.040 include Tables 5-4 and 5-5, which list the siting and design parameters applicable to development within each zoning district, including minimum lot area, maximum residential density, minimum setback requirements, height limits, and maximum floor area ratio (FAR). These standards are identical to those specified in the existing certified IP, and generally reflect standard planning practice (e.g., 7,500 square feet minimum lot areas in single-family residential neighborhoods, 25-foot height limits for primary structures throughout the coastal zone, and zero front yard setbacks for structures within urbanized commercial districts). The tables also include footnotes to other chapters of the Development Code that may apply to the proposed development, including Design Review in Development Code Chapter 22.42, and height and setback requirements (including provisions specified in Chapter 22.20).

Proposed Sections 22.64.050 through 22.64.180 implement the LUP's coastal resource protection standards for biological resources; environmental hazards; water resources; community design; community development; energy; housing; public facilities and services; transportation; historic and archeological resources; parks, recreation and visitor-serving uses; and public coastal access. In general, these proposed Sections implement the corresponding LUP policy via cross-reference, which is a similar construct as the existing certified IP. For example, Section 22.64.050(B)(1) states that "The resource values of ESHAs shall be protected by limiting development per Land Use Policies C-BIO-1, C-BIO-2, and C-BIO-3." These LUP policies in turn describe in detail the types of ESHA, the buffers required to protect the resource, and the allowable uses within both the ESHA itself and its buffer.

Proposed Section 22.64.060 implements the LUP environmental hazard policies. As stated above, the Commission's consideration of the submitted LUP Environmental Hazards Chapter and the IP Environmental Hazards Section has been continued to a future Commission hearing date. Unless the County withdraws this portion of their update, the Commission must act on the two hazard-related amendments by September 29, 2017.

Finally, proposed Chapter 22.65 provides detailed site planning, development, and land use standards for particular zoning districts specified as planned zoning districts, which include C-APZ, C-ARP, C-RSP, C-RSPS, C-RMP, C-CP, C-RMPC, and C-RCR. This chapter includes additional requirements for these particular zoning districts, including specifying the development and resource protection standards for the C-APZ district.

v) Chapter 22.68 (Coastal Permit Requirements), Chapter 22.70 (Coastal Permit Administration), and Chapter 22.130 (Definitions)

Chapter 22.68 identifies what development requires a CDP, and conversely, what types of development would qualify for categorical exclusion, exemption, or waiver from CDP requirements. Per proposed Section 22.68.040, development is categorically excluded if it is consistent with Coastal Act Chapter 30610(e) and the Commission's implementing regulations.

Proposed Section 22.68.050 lists the types of projects that are exempt from CDP requirements. The IP's CDP exemption provision is intended to track the Coastal Act and Regulation's detailed CDP exemption provisions with respect to minor improvements, repair and maintenance, replacement after disaster, and emergency work, among others. The corresponding "non-exempt development" provision specified in Section 22.68.060 is also intended to track the Coastal Act and Regulations in this regard, and prohibits such exemption where the proposed development has the potential to impact sensitive or important coastal resources (e.g., improvements and repair and maintenance to structures located within 50 feet of the edge of a coastal bluff, within ESHA, etc.).

Finally, Section 22.68.070 includes a "de minimis waiver" procedure that allows the County to waive the requirement for obtaining a CDP for certain types of projects and when certain findings are made, including that the project cannot involve potential for adverse effects on coastal resources, must be consistent with the LCP, and cannot be of a type or in a location where the project would be subject to a CDP by the Coastal Commission. The waiver is then also subject to certain procedural requirements, including public notice and opportunities for public comment, the concurrence of the Coastal Commission's Executive Director, and a Notice of Final Action sent to the Commission within seven days of waiver issuance.

Chapter 22.70 proposes the procedures for filing, processing, and acting on CDPs, de minimis waivers, and categorical exclusions. Once an application is received, the Director is required to determine the permit category type, including whether the development is: (1) categorically excluded; (2) eligible for de minimis waiver; (3) qualifies as an administrative CDP application that does not require a public hearing; (4) qualifies as a public hearing application because the development is defined as appealable to the Coastal Commission; or (5) though appealable, qualifies for a public hearing waiver in which the public hearing may be waived when certain findings are made (the findings of which mirror the Coastal Act's hearing waiver allowance as specified in Section 30624.9, including that the development is consistent with the LCP, requires no other discretionary approvals other than the CDP, and will have no adverse effect on coastal resources). Proposed Section 22.70.040 allows an applicant or interested person to challenge determinations for categorical exclusions, non-public hearing applications, or public hearing applications to the Coastal Commission within 10 working days of the date of sending public notice as required by Chapter 22.70. The permit category determination may also be challenged to the Coastal Commission in compliance with Section 13569 of the Commission's regulations, which allows the Executive Director or other interested person to challenge a permit category determination subject to specified criteria and process.

The proposed IP also lists the requirements for public noticing of CDP decisions (e.g., notice must be sent at least 10 days prior to a hearing or action and sent to all owners of property within 300 feet of the proposed development, among other requirements), as well as a process for appealing those CDP decisions to both the Planning Commission and/or Board of Supervisors, and to the Coastal Commission. Finally, the Chapter contains provisions related to required findings for CDP approval (Section 22.70.070), sending a Notice of Final Action to the Coastal Commission after the County's action is considered final and no local appeals have been filed (Section 22.70.090), requirements for processing permit amendments (Section 22.70.130), emergency permits (Section 22.70.140), and coastal zone variances (Sections 22.70.150-

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22.70.170), among others.

Finally, Chapter 22.130 provides a detailed glossary of terms and phrases used in the LCP. As previously stated, this chapter is located within Article VIII of the Development Code, and therefore applies to development both within and outside of the coastal zone. The zoning maps (LCP Map Set 29) are included in the proposed IPA.

The proposed IP update would replace the existing IP in its entirety with new provisions designed to implement corresponding policies of the updated LUP.

See [Exhibit 6](#) for the County-adopted proposed IP.

B. Consistency Analysis

The standard of review for the proposed LUP amendment is the Coastal Act and the standard of review for the proposed IP amendment is whether it is consistent with and adequate to carry out the LUP with suggested modifications.

1. Coastal Hazards

The Commission's consideration of the submitted LUP Environmental Hazards Chapter and the IP Environmental Hazards Section was continued to a future Commission hearing date with a deadline to act by September 29, 2017. As such, exhibits have been modified and/or removed to exclude items related to the environmental hazards amendments as follows:

- [Exhibit 5](#) – County Proposed LUP – The environmental hazards chapter has been removed since the Commission did not act on this chapter at the November 2, 2016 hearing.
- [Exhibit 6](#) – County Proposed IP – Section 22.64.060 (Environmental Hazards) and the definition of Redevelopment in Section 22.130.030 have been removed since the Commission did not act on this section at the November 2, 2016 hearing.
- [Exhibit 9](#) – County Supplemental “Potential Sea Level Rise” Maps – this exhibit has been removed as it relates solely to review of the environmental hazards amendments.
- [Exhibit 10](#) – County Supplemental Visual Impact Analysis – this exhibit has been removed as it relates solely to review of the environmental hazards amendments.
- [Exhibit 12](#) – LUP suggested modifications in strikethrough and underline – The environmental hazards chapter has been removed since the Commission did not act on this chapter at the November 2, 2016 hearing.
- [Exhibit 13](#) – IP suggested modifications in strikethrough and underline – Section 22.64.060 (Environmental Hazards) and the definition of Redevelopment in Section 22.130.030 (that was expressly incorporated into the hazards amendments by the County) have been removed since the Commission did not act on the hazards amendments at the November 2, 2016 hearing.
- [Exhibit 14](#) – LUP Hazards Chapter and IP Hazards Section suggested modifications – This exhibit has been removed as it relates solely to the Environmental Hazards amendments and the Commission did not act on these amendments at the November 2, 2016 hearing.

2. Agriculture

a) Applicable Coastal Act Policies

Section 30241 Prime agricultural land; maintenance in agricultural production

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30241.5 Agricultural land; determination of viability of uses; economic feasibility evaluation

(a) If the viability of existing agricultural uses is an issue pursuant to subdivision (b) of Section 30241 as to any local coastal program or amendment to any certified local coastal program submitted for review and approval under this division, the determination of "viability" shall include, but not be limited to, consideration of an economic feasibility evaluation containing at least both of the following elements:

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(1) An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.

(2) An analysis of the operational expenses, excluding the cost of land, associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program. For purposes of this subdivision, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal program or in the proposed amendment to a certified local coastal program.

(b) The economic feasibility evaluation required by subdivision (a) shall be submitted to the commission, by the local government, as part of its submittal of a local coastal program or an amendment to any local coastal program. If the local government determines that it does not have the staff with the necessary expertise to conduct the economic feasibility evaluation, the evaluation may be conducted under agreement with the local government by a consultant selected jointly by local government and the executive director of the commission.

Section 30242 Lands suitable for agricultural use; conversion

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Section 30100.2. *“Aquaculture” means a form of agriculture as defined in Section 17 of the Fish and Game Code. Aquaculture products are agricultural products, and aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit-issuing decisions governed by this division.*

Section 30233. *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

...

(7) Nature study, aquaculture, or similar resource dependent activities.

Sections 30241, 30241.5, 30242 and 30250 of the Coastal Act require the protection of agricultural lands within the coastal zone by, among other means, requiring that the maximum amount of prime agricultural land be maintained in agricultural production. To protect the agricultural economy, Section 30241 of the Coastal Act requires conflicts between agricultural and urban uses to be minimized by establishing stable urban-rural boundaries, providing agricultural buffers, ensuring that non-agricultural development is directed first to lands not

suitable for agriculture or to transitional lands on the urban-rural boundary and that adjacent development does not diminish agricultural productivity, restricting land divisions, and controlling public service or facility expansions. Other lands suitable for agricultural use and productivity of soils and timberlands are to be protected as well, with certain exceptions. These requirements are implemented in order to protect an area's agricultural economy and concentrate development in and around existing developed areas. For example, non-prime lands often physically buffer the more valuable prime lands from conflicts with other uses. Thus protection of non-prime agricultural lands also serves to protect agricultural production on prime lands. Conversion and fragmentation of any agricultural land not only diminishes opportunities for economies of scale, but also increases the exposure of the remaining farm operations to conflicts with nearby urban users over such matters as noise, odor, pesticide use, smoke, and animals.

Conversions of agricultural lands to non-agricultural uses are only allowed under limited circumstances, such as when they are surrounded by urban uses. Conversions of agricultural lands around the periphery of urban areas may occur only where the viability of agricultural is severely limited or where conversion would complete a logical and viable neighborhood and contribute to a stable urban limit. Pursuant to Coastal Act Section 30242, conversions of "other lands suitable for agricultural use," i.e. conversions other than those governed by Coastal Act Section 30241, are allowed only when continued or renewed agricultural use is infeasible, when they would preserve prime land or where they would concentrate development.

Finally, Coastal Act Section 30250, cited in Sections 30241 and 30242, also works to protect rural agricultural lands by directing that new development be located in existing developed areas and that land divisions outside of urban areas, other than for agricultural leases, not result in parcel sizes that can compromise agricultural viability.

b) 2014 Commission conditionally-certified LUP

Agriculture is one of the primary uses of land within the Marin coastal zone. The LCP implements its agricultural protection standards primarily through the Coastal Agricultural Production Zone (C-APZ) zoning district. This single zoning district comprises nearly two-thirds of the non-federally owned coastal zone (30,781 acres out of a total of 48,255 acres), and contains the vast majority of Marin's existing agricultural lands, much of which is used primarily for livestock grazing rather than row crops because Marin's coastal zone contains little prime agricultural land suitable for row crop farming, and has limitations on water supply availability.

The 2014 Commission conditionally-certified LUP identified the C-APZ zoning district as the LCP's primary agricultural zone, specified the allowable uses within the zone and the permitting status for those uses, and listed a hierarchy of required development standards. The Commission focused the approved LUP policies on the protection and enhancement of the family farm, and thus the family farm became the metric by which the Coastal Act's agricultural protection standards would be based. As such, the LUP's agricultural protection policies were the subject of numerous modifications made by the Commission, including in terms of defining the types of development that would be designated as a principally permitted agricultural uses and the required development standards.

The 2014 Commission conditionally-certified LUP allowed one farmhouse or a combination of

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one farmhouse and up to two intergenerational homes per farmer, regardless of how many parcels the farmer owned. The concept was centered around the family farming operation, in that a farmer is allowed one farmhouse on their farm. A farm may consist of one legal lot, or it may consist of multiple legal lots that together constitute one unified farming operation. Regardless of how many lots constitute the farm, the farmer was allowed one farmhouse. However, in order to allow for others to live on that farm, including family members, the farmer is also allowed to build up to two intergenerational housing units. Thus, the 2014 conditionally-certified LUP sets up a structure by which protection of the family farm is the primary mandate, and a farmer is allowed up to three dwellings (a farmhouse and up to two intergenerational homes) on that farm. However, no more than 27 Intergenerational homes would be allowed in the agricultural production zone unless and until another LCPA was approved.

c) Proposed LUP

The proposed LUP update includes minor changes to the 2014 Commission conditionally-certified LUP agricultural chapter. In addition to formatting changes, the County has carried over the fundamental concept in the Commission-adopted LUP allowing one farmhouse, or a combination of one farmhouse and up to two intergenerational homes, per “farm”, as opposed to per legal lot, through insertion of the term “farm tract” in C-AG-2, C-AG-5, and C-AG-9. The proposed LUP update also bundles the C-APZ principal permitted uses of farmhouses, intergenerational homes, and agricultural worker housing into “agricultural dwelling units.”

Deviating from the Commission-certified LUP, the proposed LUP distinguishes permitting requirements for educational tours based on who is conducting the tour instead of based on for-profit revenue generation by eliminating the term “not-for-profit” from principally permitted educational tours. Thus, as proposed, all educational tours would be principally permitted even if the land owner operates the tour for profit as a commercial use unless the for profit tour is operated by a third party. The proposed LUP clarifies Program C-AG-2.a to specify that categorical exclusions are distinguished by exclusions for particular categories of development and exclusions for particular geographic areas and restores Program C-AG-2.b which acknowledges that the County plans to evaluate the efficacy of permitting limited non-agricultural residential development within the C-APZ zone. Finally, the proposed LUP Update adds the term “non-prime land” in C-AG-7 and clarifies the clustering requirements in C-AG-7(A)(4).

d) Consistency Analysis

In May 2014, the Commission conditionally certified the County’s then proposed LUP. The County and the Commission were in agreement on the suggested modifications at the hearing, and it was approved unanimously (see attached Commission-adopted LUP findings in [Exhibit 3](#)). Except as revised herein, the Commission’s adopted 2014 LUP findings are incorporated herein by reference as part of these findings, including as the County’s proposed LUP resubmittal is based on the Commission’s conditionally certified version with minor changes.⁸ Thus, the findings in this section build upon the referenced and incorporated 2014 LUP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.

⁸ The County accepted all the Commission’s 2014 modifications as the underlying “clean” version of their proposed LUP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 5](#).

The primary intent of the Commission-certified LUP's agriculture policies is, as stated in Policy C-AG-1: to protect agricultural land, continued agricultural uses, family farming, and the agricultural economy. It seeks to do so by maintaining parcels large enough to sustain agricultural production, preventing conversion to non-agricultural uses, providing for diversity in agricultural development, facilitating multi-generational operation and succession, and prohibiting uses that are incompatible with long-term agricultural production or the rural character of the coastal zone. The protection of both agricultural production and the agricultural economy, including in relation to allowing uses that are incidental to and supportive of agricultural production, are clear objectives for the Commission-certified agriculture policies.

One of the primary differences between the existing and the 1982 Commission-certified LUP is which development is designated as a principally permitted use (PPU) in the Agricultural Production Zone (C-APZ) and which development is considered a conditional or permitted use in this zone. Currently, the existing LCP does not designate any one principally permitted use in the C-APZ zone. Development designated as principally permitted in the C-APZ zone includes agricultural uses (defined as uses of land to grow and/or produce agricultural commodities for commercial purposes), one single-family residential dwelling, and agricultural accessory structures (including barns, fences, stables, and utility facilities). In addition to agricultural and residential uses, the certified zoning code identifies a visitor serving B&B as another type of PPU in the C-APZ zone. In contrast, conditional uses include farm worker housing and facilities for the processing of agricultural products. Thus, several types of agricultural development are considered conditional in the agricultural production zone, and thereby appealable to the Coastal Commission, even where such development is clearly necessary to agricultural production. Conversely, some currently certified principally permitted uses in the C-APZ zone are not agricultural uses.

The currently proposed LUP Update designates a single use, agriculture, as the PPU for the C-APZ zone. By confining the PPU in the C-APZ zone to one PPU, agriculture, agricultural development designated as principally permitted is not appealable to the Commission. Moreover, the protection of both agricultural production and the agricultural economy is strengthened. The proposed LUP Update would include several new types of agricultural development within the C-APZ's PPU designation of agriculture, but would confine the development types to agriculture. The types of agricultural development which are considered within the PPU designation of agriculture encompass activities that in support of agricultural operations and thereby the long-term preservation of agriculture. In an area characterized by farms, such as Marin County, agricultural dwellings located on the property for farm workers, owners or operators are an essential part of the agricultural operation. For example, to adequately tend livestock or milk cows, the operator must be in close proximity to the agricultural operation. Visitor serving uses and residential uses unrelated to agricultural production would become conditional uses while some of the agricultural uses that are currently conditional would become principally permitted.

Another primary goal for the County is fostering multi-generational succession in family farming operations. Thus, the proposed LUP Update includes a new type of agricultural land use within the umbrella of the C-APZ's PPU of agriculture: intergenerational homes. The intent of these

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homes is to allow for the preservation of family farms by facilitating multi-generational operation and succession by allowing family members to live on the farm. While the currently certified LUP allows one single-family residence per parcel, as proposed in Policy C-AG-5, one intergenerational home (in addition to a farmhouse) would be permitted per “farm tract” for the farm operator or owner as a principally permitted agricultural use. As stated above, “farm tract” is defined as “all contiguous legal lots under common ownership in the C-APZ.” A second intergenerational home may be permitted as a conditional agricultural use (thereby subject to appeal to the Commission), subject to density and other LCP limitations. As proposed, agricultural dwellings cannot be divided from the rest of the agricultural legal lot, and must maintain the C-APZ district’s required 60 acre density, meaning that an intergenerational home would only be allowed when a parcel is at least 120 acres, and a second intergenerational home is only allowed when the parcel is at least 180 acres. Proposed provisions also clarify that the sale of legal lots comprising the farm tract is not prohibited and that restrictive covenants only apply to the legal lot within the farm tract on which development is approved. Future development on other legal lots comprising any farm tract is subject to these same requirements of the proposed Update. Finally, the proposed LUP Update further requires a proposed restriction on the combined total size of homes allowed on C-APZ land: 7,000 square feet. The 7,000 square foot maximum is a cap on the aggregate size of all homes allowed, meaning that a farmhouse and intergenerational home would have to average 3,500 square feet or less in order to be consistent with the LUP’s home size limit.

For intergenerational homes, 27 units of such homes are the projected maximum number of potentially allowable.⁹ Proposed Policy C-AG-5 places a cap on the total number of intergenerational homes throughout the coastal zone at 27. Once this threshold is reached, a LUP amendment authorizing additional units, and analyzing the impact such additional units would have on coastal resources, including findings of consistency with Coastal Act policies, would be required.

As conditionally certified by the Commission in 2014, C-AG-2 required that the principal use of C-APZ lands be agricultural, and in order to ensure that the principal use of C-APZ land was agricultural, any development be “accessory and incidental to, in support of, compatible with and necessary for” agricultural production. As now proposed by the County, 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.

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

⁹ Including a total of 153 privately-owned C-APZ parcels, the required 120 acres necessary to meet the density requirements for the first such home, and the assumption that parcels currently under Williamson Act contract and/or agricultural conservation easement held by MALT (Marin Agricultural Land Trust) are not allowed any intergenerational homes.

structures, agricultural dwelling units, agricultural sales and processing facilities). In order to classify development other than agricultural production itself as a principally permitted use of agricultural land, development must in fact be supporting agricultural production. Further, suggested modifications in the proposed LCP's Implementation Plan (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 a cattle rancher, for example, cannot lease a portion of their land to a wine producer who could then turn an existing barn on the property into a wine processing facility because that use is not accessory and incidental to, in support of, compatible with the cattle ranching operation.

However, the LUP as proposed contains some elements that are not Coastal Act consistent because they are internally inconsistent or need further refinement in order to achieve consistency with the requirements of Coastal Act Sections 30241-30242. These inconsistencies range from consistently modifying the terms 'legal lot,' 'legal parcel,' and 'parcel,' to 'farm tract,' where necessary, to adding the definition of 'farm tract' to C-AG-2 and C-AG-5. Therefore, the LUPA must be denied as submitted and only approved as modified as discussed specifically below. (See also [Exhibit 12](#) for the Suggested Modifications discussed in this section)

Proposed Policy C-AG-7(A) defines the term "non-prime land" to indicate that such land is referred to in the Coastal Act as "other lands suitable for agriculture." However, this characterization of non-prime land is not correct and must be deleted in order to achieve consistency with the Coastal Act because the Coastal Act reference to "other land suitable for agriculture" in Section 30242 instead refers to agricultural land *other than* agricultural land governed by Section 30241, i.e. agricultural land *not* on the urban rural boundary. As modified, Policy C-AG-7's requirements to protect and maintain agricultural production are consistent with Coastal Act Sections 30241 and 30242. Further, agricultural homestays and bed and breakfast facilities must be deleted from Part (A)(4) because such facilities are only allowed in otherwise allowable agricultural dwelling units, per the proposed language in C-AG-9, and by definition LCP provisions only apply prospectively to new development. In Part (B), the statement that the County shall determine the density of permitted agricultural dwelling units or land divisions *only upon* applying Policy C-AG-6 must be changed to *including* to eliminate exclusivity because density is determined by development limitations other than those listed in C-AG-6.

As discussed above, the definition of farm tract is added to C-AG-2 and C-AG-5, in order to establish this definition as the standard of review for the IP. The references to the terms 'legal lot,' 'legal parcel,' and 'parcel' are changed to 'farm tract' in C-AG-2, -5, and -9, where applicable.¹⁰ Further, the statement that "the reviewing authority shall consider all contiguous properties under the same ownership to achieve the requirements of the LCP" is restored in C-AG-5 to address legal lots that are less than the minimum parcel size. Similarly, the requirement that "the reviewing authority shall consider all contiguous properties under the same ownership to achieve the requirements of the LCP" is also restored in C-AG-2 because the limitations on

¹⁰ See [Exhibit 11](#) for Commission staff's build-out analysis.

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agricultural dwelling units are based on the “farm tract” defined in both C-AG-2 and C-AG-5 as “all legal lots under a common ownership in the C-APZ.”

Further modifications are needed for educational tours occurring in the C-APZ zoning district. If owner/operator or third parties, including non-profits, do not charge a fee for tours or charge a fee that covered the costs associated with the tour, i.e. the tour does not generate revenue, then the use is a principally permitted; if owner/operator or third parties charge a fee that generates revenue, then the use is permitted because a tour that operates for profit is a commercial use and does not qualify as principally permitted when the PPU is agriculture in the C-APZ zoning district. Thus, suggested modifications are necessary within C-AG-2 to ensure that even though uses such as not-for-profit educational tours can be considered agricultural, for profit tours are commercial uses subject to a conditional use permit that will help ensure that any such permissible commercial use protects and maintains land designated for agricultural production consistent with the requirements of Coastal Act sections 30240 and 30241. Additional clarification is needed in Program C-AG-2.a because contrary to the County’s proposed language, categorical exclusions for particular types of development only occur in a specific geographic area limited by Coastal Act section 30610.5(b) and further proscribed within the Categorical Exclusion Order itself.

In the C-APZ, the County’s agricultural production zone, the principal permitted use of the land is agriculture, and while farmhouses and other agricultural dwellings are permitted, residential development is neither a permitted nor a conditional use in the agricultural production zone. County staff recommends, in Program C-AG-2.b, that the County continue to research the use of affirmative agricultural easements, including in conjunction with residential development. Although the County and its staff are free to undertake the research County staff identify in Program C-AG-2.b, a subsequent LCP amendment would be required before any residential development could occur. Program references do not mean that residential development will eventually become a conditional use in C-APZ, especially given that the County has not yet conducted its study.¹¹

Regarding the specifics of the study to be conducted through Program C-AG-2.b, Commission staff have previously recommended that any such study take into account the results and recommendations of the Marin County Agricultural Economic Analysis undertaken for the

¹¹ In its staff report to the Board, County staff point to the Commission’s action on the Chan CDP (CDP #A-2-SMC-06-021) as support for allowing residential development, in conjunction with affirmative agricultural easements, on land located in the agricultural production zone. Commission staff notes that the Chan dwelling did not convert agricultural land to a residential use because the dwelling approved by the Commission was sited in a non-farmed area with an existing concrete pad and access road. Also, the Applicant voluntarily proposed to record an affirmative agricultural easement over all of the property outside the development envelope because the property was actively being farmed. Another Commission action on CDP# A-2-SMC-07-001, the Sterling application also cited by County staff in its staff report, authorized a residential structure on agricultural lands along the urban rural boundary where agricultural lands may be converted in order to concentrate development and protect the agricultural productivity of rural agricultural lands. These are very particular circumstances whose outcome should not be “lumped” into an expectation that affirmative agricultural easements can appropriately offset and allow residential use in all cases. We recommend any County study clearly evaluate and explain the types of circumstances where the County believes such uses and easements are appropriate in Marin County’s agricultural production zone.

County by Strong Associates in November 2003,¹² especially those recommendations that may help keep land values in balance with agricultural income in order to maintain long-term agricultural viability. As County staff is aware, one of the properties it identifies in its draft staff report as having an affirmative agricultural easement was the subject of the Strong Report, the Moritz property. According to a Property Detail Report now available on Realquest, the 84-acre Moritz property sold for \$5.2 million dollars in 2013, highlighting that land costs can be driven up beyond a current or subsequent farmer's ability to pay for the taxes, insurance and maintenance costs associated with the land, thus discouraging maintenance of the agricultural operation. Therefore, another farmland conservation tool Commission staff recommends that the County consider during its study to help ensure land-affordability for farmers is known as Options to Purchase at Agricultural Value ("OPAV"). An OPAV allows easement holders to step in any time a farm property threatens to sell for estate value, and as such, provides a substantial deterrent to non-farm buyers as well as an opportunity for land trusts to help farmers purchase the farms each time land is transferred. OPAVs also protect affordable housing in agricultural areas and serve as an enforcement mechanism for affirmative agricultural language included within easements.

As discussed above, the LUP's proposed policies and standards, taken together with the suggested modifications, protect agricultural production and ensure a sustainable agricultural economy, and can be found consistent with the Coastal Act.

e) Applicable Land Use Plan Policies

C-AG-2 Coastal Agricultural Production Zone (C-APZ). Apply the Coastal Agricultural Production Zone (C-APZ) to preserve agricultural lands that are suitable for land-intensive or land-extensive agricultural productivity, that contain soils classified as Prime Farmland, Farmland of Statewide Importance, Farmland of Local Importance, or Grazing Land capable of supporting production agriculture, or that are currently zoned 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:

- a. Uses of land for the breeding, raising, pasturing, and grazing of livestock;
- b. The production of food and fiber;
- c. The breeding and raising of bees, fish, poultry, and other fowl;

¹² The Strong Study stated: "The wild card in the agricultural land/cost/income balance is property value increase for new residential development. High value estate development on the County's agricultural lands drives up the land ownership costs for both property taxes and insurance. This can tip the scales so that the cost of land ownership exceeds (by orders of magnitude) what the agricultural income can cover. This may result in the owner of the new estate having little motivation to continue the traditional grazing use.if agricultural income is no longer significant in offsetting ownership costs, the agricultural use becomes less likely, especially into the future as high value parcels change ownership."

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d. The planting, raising, harvesting and producing of agriculture, aquaculture, mariculture, horticulture, viticulture, vermiculture, forestry crops, and plant nurseries.

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

B. Conditional uses in the C-APZ zone include a second intergenerational home per farm tract, for-profit tours, agricultural homestay facilities, agricultural worker housing above 36 beds in group living quarters per legal lot or 12 units or spaces per legal lot for agricultural works and their households, and additional agricultural uses and non-agricultural uses consistent with Policies C-AG-5, 6, 7, 8 and 9.

Development shall not exceed a maximum density of 1 agricultural dwelling unit per 60 acres. Densities specified in the zoning are not entitlements but rather maximums that may not be achieved when the standards of the Agriculture policies below and other relevant LCP policies are applied. The County (and the Coastal Commission on appeal) shall include all contiguous properties under the same ownership when reviewing a Coastal Permit application that includes agricultural dwelling units.

C-AG-5 Agricultural Dwelling Units (Farmhouses, Intergenerational Housing, and Agricultural Worker Housing). *Support the preservation of family farms by facilitating multi-generational operation and succession.*

A. Agricultural dwelling units may be permitted on C-APZ lands subject to the policies below, as well as any applicable requirement in C-AG-6, 7, 8, and 9. Agricultural dwelling units must be owned by a farmer or operator actively and directly engaged in

agricultural use of the property. No more than a combined total of 7,000 sq ft (plus 540 square feet of garage space and 500 square feet of office space in the farmhouse used in connection with the agricultural operation) may be permitted as an agricultural dwelling per farm tract, defined in this LCP as all contiguous legal lots under common ownership within a C-APZ zoning district, whether in a single farmhouse or in a combination of a farmhouse and intergenerational homes(s). Intergenerational farm homes may only be occupied by persons authorized by the farm owner or operator, shall not be divided from the rest of the legal lot, and shall be consistent with the standards of C-AG-7 and the building size limitations of C-AG-9. Such intergenerational homes shall not be subject to the requirement for an Agricultural Production and Stewardship Plan (C-AG-8), or permanent agricultural conservation easement (C-AG-7). A density of 60 acres per unit shall be required for each farmhouse and intergenerational house (i.e. at least 60 acres for a farmhouse, 120 acres for a farmhouse and an intergenerational house, and 180 acres required for a farmhouse and two intergenerational homes), including any existing homes. The reviewing authority shall consider all contiguous properties under the same ownership to achieve the requirements of the LCP. No Use Permit shall be required for the first intergenerational home on a qualifying farm tract, but a Use Permit shall be required for a second intergenerational home. No more than 27 intergenerational homes may be allowed in the County's coastal zone.

B. Agricultural worker housing providing accommodations consisting of no more than 36 beds in group living quarters per legal lot or 12 units or spaces per legal lot for agricultural workers and their households shall not be included in the calculation of density in the following zoning districts: C-ARP, C-APZ, C-RA, and C-OA. Additional agricultural worker housing above such 36 beds or 12 units shall be subject to the density requirements applicable to the zoning district. An application for agricultural worker housing above such 36 beds or 12 units shall include a worker housing needs assessment and plan, including evaluation of other available worker housing in the area. The amount of approved worker housing shall be commensurate with the demonstrated need. Approval of agricultural worker housing shall require recording a restrictive covenant running with the land for the benefit of the County ensuring that the agricultural worker housing will continuously be maintained as such, or, if no longer needed, for non-dwelling agricultural production related uses.

f) Proposed IPA

The proposed IP Update implements the aforementioned LUP agricultural protection policies in various sections. Chapter 22.32 includes standards for specific development, including agricultural dwellings units such as farmhouses, intergenerational housing, and agricultural worker housing. The section describes the standards applicable to those listed development types, including specifying in which zoning district they are allowed, limitations on use (including that intergenerational homes shall not be subdivided from the rest of the agricultural legal lot), clustering requirements and permitting requirements, including requiring a restrictive covenant for agricultural worker housing ensuring that such housing will be continuously maintained as such. Chapter 22.62 includes Table 5-1 that lists the allowable land uses and their permitting status for the C-APZ district. The table designates specified types of agricultural development as principally permitted, including accessory activities and structures, one

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intergenerational home, one farmhouse, and agricultural production, with additional permitted agricultural development (such as a second intergenerational home and agricultural processing facilities of greater than 5,000 square feet), all subject to certain criteria. Table 5-1 also classifies non-agricultural development such as campgrounds and public parks/playgrounds as permitted or conditional uses. The table cross-references other applicable IP sections that may apply to development allowed within C-APZ, including the use-specific standards specified in Chapter 22.32, the resource protection standards that apply coastal zone-wide in Chapter 22.64, and the zoning district-specific standards specified in Chapter 22.65. Chapter 22.130 defines all uses and in some cases, such as for “agriculture, ongoing” identifies when the development associated with a certain use requires a permit. Finally, as discussed earlier, Section 22.65.040 describes the specific standards for the C-APZ, and lists the required development standards applicable for non-agricultural development (including that permanent conservation easements shall be required to preserve undeveloped land).

Changes to previously proposed Chapter 22.32 from 2015 from include the removal of “and necessary for” from certain references governing development within the C-APZ zone. Section 22.32.024 was reformatted to address standards for all agricultural dwelling units, defined to include farmhouses, intergenerational homes, and agricultural worker housing, consistent with the organization of proposed LUP Policy C-AG-2. Likewise, Section 22.62.060(B) regarding the C-APZ zoning district was reformatted to be consistent with C-AG-2. Development standards for agricultural dwelling units have been moved from 22.65.040(C)(1)(e) to 22.32.024 and standards for agricultural processing and retail sales have been moved from 22.65.040(C)(1)(e) to 22.32.026 and 22.32.027, respectively. In Section 22.32.024(J), the term ‘agricultural dwelling cluster’ was added to clarify the clustering requirements for farmhouses and intergenerational homes. Likewise, Section 22.65.040(C)(1)(d) has been modified to clarify which structures should be placed with a clustered development area and when exceptions are allowable. Other changes include the deletion of ‘not-for-profit’ as determining whether or not an educational tour is a principal permitted use and the addition of ‘for-profit tours operated by a third party’ as conditional uses in Section 22.32.062, consistent with proposed LUP Policy C-AG-2. In Table 5-1-a in Chapter 22.62, agricultural accessory activities and structures, farmhouses, agricultural processing uses, agricultural production, agricultural retail sales, and agricultural worker housing are types of development designated as the principal permitted use in the C-ARP zoning district. In Section 22.65.050, subsection (C) was added to clarify that residential is principal permitted use for all parcels with land use designation of C-AG3 and agriculture is the principal permitted use for all parcels with the land use designation of C-AG1 and C-AG2.

In the definitions Chapter 22.130, agriculturally related definitions have been added, deleted and modified since the 2015 proposed version. Definitions of ‘actively and directly engaged,’ ‘agricultural dwelling cluster,’ ‘average agricultural slope,’ and ‘initial vineyard planting work’ have been added. The definition of “actively and directly engaged” includes a lease to a bona fide farm operator. The definitions of ‘agricultural production’ and ‘agriculture’ are proposed to more closely match C-AG-2. The definition of ‘agriculture, ongoing’ was modified to include all-routine agricultural cultivation practices and conservation practices required by a government agency. The definition of ‘grading’ was modified to add a 50 cubic yard threshold.

g) Consistency Analysis

In April 2015, the County's then proposed IP was heard by the Commission. At that time, Commission staff had suggested a series of proposed IP modifications to the proposed IP, and a set of findings supporting those changes (see attached Commission staff IP recommendation in [Exhibit 4](#)). Except as revised herein, the Commission staff recommended 2015 IP findings are incorporated herein by reference as part of these findings, including as the County's proposed IP is based on the Commission staff's recommended certified version with minor changes. Thus, the findings in this section build upon the referenced and incorporated 2015 IP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.¹³

The IP's agricultural protection policies as proposed are based upon implementing the Land Use Plan *before* it was modified by the Commission with suggested modifications as described above. Therefore, the proposed IP is not consistent with, and is not adequate to carry out, the LUPA with suggested modification and must be denied as submitted. The IP can be approved only with the following suggested modifications that are necessary to carry out the proposed LUP as modified above.

As described above, "farm tract" has been defined to consist of all contiguous legal parcels owned by the applicant. Those identified parcels are then allowed one farmhouse and up to two intergenerational homes, if they meet certain criteria. Thus, suggested modifications are necessary in order to achieve consistency with LUP Policies C-AG-2, -5 and -9 to change the terms 'legal parcel' and 'legal lot' to 'farm tract,' where applicable throughout the IP.¹⁴ Similarly, in order to achieve consistency with C-AG-2, a suggested modification is necessary for IP Section 22.32.062 to clarify 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.

Permitting of Agricultural Development

~~Proposed IP Section 22.68.030 (Coastal Permit Required) states that a CDP is required for all development in the coastal zone, and provides a list of activities that do or do not fall under the definition of development. Section 30106 of the Coastal Act states that the removal or harvesting of major vegetation for agricultural purposes is not development, but that any change in the intensity of use of land or water is development, as is grading. Consistent with Coastal Act Section 30106, proposed IP Section 22.68.030 (Coastal Permit Required) states that a coastal development permit (CDP) is required for all development in the coastal zone defined, in part, to include grading, a change in the density or intensity of use of land, a change in the intensity of use of water or of access thereto, and the removal or harvesting of major vegetation other than for agricultural purposes, unless the development is categorically excluded, exempt, or qualifies for a de minimis waiver. Proposed IP Section 22.68.050 more specifically lists activities exempt from CDP requirements including "ongoing agricultural activities" (see proposed IP Section 22.68.050 (L)) as further defined in proposed IP Section 22.130.030 (Definitions of Specialized~~

¹³ The County accepted all the Commission staff's 2015 modifications as the underlying "clean" version of their proposed IP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 6](#).

¹⁴ See [Exhibit 11](#) for Commission staff build-out analysis.

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Terms and Phrases) as “Agriculture, ongoing”). The County proposed definition of “Agriculture, ongoing” identifies six types of agricultural activities that are not ongoing and would require a coastal development permit (CDP). ~~has offered an interpretation of the definition of development prescribed by the Coastal Act such that “development” would exclude any routine agricultural activities which are not expanded into ESHA, ESHA buffers, or never before used areas. The proposed definition also includes conservation practices required by a government agency as “ongoing agricultural activities” not subject to CDP requirements.~~

The Commission has grappled with the question of what types of agricultural activities constitutes development numerous times, and on March 19, 1981, the Commission issued a policy statement clarifying that it had jurisdiction over *expansion* of agricultural activities located in areas containing major vegetation. The Commission determined that expansion of agricultural uses into areas of native vegetation constitutes a “change in the intensity of the use of land” and is therefore development under the Coastal Act. New and expanded agriculture is also a change in the intensity of the use of land and water for a variety of additional reasons, including because preparing land never before used for agriculture for new agricultural use requires clearing the land of existing vegetation, and growing crops and livestock requires a significant amount of additional water, unlike the land’s water needs in its natural state. Thus, removal of major vegetation in association with new and expanded agricultural operations requires a CDP, so such activities cannot be exempted from CDP requirements in the LCP. In addition, because the Coastal Act and LCP definitions of development do not exclude *grading* for agricultural purposes (as they do for the *removal of major vegetation* for agricultural purposes), all grading requires a CDP, unless it is otherwise exempt or excluded.

Commission staff worked diligently with County staff to try to come to agreement on those activities that would constitute “Agriculture, ongoing” not requiring a CDP, and have made much progress. To this effect, suggested modifications conditionally certified by the Commission are in part consistent with the County’s proposed definition as it similarly describes “Agriculture, ongoing” to include agricultural production activities (such as crop rotation, plowing, tilling, planting, harvesting, seeding, etc.) that haven’t been expanded into never before used areas. As such, ~~to the extent the~~ that rotational crop farming or grazing has been part of a regular pattern of agricultural practices, rotational changes are ~~it is~~ not a change in intensity of use of the land despite the fact that the grazing and crop growing are ~~rotationally~~ occurring at different times on different plots of land.

However, ~~as~~ proposed, the IP Update is inconsistent with Section 30106 ~~including~~ because it more broadly exempts agricultural activities which may require a CDP and does not clearly differentiate between different types of agricultural activities (including converting grazing land to row crops such as viticulture) that independently constitute development because they are a change in the intensity of use of land and/or require grading; and does not require that the ongoing agricultural activities be lawfully established. The Commission finds that the six County-enumerated activities do not comprise the universe of activities requiring a CDP. Therefore, the Commission has conditionally certified a suggested modification converting the enumerated listing to a listing that is illustrative. In addition, the Commission’s suggested modifications retain the necessary CDP requirement for new development, even if it involves agricultural activities being authorized or required by another agency. The ~~s~~ suggested

~~modifications are therefore required that do not eliminate~~ also ensure that a permit is required for either agricultural activities that would independently require a CDP because they involve grading or a change in intensity of use of the land ~~or agricultural activities that were not lawfully established.~~

~~Further,~~ Both the proposed County definition and 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. Instead the definition removes the upfront burden of proof from an individual farmer that all activities must be shown to be legally established as part of a CDP application process in recognition of the fact that agricultural activities, including cattle grazing, have historically been occurring on properties in Marin for decades.¹⁵ ~~the Commission's definition acknowledges~~ However, if the extent or legality of agriculture production activities were to be contested, the Commission's suggested modifications acknowledge that determinations of ongoing agricultural activities may need to be supported with evidentiary information such as information from the Marin County Department of Agriculture, Weights and Measures.

Further, even if agricultural activities are occurring in existing areas and are legal, allowable uses, if the activity changes the intensity of use of land it would still require a CDP. As described further in the Agriculture section of the proposed Land Use Plan, the coastal environment present in Marin County provides for high quality grasslands which support the majority of Marin's animal agricultural industry while other factors such as the steep slopes, hills, non-prime soils, and limited water sources restrict the expansion of intensive row crop cultivation. Recognizing these constraints unique to Marin agriculture, the County and Commission proposed definition of ongoing agriculture captures types of agricultural activities, including an enumerated list of activities currently recognized by the Marin County agricultural community that would clearly change the intensity of the use of land, and that meet the definition of development requiring a CDP. This enumerated list includes, but is not limited to, uses that would intensify water usage and require development of new water sources such as construction or expansion of new or expanded wells, and installation or extension of irrigation systems. This list also captures uses that would fall outside of the scope of routine agricultural practices such as terracing of land, viticulture and activities on steep slopes. Any similar use not enumerated but that still changes the intensity of use of land in a similar manner would also still require a CDP.

There has been some debate as to whether a change from grazing to row crops (again, not expanding into never before used areas) should be included in this enumerated list as an activity that requires a CDP. Given the particular context of Marin, there are a number of cases in which the conversion of grazing to row crop would not intensify the use of land or require grading and as such, would not require a CDP. These examples include the growing of grasses for silage to feed grazing animals or dry farming of potatoes or other crops that would not intensify the use of water. The Commission also recognizes the need to provide farmers with the flexibility to adjust

¹⁵ The Marin County Department of Agriculture, Weights and Measures began preparing Livestock and Crop Reports in the 1930s.

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their agricultural practices to respond to changing market conditions or environmental factors and should be allowed to do so in a streamlined manner if it is not increasing the intensity of the use of land. As such, in Marin, all forms of agriculture which convert grazing to row crop do not require a CDP, only those conversions that would intensify the use of land or water or require grading not already exempt or excluded. Due to the limited prime soils, steep slopes, and water availability in Marin, activities that convert grazing areas to row crop and increase the intensity of use of land often are captured within other enumerated categories that require that development of new water sources, expansion of irrigation, terracing of land or planting on a slope exceeding 15% require a CDP. There has also been much public concern expressed about the conversion of grazing land to viticulture due to the water requirements and the visual impact on the landscape, and the unknown consequences of the legalization of marijuana and the subsequent new cannabis industry. To ensure these uses are developed in a manner consistent with the Coastal Act, both the County and the Commission's definition include these uses in the list of activities which require a CDP.

It has been presumed that the suggested modification would institute a *new* coastal permit requirement program for agriculture where one never existed, inconsistent with the Coastal Act and the Commission's own guidance on this point. The Commission respectfully disagrees with this characterization and wishes to clarify the record. Since 1982, the County's certified LCP has included agricultural production as the principal permitted use in the Coastal Agricultural Production Zone. However, even development that is designated as principally permitted is not exempt from coastal permitting requirements. Therefore, 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. Thus, Commission suggested modifications do not "establish" a new coastal permitting requirement for agricultural production in Marin County. Rather, such a permit process has existed in the C-APZ portion of the County since 1982 (and prior to LCP certification through the Commission). In short, the definition proffered by the Commission recognizes the unique attributes of farming in Marin, and responds appropriately, including to public comments received on this topic. It also respects both the Coastal Act and the Commission's guidance related to agricultural activities over the years.

Even if an agricultural development is found to require a CDP, the existing LCP offers many tools to streamline the permitting process for the agricultural community. 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. As defined in these exclusion orders, agriculture means the tilling of soil, raising of crops, horticulture, viticulture, livestock, farming, dairying and animal husbandry including all uses customarily incidental and necessary thereto. These exclusions apply to specified parcels zoned Agriculture C-APZ at the time of the exclusion orders' adoption that are located outside the areas prohibited by Coastal Act Section 30610.5(b) and 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 1981 zoning ordinance). As such, in order for development to be excluded, it would need to meet the 1981 zoning ordinance requirements that development be clustered on no more than five percent of the gross acreage, to the extent feasible; be outside of wetlands, streams and their 100-foot buffers; and have adequate water

supply, among other requirements. In addition, intergenerational homes, for example, cannot be excluded because they were not an allowed use on C-APZ lands when the Orders were adopted. Even with these caveats, much of the newly proposed agricultural development within the County's coastal zone can be excluded from coastal permit requirements per the Exclusion Orders.

Public commenters have expressed concern that application of the County Categorical Exclusion Orders E-81-2 and E-81-6 in conjunction with the new expanded definition of agriculture in the proposed LCPA will result in future development of agricultural land with limited oversight potentially leading to scenic and visual resource impacts, intensification of uses, and development of agricultural dwelling units that are not necessary for agricultural production. County Categorical Exclusion Orders E-81-2 and E-81-6, 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. However, these exclusions only apply to parcels zoned Agriculture C-APZ at the time of the exclusion orders' adoption if those parcels are located outside the statutorily proscribed exclusion areas as well as outside of the area between the sea and the first public road or 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.

To ensure that the applicable zoning is applied to such categorically excluded development, the Commission has required the addition of Appendix 7a, Title 22 of the Marin County Code Zoning Ordinance from April 1981. Suggested modifications to 22.68.040 (A) clarify that Appendix 7a represents the zoning in effect at the time of the categorical exclusions adoption and requires that any application for excludable development establish zoning consistency. As such, categorically excluded development must still meet the 1981 LCP's requirements that development be clustered on no more than five percent of the gross acreage, to the extent feasible; be outside of wetlands, streams and their 100-foot buffers; and have adequate water supply, among other requirements. Further, development must be also be consistent with April 1981 zoning requirements which include that dwellings be incidental to the primary and principle agricultural use of the land as demonstrated by the applicant and requires design review for agricultural buildings unless they meet certain criteria. Any conversion of an agricultural structure constructed under the categorical exclusion order to a principally permitted use without a public hearing would need to meet all above-identified statutory and regulatory requirements. These standards in part would address issues related to intensification including parking standards and the size of the facility.

Additionally, even if an agricultural development is found to require a CDP, the IP as proposed to be modified by the Commission offers new tools to streamline the permitting process. These streamlined procedures include the County's use of the de minimis waiver of CDP requirements process for non-appealable development (IP Section 22.68.070), and public hearing waivers for appealable development (IP Section 22.70.030(B)(5)). With respect to de minimis waivers, as suggested to be modified, any non-appealable development, if it is found to be consistent with the LCP and does not have potential for any adverse effect on coastal resources, can have CDP requirements waived by the Board of Supervisors. The proposed waiver must be noticed to the Executive Director of the Commission, and he/she has the right to request that waiver not be

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issued and that a regular CDP be obtained, consistent with the process for de minimis waivers specified in the Commissions regulations. The new County IP allowance for a de minimis waiver process stems from Coastal Act Section 30624.7, while the new IP allowance for a waiver of a public hearing for appealable development stems from Section 30624.9. Since all appealable development is required to have one public hearing (and therefore the permit requirement cannot be waived), 30624.9 allows for certain types of development, defined as “minor” development, to be allowed without the otherwise required public hearing if notice is provided and nobody specifically requests such a hearing. Minor development must still be found consistent with the certified LCP, cannot require any other discretionary approval, and cannot have any adverse effect on coastal resources or public access to and along the coast.

The proposed definition as modified by the Commission specifically recognizes the categorical exclusions and waiver process described above and includes language to that effect specifying that even activities listed as requiring a CDP may be waived pursuant to the requirements of Section 22.68.070 or excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.

Buildout

Public comments have asserted that the Commission-approved LUP, and the proposed IP, would increase development potential on C-APZ lands, in part because of the new allowance for intergenerational housing units. However, as described at the Commission hearing on the conditionally certified LUP, the development potential on C-APZ land will only be reduced under the proposed LCP language.

Policy C-AG-5 and IP section 22.65.040(C)(1)(e)(3) only allow a single farmhouse/two intergenerational homes per farm tract, which may consist of multiple separate legal lots. Whereas, under the existing certified IP, a farmer is potentially allowed up to a maximum one farmhouse per legal lot, under both the 2014 conditionally certified LUP and the proposed LUP, the farmer is only allowed one farmhouse per farm tract, defined as all contiguous legal lots under common ownership . Therefore, the development potential on each lot is not increased under the proposed LCP Update .

As part of its submittal, the County calculated a buildout analysis in order to understand the cumulative impact the new LCP policies would have on C-APZ parcels. The County reviewed parcel data and found that there are 193 privately owned C-APZ parcels in the coastal zone. Of the 193 parcels, 40 are subject to easements held by the Marin Agricultural Land Trust (MALT), and 123 are subject to Williamson Act contracts. Based on County assessor’s data, 125 of the 193 parcels are currently held in common ownership over 40 ranches (i.e., of the 193 total C-APZ parcels, 68 of them are owned by an owner that does not own any other C-APZ parcels, while 125 parcels are owned by owners that own multiple parcels that together constitute 40 “ranches”). In calculating buildout, the County excluded all existing parcels that currently have a farmhouse, excluded all lands subject to MALT easement or Williamson Act contract from being allowed an intergenerational home, assumed that a substandard lot (i.e., one below 60 acres) would be allowed a farmhouse, and then calculated allowable intergenerational homes by the acreage of the parcels (i.e., one intergenerational unit allowed if the parcel is 120 acres, and second allowed if 180 acres). Based on these assumptions, the County found that there was the potential to build a maximum of 83 additional farmhouses and 27 intergenerational units. This 27

unit assumption became the basis for the 27 intergenerational unit cap in the coastal zone as approved by the Commission in Policy C-AG-5 (and implemented in proposed IP Section 22.65.050(C)(1)(e)(7)).

However, the County's buildout estimates assumed that a farmhouse would be allowed on every parcel. The analysis did not reflect that some parcels might not be legal lots or that some parcels are contiguous legal lots owned by one farmer, who would only be allowed one farmhouse under both the 2014 conditionally certified LUP and the proposed LUP. .

In 2015, in order to further document buildout based on the conditionally certified LUP and the IP as suggested to be modified, Commission staff prepared an updated buildout analysis. In order to ascertain the total number of C-APZ parcels that would be allowed dwelling units, staff excluded publicly-owned parcels and parcels subject to permanent MALT agricultural conservation easement, included parcels that touch the coastal zone boundary where the majority of the parcel is located within the coastal zone, and also included parcels subject to Williamson Act contracts since such contracts can expire. The County did not include split-zoned nor Williamson Act parcels in its analysis, which explains why, including these parcels, Commission staff found that there are **232** total privately-owned C-APZ parcels in the coastal zone, as opposed to the County's estimate of 193. Of the 232 privately owned C-APZ parcels, the average size is 152 acres, 35 parcels are under 60 acres in size, and 197 are above 60 acres.¹⁶ Of the 40 sub-60 acre parcels, 27 are the only parcel owned by the owner, while 13 are held in common ownership with other parcels. Of the 193 parcels over 60 acres, 39 are the only parcel owned by the owner, and 153 are owned by people that own multiple parcels. Finally, of the 50 owners that own the 153 parcels, six owners own parcels that are non-contiguous (meaning that, under Section 22.65.050(C)(1)(e)(3), these six owners could pursue additional farmhouses if the findings could be made that those non-contiguous parcels constitute wholly independent farming operations).

Under the assumptions that parcels with existing farmhouses were not allowed an additional one, including commonly owned contiguous parcels (consistent with conditionally certified and currently proposed C-AG-5), and that sub-60 acre parcels where the parcel was the only parcel owned by that owner were allowed a farmhouse, staff calculated a total of 48 potential new farmhouses allowed under the IP's proposed standards, as modified. Furthermore, without the conditionally certified cap of 27 intergenerational homes, a total of 94 intergenerational units could be allowed, highlighting the importance of the approved LUP's 27 unit cap on intergenerational homes.

Thus, under the County's analysis, there would be a maximum potential of 83 additional farmhouses and 27 intergenerational units (84 intergenerational units if including Williamson Act parcels), for a total of up to an additional 110 units. Under both the conditionally certified and currently proposed LUP, there would be a maximum potential of up to 48 new farmhouses and up to 27 intergenerational units, for a total of up to 75 units. In comparison, under the existing certified LCP, which allows up to a maximum of one farmhouse per legal lot and does not allow intergenerational units, there is the potential for a maximum of 83 additional

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farmhouses per the County's analysis.¹⁷ Therefore, the conditionally certified LUP and the proposed LUP, as modified, significantly reduce the maximum potentially allowable buildout of agricultural dwelling units.

Finally, Commission staff's analysis is based on consideration of a larger number of C-APZ parcels (232) as compared with the County's analysis (193), because of the inclusion of Williamson Act parcels and parcels bisecting the coastal zone. As a result, the difference is even greater, relatively speaking, between the County's analysis under the proposed IP Update, and the IP Update as it would be modified. Thus, it is clear that the IP Update, as suggested to be modified, reduces the maximum potentially allowable buildout in the coastal zone, and, as described earlier, will ensure that permissible dwelling units are clustered together as opposed to spread out on individual legal lots.

Viticulture

Public comments have also discussed adding additional standards that viticulture must meet, including additional standards for water usage, habitat impacts, and water quality. As discussed in this report, the IP Update states that ongoing agricultural production activities do not require a CDP, but that new or expanded agricultural production activities constitute development requiring a CDP. Therefore, expanding agricultural activities into never before farmed areas, including viticulture development, constitutes development requiring a CDP that is consistent with all applicable LCP policies, including the standards and findings listed in IP Section 22.65.040(C)(1). This IP Update section applies to all agricultural development within C-APZ lands and requires findings that there is adequate water supply, sewage disposal, road access and capacity, and other public services to serve the development after taking into account the needs of existing agricultural production activities; that the development shall have no significant adverse impacts on environmental quality or natural habitats and meet all other LCP policies (including those that prohibit new agricultural development within ESHA and its buffer); and that the production activity shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies including Tomales Bay, either individually or cumulatively. Therefore, the LCP Update includes development standards adequate to carry out the LCP's coastal resource protection policies while also offering streamlining of required permitting to ensure that this Coastal Act and LUP priority use is appropriately encouraged and strengthened. Thus, additional standards specific to viticulture are not necessary as the existing standards, as proposed to be modified, adequately address potential coastal resource concerns.

Thus, the LCP as modified sets up a structure in which, in terms of agricultural development, a CDP is not required for ongoing agricultural activities, many new agricultural activities may be excluded from a CDP (including production and grading activities and other structural development if it meets specific criteria), and, even if a CDP is required, it can be waived (including if it is a principally permitted and non-appealable use) or deemed minor. As such, as modified, the LCP provides numerous tools to streamline permitting requirements for the County's agricultural community and maximize public participation in the protection of the agricultural economy, all consistent with the Coastal Act and the conditionally certified LUP.

h) Response to Public Comment on the LUP and IP

The primary intent of the LCP's agriculture policies is to protect agricultural land, continued agricultural uses, family farming, and the agricultural economy. It seeks to do so by maintaining parcels large enough to sustain agricultural production, preventing conversion to non-agricultural uses, providing for diversity in agricultural development, facilitating multi-generational operation and succession, and prohibiting uses that are incompatible with long-term agricultural production or the rural character of the coastal zone. The protection of both agricultural production and the agricultural economy, including in relation to allowing uses that are incidental to and supportive of agricultural production, are clear objectives for the LCP agriculture policies.

Ongoing Agriculture

Since 1982, the County's certified LCP has included agricultural production as the principal permitted use in the Coastal Agricultural Production Zone (C-APZ). However, even development that is designated as principally permitted is not exempt from coastal permitting requirements. Therefore, 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

Proposed IP Section 22.68.030 (Coastal Permit Required) states that a CDP is required for all development in the coastal zone, and provides a list of activities that do or do not fall under the definition of development. Section 30106 of the Coastal Act states that the removal or harvesting of major vegetation for agricultural purposes is not development, but that any change in the intensity of use of land or water is development, as is grading. The County proposed definition of "Agriculture, ongoing" identifies six types of agricultural activities that are not ongoing and would require a coastal development permit (CDP). ~~has offered an interpretation of the definition of development prescribed by the Coastal Act such that "development" would exclude any routine agricultural activities which are not expanded into ESHA, ESHA buffers, or never before used areas. The proposed definition also includes conservation practices required by a government agency as "ongoing agricultural activities" not subject to CDP requirements.~~

As proposed, the IP Update is inconsistent with Section 30106 ~~including~~ because it more broadly exempts agricultural activities that may require a CDP and does not clearly differentiate between the different types of agricultural activities (including converting grazing land to row crop use such as viticulture) that independently constitute new development because the proposed new agricultural activity is a change in the intensity of use of land and/or requires grading; and the IP Update does not require that the ongoing agricultural activities be legally established. The Commission finds that the six County-enumerated activities do not comprise the universe of activities requiring a CDP. Therefore, the Commission has conditionally certified a suggested modification converting the enumerated listing to a listing that is illustrative. In addition, the Commission's suggested modifications retain the necessary CDP requirement for new development, even if it involves agricultural activities being authorized or required by another

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agency. ~~The suggested modifications also ensure that a permit is required for either new development agricultural activities that independently require a CDP because they involve grading or a change in intensity of use of the land or agricultural activities that were not legally established.~~

The Commission has grappled with the question of what types of agricultural activities constitutes development numerous times, and on March 19, 1981, the Commission issued a policy statement clarifying that it had jurisdiction over *expansion* of agricultural activities located in areas containing major vegetation. The Commission determined that expansion of agricultural uses into areas of native vegetation constitutes a “change in the intensity of the use of land” and is therefore development under the Coastal Act. New and expanded agriculture is also a change in the intensity of the use of land and water for a variety of additional reasons, including because preparing land never before used for agriculture for new agricultural use requires clearing the land of existing vegetation, and growing crops and livestock requires a significant amount of additional water, unlike the land’s water needs in its natural state. Thus, removal of major vegetation in association with new and expanded agricultural operations constitutes new development, requires a CDP, so such activities cannot be exempted from CDP requirements in the LCP. In addition, because the Coastal Act and LCP definitions of development do not exclude *grading* for agricultural purposes (as they do for the *removal of major vegetation* for agricultural purposes), all grading requires a CDP, unless it is otherwise exempt or excluded. To the extent the rotational crop farming and/or grazing has been part of a regular pattern of agricultural practices, it is not considered to be a change in intensity of use of the land despite the fact that the grazing and crop growing are ~~rotationally-occurring at different times~~ on different plots of land.

~~Further, Both the proposed County definition and the Commission’s suggested modifications limit ongoing agriculture to existing agricultural activities that are not expanding into never before used areas. It is also important to note that existing agricultural 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 previously has been occurring. Instead the definition removes the upfront burden of proof from an individual farmer that all activities must be shown to be legally established as part of a CDP application process in recognition of the fact that agricultural activities, including cattle grazing, have been occurring on properties in Marin for decades.¹⁸, the Commission’s definition acknowledges~~ However, if the extent or legality of agriculture production activities were to be contested, the Commission’s suggested modifications acknowledge that determinations of ongoing activities may need to be supported with evidentiary information such as information from the Marin County Department of Agriculture, Weights and Measures. In short, the definition proffered by the Commission recognizes the unique attributes of farming in Marin, and responds appropriately, including to public comments received on this topic. It also respects both the Coastal Act and the Commission’s guidance related to new development requirements over the years.

Even if an agricultural development is found to require a CDP, the LCP offers many tools to

¹⁸The Marin County Department of Agriculture, Weights and Measures began preparing Livestock and Crop Reports in the 1930s.

make the process of obtaining approval an easy process for the agricultural community. The LCP streamlines the permitting process for the agricultural community as demonstrated in attached [Exhibit 17](#). In addition, much agricultural development is excluded from permit requirements in certain geographic locations. 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, 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 feet; electric utility lines; new fencing for farm or ranch purposes, provided no solid fence designs are used.

Additionally, even if an agricultural development is found to be new development therefore requiring a CDP, the IP as proposed by the County to be modified by the Commission offers new tools to streamline the CDP process. These streamlined procedures include the County's use of the de minimis waiver of CDP requirements process for non-appealable development (IP Section 22.68.070), and public hearing waivers for appealable development (IP Section 22.70.030(B)(5)). With respect to de minimis waivers, as suggested to be modified, any non-appealable development, if it is found to be consistent with the LCP and does not have potential for any adverse effect on coastal resources, can have CDP requirements waived by the Board of Supervisors. The proposed waiver must be noticed to the Executive Director of the Commission, and he/she has the right to request that waiver not be issued and that a regular CDP be obtained, consistent with the process for de minimis waivers specified in the Commissions regulations. The new County IP allowance for a de minimis waiver process stems from Coastal Act Section 30624.7, while the new IP allowance for a waiver of a public hearing for appealable development stems from Section 30624.9. Since all appealable development is required to have one public hearing (See 14 CCR 13566), 30624.9 allows for certain types of development, defined as "minor" development, to be allowed without the otherwise required public hearing if notice is provided and nobody specifically requests such a hearing. Minor development must still be found consistent with the certified LCP, cannot require any other discretionary approval, and cannot have any adverse effect on coastal resources or public access to and along the coast.

Thus, concerns have been raised on both sides, namely that this updated LCP will somehow open the floodgates to new development proposed on sensitive coastal resources on the one hand and new permit requirements will unfairly burden agricultural operators on the other. Neither concern is entirely accurate. As suggested to be modified, the updated LCP will only enhance coastal resource protection and reduce the allowable development, as described on page 36 of the staff report, through Commission staff's buildout analysis. At the same time, these updated

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policies recognize the unique role of agricultural interests in Marin's coastal zone and provides a framework that helps to facilitate the continuation of family farming.

"Necessary" for Agricultural Production

Public comments have raised concerns about the deletion of the requirement that development on C-APZ lands demonstrate that is necessary for agricultural production. As stated on page 24 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.

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, in order 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.

Program C-AG-2.b

Public comments have raised concerns about the Coastal Act consistency of continuing to research the possibility of authorizing residential development in the C-APZ zoning district. LUP programs do not comprise the standard of review for the approval of coastal permits. Instead, as set forth in Development Code Section 22.70.070 – Required Findings, the policies of the LUP and the development standards of the Zoning Code, comprise the standard of review for coastal permits. Section 22.70.070 entitled "Findings" provides: The applicable review authority shall approve a Coastal Permit only when it first makes the findings below in addition to any findings required by the Marin County Local Coastal Program. Findings of fact establishing that the project conforms to all requirements of the Marin County Local Coastal Program shall be made and shall include all of the findings enumerated below. The findings shall reference applicable policies of the Marin County Local Coastal Program where necessary or appropriate in addition to the development standards identified below.

On the other hand, programs identify future evaluations to be undertaken by the County before it considers whether and how to propose future LCPAs. For example, Program 2b expressly states that the Program would have no effect until certified as an LCPA by the Coastal Commission. As described on page 26 of the staff report, through proposed Program C-AG-2.b, the County expresses its intention to research the use of affirmative agricultural easements, including in conjunction with residential development. Although the County and its staff are free to undertake the research County staff identify in Program C-AG-2.b, a subsequent LCP amendment would be required before any residential development could occur. Program references do not mean that residential development will eventually become a conditional use in C-APZ, especially given that the County has not yet conducted its study.

Takings Claims

While some public commenters expressed concern about expanded development potential and decreased appellate oversight by the Commission due to changes in the C-APZ, other public commenters expressed concern that they would no longer be able to build a single-family residence on each and every lot a farmer owned. These public comments expressed concern that they had a right to build a single-family residence on each and every legal lot in the C-APZ and to be deprived of this entitlement was tantamount to a taking. However, these public comments fail to acknowledge the existing limitations in the certified LCP that apply to development in the C-APZ. First, the County has other areas of the coastal zone designated residential as well as two other agricultural zones wherein residential development is to be concentrated. Second, there was never an entitlement to develop a single-family residence in the C-APZ; the County's agricultural production zone is not a residential zone and the denial of a single-family residence would still leave the farmer with the ability to grow agriculture as a commodity for commercial purposes. Third, single-family residences in the County's agricultural production zone are currently subject to stringent use limitations, including that any permissible residence must "protect and enhance continued agricultural use and contribute to agricultural viability". If this standard could be met, permanent conservation easements were to be recorded over the portion of the property not used for physical development, and a prohibition on further division of the property was executed as a covenant against the property.

Further, the definition of actively and directly engaged includes "maintaining a lease to a bona fide commercial agricultural producer" to ensure that farmers and ranchers can retire from active farming or ranching while complying with LCP requirements by leasing land to another producer. Section 22.42.024(F) expressly excepts agricultural leases from the limitation on dividing farmhouses and intergenerational homes from the rest of the legal lot containing the farmhouse and IG. In addition, section 22.32.024(D) of the LCP Update expressly states that nothing in its provisions shall be construed to prohibit the sale of any legal lot comprising the farm tract, nor require the imposition of any restrictive covenant on any legal lot comprising the farm tract, other than the legal lot upon which the farmhouse and up to 2 intergenerational homes is authorized. Future development of the other legal lots comprising the farm tract are subject to the provisions of the certified LCP.

Therefore, rather than deviate from the framework set up in the currently certified LCP, the LCP Update (that only allows one farmhouse and up to two intergenerational homes for each farm

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tract owner or operator actively and directly engaged in agriculture), serves to limit the proliferation of agricultural dwelling units in the coastal zone by acknowledging that the a “farm tract,” defined as all contiguous lots under common ownership, can consist of multiple legal parcels that together constitute one unified farming operation. Instead of allowing the potential for the same farmer to develop multiple farmhouses spread across multiple contiguously owned legal parcels that are under common ownership in the commercial agricultural zone, the LCP Update (C-AG-5) only allows for one farmhouse, or one farmhouse and up to two intergenerational homes per farm tract to allow for family members (or any other person authorized by the owner) to live on the farm property. As observed in the currently certified LCP, the agricultural policies are intended to avoid buildout spread evenly across the zoning district, inefficiently utilizing the agriculturally productive land and requiring large investments for public service. Therefore the LCP Update provisions seek to cluster permissible development and direct other construction to existing communities where it can be accommodated. As modified, the Commission finds that the LCP Update protects and enhances the agricultural productivity and viability of the County’s agricultural production zone consistent with the requirements of the Coastal Act. By limiting dwellings within the agricultural production zone to farmhouses, land values are driven agriculturally rather than residentially, helping to sustain the long term viability of agriculture and prevent large residential estates from driving up the cost of the agricultural land.

Finally, regarding the imposition of affirmative agricultural easements in connection with non-agricultural conditional uses, such agricultural easements are only authorized “consistent with state and federal laws,” such as the state and federal constitution.

3. Habitat Resources

a) Applicable Coastal Act Policies

Section 30107.5. "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240. (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.

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities,

including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreation.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. ...

Section 30236: *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section 30250(a): *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

The Marin County coastal zone contains an extraordinary variety of habitat types and geologic features, including a broad range of estuarine and marine environments, tidal marshes, freshwater wetlands, streams, upland forests, chaparral, grasslands, dunes, and beaches. Because so much of the coastal zone is rural, the protection of these habitats, including through policies that specify allowable uses within them and clearly defined development standards, is critical.

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Coastal Act requirements emphasize the importance of protecting, maintaining, enhancing, and restoring coastal waters, wetlands, and ESHA. For example, with regard to sensitive habitats, Coastal Act Section 30240 requires that ESHA be protected against any significant disruption of habitat values, prohibits all but resource dependent uses, and requires areas adjacent to ESHA be sited and designed to prevent impacts that would significantly degrade ESHA. In addition to requiring protection to habitats designated as ESHA, Section 30233 provides that the diking, filling, or dredging of open coastal waters, wetlands, or estuaries may only be permitted where there is no less environmentally damaging alternative and when such actions are only for those uses specifically listed, including new or expanded port facilities, boating facilities and public recreational piers, incidental public service purposes, and mineral extraction. Section 30236 limits channelizations, dams, or other substantial alterations of rivers and streams to only three purposes: necessary water supply; protection of existing structures where there is no feasible alternative; or improvement of fish and wildlife habitat. Finally, Section 30250(a) requires, in part, new residential, commercial, and industrial development to be located within existing developed areas, or, in other areas where it will not have adverse effects on coastal resources, including biological resources. Thus, the LUPA must contain appropriate standards, such as avoidance of ESHA for all but resource dependent uses, maintaining adequate habitat buffers, and full mitigation for all unavoidable impacts. Any allowed land uses within wetlands and streams must also be consistent with the specific uses allowed within them by Coastal Act Sections 30233 and 30236, respectively, and all development must be consistent with coastal resource protection.

b) 2014 Commission conditionally-certified LUP

The 2014 conditionally-certified LUP's proposed biological resources policies retained the existing LUP's requirements that limit the allowable uses within the particular resource type, including for wetlands, streams, and terrestrial ESHA, but also provide additional detail and clarity over the existing LUP in terms of biological resource protection standards. Foremost, the 2014 conditionally-certified LUP required development proposals within or adjacent to ESHA to prepare a biological site assessment prepared by a qualified biologist. The purpose of the assessment was to confirm the existence of ESHA, document site constraints, and recommend precise buffer widths and siting/design techniques required to protect and maintain the biological productivity of the ESHA. The 2014 conditionally-certified LUP retained the 1981 certified requirements for buffers around ESHA, 100 feet for wetlands and streams and a newly defined 50 feet for terrestrial ESHA, and also maintained the requirement that the uses allowed within buffers are only those that are allowed within the ESHA itself (except for terrestrial ESHA, wherein any use is allowed within the buffer so long as it does not significantly degrade the habitat). However, while the 1981 certified LUP allows for a reduction in buffer width only for streams, the 2014 conditionally-certified LUP allowed for a reduction in the required buffer to an absolute minimum of 50 feet for both wetlands and streams, and no absolute minimum for terrestrial ESHA. Any buffer reduction was only be allowed upon required findings of the biological site assessment and upon a project condition that there be a net environmental improvement (including elimination of non-native or invasive species) over existing conditions.

The 2014 conditionally-certified LUP policies have been reviewed, and were developed with recommendations from, the Commission's Senior Ecologist, Dr. John Dixon, and generally reflect the Commission's best practices in terms of LCP requirements for resource protection.

The 2014 conditionally-certified LUP provided an encompassing definition of ESHA, required detailed site-specific biological assessments to protect it, and required the allowed land uses within such resources to be fully consistent with those specified by the Coastal Act.

c) Proposed LUPA

For the most part, the LUP's proposed biological resources policies have not been modified from the 2014 conditionally-certified LUP and are consistent with applicable Coastal Act policies. The only two proposed changes are deletions of references to Environmental Hazards policies in C-BIO-4 regarding the protection of major vegetation and C-BIO-9 regarding Stinson Beach Dune and Beach Areas.

d) Consistency Analysis

The proposed modification to C-BIO-4 is not Coastal Act consistent because it needs further refinement in order to achieve internal consistency with the rest of the LUP and with the requirements of Coastal Act related to habitat resources. Therefore, the LUP must be denied as submitted and only approved as modified as discussed specifically below.

Coastal Act Section 30240 requires that ESHAs are protected against any significant disruption of habitat values and limits uses allowed within ESHAs to those dependent on the resource. Thus, a suggested modification is required for C-BIO-4 to state that major vegetation removal will first and foremost avoid ESHA, rather than just avoiding impacts to an ESHA. In order to achieve internal consistency throughout the LUP for how shoreline protection is referred to and defined, a suggested modification to C-BIO-9 changes the term 'protective works' to 'shoreline protective device.'

Public comment has raised the issue of the Coastal Act consistency of wetland buffers reductions allowed in the proposed LUP. In addition to the limitations on buffer adjustments set forth in C-BIO-19 subsection (1), subsection (2) of C-BIO-19 states that a buffer adjustment may only be granted if supported by the findings of a site assessment which demonstrate that the adjusted buffer, in combination with incorporated siting, design, and other mitigation measures, will prevent impacts that significantly degrade the wetland and will be compatible with the continuation of the wetland ESHA. A parallel provision is set forth in C-BIO-25 governing stream buffer adjustments. Therefore, the LUPA's proposed Biological Resources chapter includes policies to protect coastal streams, and ESHA wetlands, consistent with the biological resource policies of Coastal Act.

If modified as described above, the LUPA's proposed Biological Resources chapter would include a clear, comprehensive and appropriate set of policies to meet the goal of protecting, maintaining, enhancing, and restoring coastal streams, wetlands, and ESHA, consistent with and adequate to carry out the biological resource policies of Coastal Act.

e) Applicable Land Use Plan Policies

C-BIO-1 Environmentally Sensitive Habitat Areas (ESHAs).

- 1. An environmentally sensitive habitat area (ESHA) is any area in which plant or animal life or their habitats are either rare or especially valuable because of their*

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special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

2. *ESHA consists of three general categories: wetlands, streams and riparian vegetation, and terrestrial ESHAs. Terrestrial ESHA includes non-aquatic habitats that support rare and endangered species; coastal dunes as referenced in C-BIO-7 (Coastal Dunes); roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats); and riparian vegetation that is not associated with a perennial or intermittent stream. The ESHA policies of C-BIO-2 (ESHA Protection) and C-BIO-3 (ESHA Buffers) apply to all categories of ESHA, except where modified by the more specific policies of the LCP.*

C-BIO-2 ESHA Protection.

1. *Protect ESHAs against disruption of habitat values, and only allow uses within those areas that are dependent on those resources or otherwise specifically provided in C-BIO-14 (Wetlands), C-BIO-15 (Diking, Filling, Draining and Dredging) or C-BIO-234 (Coastal Streams and Riparian Vegetation). Disruption of habitat values includes when the physical habitat is significantly altered or when species diversity or the abundance or viability of species populations is reduced. The type of proposed development, the particulars of its design, and its location in relation to the habitat area, will affect the determination of disruption.*
2. *Accessways and trails that are fundamentally associated with the interpretation of the resource are resource dependent uses that shall be sited and designed to protect ESHAs against significant disruption of habitat values in accordance with Policy C-BIO-2.1. Where it is not feasible to avoid ESHA, the design and development of accessways and trails shall minimize intrusions to the smallest feasible area and least impacting routes. As necessary to protect ESHAs, trails shall incorporate measures to control the timing, intensity or location of access (e.g., seasonal closures, placement of boardwalks, limited fencing, etc.).*
3. *Avoid fence types, roads, and structures that significantly inhibit wildlife movement, especially access to water.*
4. *Development proposals within or adjacent to ESHA will be reviewed subject to a biological site assessment prepared by a qualified biologist hired by the County and paid for by the applicant. The purpose of the biological site assessment is to confirm the extent of the ESHA, document any site constraints and the presence of other sensitive biological resources, recommend buffers, development timing, mitigation measures including precise required setbacks, provide a site restoration program where necessary, and provide other information, analysis and modifications appropriate to protect the resource.*

C-BIO-3 ESHA Buffers.

1. *In areas adjacent to ESHAs and parks and recreation areas, site and design development to prevent impacts that would significantly degrade those areas, and to be compatible with the continued viability of those habitat and recreation areas.*
2. *Provide buffers for wetlands, streams and riparian vegetation in accordance with C-BIO-19 and C-BIO-24, respectively.*
3. *Establish buffers for terrestrial ESHA to provide separation from development impacts. Maintain such buffers in a natural condition, allowing only those uses that will not significantly degrade the habitat. Buffers for terrestrial ESHA shall be 50feet, a width that may be adjusted by the County as appropriate to protect the habitat value of the resource, but in no case shall be less than 25 feet. Such adjustment shall be made on the basis of a biological site assessment supported by evidence that includes but is not limited to:*
 - a. *Sensitivity of the ESHA to disturbance;*
 - b. *Habitat requirements of the ESHA, including the migratory patterns of affected species and tendency to return each season to the same nest site or breeding colony;*
 - c. *Topography of the site;*
 - d. *Movement of stormwater;*
 - e. *Permeability of the soils and depth to water table;*
 - f. *Vegetation present;*
 - g. *Unique site conditions;*
 - h. *Whether vegetative, natural topographic, or built features (e.g., roads, structures) provide a physical barrier between the proposed development and the ESHA; and*
 - i. *The likelihood of increased human activity and disturbance resulting from the project relative to existing development.*

C-BIO-19 Wetland Buffer Adjustments and Exceptions.

1. *A buffer adjustment to less than 100 feet may be considered only if it conforms with zoning and:*
 - a. *It is proposed on a legal lot of record located entirely within the buffer; or*
 - b. *It is demonstrated that permitted development cannot be feasibly accommodated entirely outside the required buffer; or*
 - c. *It is demonstrated that the permitted development outside the buffer would have greater impact on the wetland and the continuance of its habitat than development within the buffer; or*
 - d. *The wetland was constructed out of dry land for the treatment, conveyance or storage of water, its construction was authorized by a coastal permit (or pre-dated coastal permit requirements), it has no habitat value, and it does not affect natural wetlands.*
2. *A buffer adjustment may be granted only if supported by the findings of a site assessment which demonstrate that the adjusted buffer, in combination with incorporated siting, design or other mitigation measures, will prevent impacts that*

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significantly degrade the wetland and will be compatible with the continuance of the wetland ESHA.

3. *A Coastal Permit authorizing a buffer adjustment shall require measures that create a net environmental improvement over existing conditions, in addition to what is otherwise required by minimum applicable site development standards. Such measures shall be commensurate with the nature and scope of the project and shall be determined at the site level, supported by the findings of a site assessment or other technical document. Work required in accordance with this Policy shall be completed prior to occupancy. Appropriate measures may include but are not limited to:
 - a. *Retrofitting existing improvements or implementing new measures to reduce the rate or volume of stormwater run-off and improve the quality of stormwater run-off (e.g., use of permeable “hardscape” materials and landscape or site features designed to capture, absorb and filter stormwater; etc.);*
 - b. *Elimination of on-site invasive species;*
 - c. *Increasing native vegetation cover (e.g., expand continuous vegetation cover, reduce turf areas, provide native groundcover, shrubs and trees; etc.);*
 - d. *Reduction in water consumption for irrigation (e.g., use of drought-tolerant landscaping or high efficiency irrigation systems, etc.); and*
 - e. *Other measures that reduce overall similar site-related environmental impacts.**
4. *The buffer shall not be adjusted to a distance of less than 50 feet in width from the edge of the wetland.*

C-BIO-25 Stream Buffer Adjustments and Exceptions.

1. *A buffer adjustment to less than that required by C-BIO-TBD 24 may be considered only if it conforms with zoning and:
 - a. *It is proposed on a legal lot of record located entirely within the buffer; or*
 - b. *It is demonstrated that permitted development cannot be feasibly accommodated entirely outside the required buffer; or*
 - c. *It is demonstrated that the permitted development outside the buffer would have greater impact on the stream or riparian ESHA and the continuance of its habitat than development within the buffer.**
2. *A buffer adjustment may be granted only if supported by the findings of a site assessment which demonstrate that the adjusted buffer, in combination with incorporated siting, design or other mitigation measures, will prevent impacts that significantly degrade the stream or riparian vegetation, and will be compatible with the continuance of the stream/riparian ESHA.*
3. *A Coastal Permit authorizing a buffer adjustment shall require measures that create a net environmental improvement over existing conditions, in addition to what is otherwise required by minimum applicable site development standards. Such measures shall be commensurate with the nature and scope of the project and shall be determined at the site level, supported by the findings of a site assessment or other*

technical document. Work required in accordance with this Policy shall be completed prior to occupancy. Appropriate measures may include but are not limited to:

- a. Retrofitting existing improvements or implementing new measures to reduce the rate or volume of stormwater run-off and improve the quality of stormwater run-off (e.g., permeable “hardscape” materials and landscape or site features designed to capture, absorb and filter stormwater);*
 - b. Elimination of on-site invasive species;*
 - c. Increasing native vegetation cover (e.g., expand continuous riparian vegetation cover;, reduce turf areas;, provide native groundcover, shrubs and trees; etc.);*
 - d. Improvement of streambank or in-stream conditions (e.g., remove hard bank armoring, slope back streambanks, create inset floodplains, install large woody debris structures, etc.), in order to restore habitat and more natural stream conditions;*
 - e. Reduction in water consumption for irrigation (e.g., use of drought-tolerant landscaping or high efficiency irrigation systems, etc.);*
 - f. Other measures that reduce overall similar site-related environmental impacts.*
- 4. The buffer shall not be adjusted to a distance of less than 50 feet in width from the edge of the stream/riparian ESHA.*

f) Proposed IPA

The proposed IP Update implements the aforementioned LUP Update policies primarily through Chapter 22.64.050 (Biological Resources). Section 22.64.050(A) describes the submittal requirements applicable for proposed development, including the process by which the required biological resource assessments are to be undertaken, the factors to be studied in order to determine appropriate ESHA buffer widths, required habitat mitigation for development allowed within ESHA, and the requirements for restoration and monitoring plans. Specifically, this IP section requires the Marin County Community Development Agency to conduct an initial site assessment screening of all new development applications, using the LCP’s resource maps, past coastal permit actions, site inspections, and other necessary resources to determine the potential presence of ESHA. Should this initial study reveal the potential presence of ESHA within 100 feet of the proposed project site, then a biological site assessment shall be required. Per subsection (b), the assessment is to be prepared by a qualified biologist, confirming both the existence and extent of ESHA, and recommending appropriate siting and design measures, buffer widths and include mitigation measures if significant impacts are identified, in order to protect the resource. Section 22.64.050(B) lists the required biological resources standards that development must meet. Consistent with the general construct of the IP, the listed standards cross-reference the applicable LUP policy. For example, Section 22.64.050(B)(1) implements the LUP’s ESHA protection policies by stating that “the resource values of ESHAs shall be protected by limiting development per Land Use Policies C-BIO-1, C-BIO-2, and C-BIO-3.” As discussed above, these three LUP policies describe in detail the types of ESHA, the uses allowed within them, and required buffers. The proposed IP allows reductions to buffers to be considered only when supported by evidence that the reduction is the minimum necessary and will prevent impacts that degrade ESHA.

g) Consistency Analysis

In April 2015, the County's then proposed IP was heard by the Commission. At that time, Commission staff had suggested a series of proposed IP modifications to the proposed IP, and a set of findings supporting those changes (see attached Commission staff IP recommendation in [Exhibit 4](#)). The Commission staff recommended 2015 IP findings are incorporated herein by reference as part of these findings, including as the County's proposed IP is based on the Commission staff's recommended certified version with minor changes. Thus, the findings in this section build upon the referenced and incorporated 2015 IP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.¹⁹

In general, the proposed IP submitted by the County for Commission consideration implements the LUP's required biological resource protection standards and offers additional details on the CDP submittal requirements necessary to ensure such sensitive habitat protection. Section 22.64.050(B) cross-references corresponding LUP policies, thereby ensuring that the LUP's detailed provisions for defining the different types of ESHA, listing the allowable uses within them, and noting their required buffers, are appropriately implemented. Furthermore, Section 22.64.050(A)'s listing of the required CDP submittal materials describes the necessary steps and process the County must employ in order to determine when a project needs a biological site assessment, as well as a listing of the required parameters the assessment must analyze in order to determine whether ESHA is protected. For example, while LUP Policy C-BIO-2 states that a biological site assessment is required, IP Section 22.64.050(A)(1) implements the policy by identifying the process by which the assessment is to be performed, including describing what resources the County is to review when assessing the initial project submittal, stating that the assessment is required when the County's initial screening review shows that ESHA may be located within 100 feet of the project location, and then listing the required parameters for the assessment (including that it may only be prepared by a qualified biologist).

However, certain modifications are required in order for this Section of the IP to be fully LUP consistent. First, in terms of Section 22.64.050(A)(1)(b)'s requirements for site assessments, the standard as written by the County states that the report shall identify appropriate mitigation measures when potential ESHA impacts are identified. As written, this standard is inconsistent with LUP Policy C-BIO-2, which specifically states ESHAs must be protected against disruption of habitat values. Therefore, a modification is required in Section 22.64.050(A)(1)(b) to state that mitigating for ESHA habitat loss/adverse impacts is only allowed as a mitigation strategy when there are no feasible alternatives that would avoid otherwise permissible ESHA impacts. Public comments have asserted that the IP should narrow the list of uses allowed a reduction in buffers, suggesting that only uses designated as the principally permitted use specified for the particular zoning district be allowed buffer reductions. However, this suggestion would not be consistent with LUP Policies C-BIO-3, C-BIO-20, and C-BIO-25, which specify in detail the uses allowed buffer reductions for ESHA, wetlands, and streams, respectively. These policies state that any use is allowed a buffer reduction so long as it is consistent with zoning, as well as additional requirements for wetlands and streams. Thus, the LUP already includes a detailed process for identifying appropriate buffers, and limiting buffer reductions to only the principally

¹⁹ The County accepted all the Commission staff's 2015 modifications as the underlying "clean" version of their proposed IP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 6](#).

permitted use in the zoning district would be inconsistent with the LUP criteria. Thus, no suggested modification is made in this respect. However, a modification is added, as requested by public comment, to further clarify standards that buffer reductions must meet. As such, modifications are added to Section 22.64.050(A)(1)(c) to state that, for buffer reductions, the applicant has provided clear and convincing evidence that the reduction is not necessary, but unavoidable, and the reduction will be compatible with the continuance of the ESHA, consistent with C-BIO-1. As modified, the IP includes a clear set of policies and standards that defines ESHA, specifies the allowable uses within it, required buffers, and the habitat mitigation requirements. The IP is thus adequate to carry out the LUP.

h) Response to Public Comment on the LUP and IP

The Marin County coastal zone contains an extraordinary variety of habitat types and geologic features, including a broad range of estuarine and marine environments, tidal marshes, freshwater wetlands, streams, upland forests, chaparral, grasslands, dunes, and beaches. Because so much of the coastal zone is rural, the protection of these habitats, including through policies that specify allowable uses within them and clearly defined development standards, is critical.

Enforceable Standards

Public comments have asserted that the standards described in the biological and water resources LUP policies and IP sections do not include enforceable standards. However, as described on page 51 of the staff report, the updated LCP describes the necessary steps and process the County must employ in order to determine when a project needs a biological site assessment, as well as a listing of the required parameters the assessment must analyze in order to determine whether ESHA is protected. For example, while LUP Policy C-BIO-2 states that a biological site assessment is required, IP Section 22.64.050(A)(1) implements the policy by identifying the process by which the assessment is to be performed, including describing what resources the County is to review when assessing the initial project submittal, stating that the assessment is required when the County's initial screening review shows that ESHA may be located within 100 feet of the project location, and then listing the required parameters for the assessment (including that it may only be prepared by a qualified biologist). For water resources, the updated LCP policies outline application requirements for projects, which may have a potential impact on water quality, water quality standards for new development, and grading and excavation standards, as described on p. 76 of the staff report.

Wetland and Stream Buffer Reductions

Public comment has raised the issue of the Coastal Act consistency of wetland buffers reductions allowed in the proposed LUP. In addition to the limitations on buffer adjustments set forth in C-BIO-19 subsection (1), subsection (2) of C-BIO-19 states that a buffer adjustment may only be granted if supported by the findings of a site assessment which demonstrate that the adjusted buffer, in combination with incorporated siting, design, and other mitigation measures, will prevent impacts that significantly degrade the wetland and will be compatible with the continuation of the wetland ESHA. A parallel provision is set forth in C-BIO-25 governing stream buffer adjustments. Therefore, the LUPA's proposed Biological Resources chapter includes policies to protect coastal streams and ESHA wetlands, consistent with the biological resource policies of the Coastal Act.

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Allowable Uses in ESHA and Wetlands

Public commenters have requested that suggested modifications be added clarifying that residential uses are not permissible uses in wetlands. While there is agreement that residential uses are not permissible uses in wetlands, it is not necessary to add additional suggested modifications. First, C-Bio-2 establishes that only resource-dependent uses are allowed in ESHA. It is not necessary to list every use that is impermissible. Further, a modification is required in Section 22.64.050(A)(1)(d) to state that the only allowed uses to be considered for siting within ESHA, wetlands, and streams are those specifically identified to be allowable within ESHA per applicable LUP policies. Therefore, mitigation for ESHA habitat loss/adverse impacts is only allowed as a mitigation strategy for otherwise permissible uses specifically identified in the LUP when there are no feasible alternatives, including the no project alternative that would avoid ESHA impacts. A similar modification is also required in Section 22.64.050(B)(11), which clarifies that new development proposed within coastal streams and riparian vegetation is only permitted for the uses identified in LUP Policy C-BIO-24, and not for other types of proposed uses. These modifications make clear that any new development proposed to be sited within ESHA must be otherwise permissible.

4. Water Resources

a) Applicable Coastal Act policies

Section 30230. Marine resources; maintenance.

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. Biological productivity; water quality.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and restored. New development must not interfere with the biological productivity of coastal waters or the continuance of healthy populations of marine species. Coastal Act Section 30231 requires that the productivity of coastal waters necessary for the continuance of healthy populations of marine species shall be maintained and restored by minimizing waste water discharges and entrainment and controlling runoff.

b) 2014 Commission conditionally-certified LUP Update

The 2014 Commission conditionally-certified LUP Update included a variety of important policies to address water quality issues, including policies that require the protection of natural drainage systems, site planning to address drainage and polluted runoff, and the use of Best Management Practices (BMPs). The storm water and water quality provisions were coordinated through Commission water quality staff, including insuring that they address current water quality planning standards such as the prevention of non-point source pollution. The 2014 Commission conditionally-certified LUP incorporated robust and quantitative storm water and water quality protection provisions to mitigate both construction and post-construction water quality impacts. In addition to general provisions that required all development to minimize grading and impervious surface area through measures such as Low Impact Development (LID), the conditionally-certified LUP also targeted specific types of development, defined as high-impact projects (i.e. any development that results in the creation of 5,000 square feet of impervious surface and occurs within 200 feet of the ocean or coastal wetlands, streams, or ESHA) for their particularly acute water quality impairment potential. These requirements complemented other LCP policies, including protections against development in and surrounding coastal waters and limiting allowable land uses in coastal waters, such as mariculture operations, to those that meet specific LUP water quality protections.

c) Proposed LUP

The proposed LUP's water resources policies have not been modified from the Commission-certified LUP and again are proposed consistent with applicable Coastal Act policies.

d) Consistency Analysis

In May 2014, the Commission conditionally certified the County's then proposed LUP. It was approved unanimously (see attached Commission-adopted LUP findings in [Exhibit 3](#)). Except as revised herein, the Commission's adopted 2014 LUP findings are incorporated herein by reference as part of these findings, including as the County's proposed LUP resubmittal is based on the Commission's conditionally certified version with minor changes.²⁰ Thus, the findings in this section build upon the referenced and incorporated 2014 LUP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.

The proposed LUP Update defines a High-Impact Project in Policy C-WR-14 as any development that results in the creation of 5,000 square feet of impervious surface and occurs within 200 feet of the ocean or coastal wetlands, streams, or ESHA. Because there are rarely development projects allowed within 100 feet of ESHA due to required buffers and hence directly affecting the sensitive resource, impacts tend to occur offsite and are potentially carried to sensitive habitats through runoff and other drainage. As proposed, C-WR-14 is consistent with Coastal Act Sections 30230-33 and 30240 because it would require stormwater and grading restrictions to apply within 200 feet of a watercourse allowing for required buffers to be maintained in a more natural condition and restricting potential offsite impacts. Proposed Policy C-WR-14 also requires High-Impact Projects, where feasible and appropriate, to connect to sanitary sewer systems as a means of treating polluted runoff that cannot be addressed by typical BMPs. Because BMPs and other siting and design measures may not be adequate to

²⁰ The County accepted all the Commission's 2014 modifications as the underlying "clean" version of their proposed LUP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 5](#).

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meet necessary water quality objectives, directing runoff to the sanitary sewer system, in cases where there is a sanitary sewer system present and available for this purpose, may be required in order for the development to meet the LCP's policies. Finally, proposed Policy C-WR-6 requires all High-Impact Projects to prepare an erosion and sedimentation control plan, thereby ensuring that High-Impact Projects' construction-phase water quality impacts are appropriately addressed. Therefore, the proposed LUP policies relating to protection of coastal waters are consistent with 30230-30231 of the Coastal Act.

e) Applicable Land Use Plan Policies

***C-WR-2 Water Quality Impacts of Development Projects.** Site and design development, including changes in use or intensity of use, to prevent, reduce, or remove pollutant discharges and to minimize increases in stormwater runoff volume and rate to prevent adverse impacts to coastal waters to the maximum extent practicable. All coastal permits, for both new development and modifications to existing development, and including those for developments covered by the current National Pollutant Discharge Elimination System (NPDES) Phase II permit, shall be subject to this review. Where required by the nature and extent of a proposed project and where deemed appropriate by County staff, a project subject to this review shall have a plan which addresses both temporary (during construction) and permanent (post-construction) measures to control erosion and sedimentation, to reduce or prevent pollutants from entering storm drains, drainage systems and watercourses, and to minimize increases in stormwater runoff volume and rate.*

***C-WR-5 Cut and Fill Slopes.** Design cut and fill slopes so that they are no steeper than is safe for the subject material or necessary for the intended use. A geotechnical report may be required.*

f) Proposed IP

The proposed IP implements the water resource policies through Section 22.64.080 which outlines application requirements for projects which may have a potential impact on water quality, water quality standards for new development, and grading and excavation standards.

g) Consistency Analysis

In April 2015, the County's then proposed IP was heard by the Commission. At that time, Commission staff had suggested a series of modifications to the proposed IP, and a set of findings supporting those changes (see attached Commission staff IP recommendation in [Exhibit 4](#)). Except as revised herein, the Commission staff recommended 2015 IP findings are incorporated herein by reference as part of these findings, including as the County's proposed IP is based on the Commission staff's recommended certified version with minor changes. Thus, the findings in this section build upon the referenced and incorporated 2015 IP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.²¹

²¹ The County accepted all the Commission staff's 2015 modifications as the underlying "clean" version of their proposed IP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 6](#).

In general, the IP implements corresponding water quality protection policies via its general construct of cross-referencing the corresponding LUP policy. For example, 22.64.080(2) requires that development meet the site design and source control measures contained in LUP Policy C-WR-2. Therefore, LUP requirements that specify the requirement of plans to address both temporary (during construction) and permanent (post-construction) measures to control erosion and sedimentation, to reduce or prevent pollutants from entering storm drains, drainage systems and watercourses, and to minimize increases in stormwater runoff volume and rate, will be implemented.

However, in order to achieve consistency with requirements of the land use plan, IP Section 22.64.080(A)(1) and (2), requiring water quality impair assessments, is needed to ensure that all projects for new development and modifications to existing development are first reviewed for their potential water quality impacts and that drainage plans are required for any project shown to impair water quality through the initial assessment consistent with LUP water resources protection policies. As modified, the IP Update conforms with and is adequate to carry out the 2016 conditionally certified LUP.

5. New Development, Visual Resources and Community Character

a) Applicable Coastal Act Policies

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 (part). New development shall do all of the following:

- (e): Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

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The Marin coastal zone contains small-scale communities, farms, scattered residences, and businesses. The built environment is subordinate to the natural environment; natural landforms, streams, forests, and grasslands are dominant. Yet the residential, agricultural, and commercial buildings, as well as the community services that support them, have particular significance, both as the scene of daily life and for their potential impacts on natural resources. Visitors enjoy coming to Marin's coast because of the small-scale character of its built environment surrounded by agricultural and open space lands that offer a pastoral, rural character.

The Coastal Act requires new residential, commercial, and industrial development to be located within, contiguous with, and in close proximity to existing development, or in other areas where it will not have significant adverse impacts, either individually or cumulatively, on coastal resources. Additionally, Section 30250 establishes that land divisions outside existing developed areas can only be permitted where fifty percent of existing parcels have already been developed and that the new parcels are no smaller than the average size of existing parcels. For otherwise allowable development, one of the primary objectives of the Coastal Act is the protection of scenic and visual resources, particularly as viewed from public places. Section 30251 requires that development be sited and designed to protect views to and along the ocean and other scenic coastal areas. New development must minimize the alteration of natural landforms and be sited and designed to be visually compatible with the character of surrounding areas. Where feasible, development shall include measures to restore and enhance visual quality in visually degraded areas.

b) 2014 Commission conditionally-certified LUP

The 2014 Commission conditionally-certified LUP implemented these Coastal Act requirements primarily through two LUP chapters, Community Design and Community Development, which contain general policies and standards that apply coastal zone-wide, as well as additional community-specific policies that contain particular standards for the nine coastal villages. For example, Policy C-DES-2 requires the protection of visual resources, including requiring development to be sited and designed to protect significant views (defined as including views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, etc.). This policy applies coastal zone-wide to all development, while, for example, Policy C-PRS-2, which encourages commercial infill within and adjacent to existing commercial uses in Point Reyes Station, only applies within the village itself. Community development policies focused on the land use constraints and opportunities in each coastal zone planning area, as well as the appropriate location and intensity of new development, and ways to assure that development will not have significant adverse effects, either individually or cumulatively, on coastal resources. These policies ensure community character and significant views are protected; that new development be located within, next to, or in close proximity of existing development areas; and that development within coastal villages reflect the unique character of those communities.

c) Proposed LUP

The majority of the proposed LUP's community development and community design policies have not been modified from the 2014 Commission-certified LUP and are proposed consistent with applicable Coastal Act policies.

d) Consistency analysis

In May 2014, the Commission conditionally certified the County's then proposed LUP. It was approved unanimously (see attached Commission-adopted LUP findings in [Exhibit 3](#)). Except as revised herein, the Commission's adopted 2014 LUP findings are incorporated herein by reference as part of these findings, including as the County's proposed LUP resubmittal is based on the Commission's conditionally certified version with minor changes.²² Thus, the findings in this section build upon the referenced and incorporated 2014 LUP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.

The LUP Community Design and Community Development policies as proposed, other than those discussed further below in the public recreation and access sections, and the one exception outlined below, are consistent with the requirements of Coastal Act policies related to visual resources and community character.

Coastal Act Section 30251 requires that scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance and that development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. These provisions are implemented through a number of the proposed LUP policies for various types of development including signs and telecommunications facilities. Section 30251 requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas. The County's inclusion of the word "significant" before the phrase "public views" is consistent with Section 30251 of the Coastal Act because the Coastal Act does not require that permits be denied for all projects which infringe in any way, no matter how minimal, on any public view, no matter how limited, from any public vantage point, no matter the proximity of unlimited and expansive public views. By reviewing proposed development on a case by case basis to ensure that significant public views are protected based on the particular facts of each case, the reviewing authority will be able to ensure protection of significant public views in a meaningful, site specific manner.

Policy C-PFS-9 requires telecommunications facilities be designed and constructed to minimize impacts on coastal views, community character, and natural resources using measures such as co-location and stealth design and requires protection of significant public views to the extent feasible, as is defined in Policy C-DES-2. Policy C-DES-5 retains a policy from the existing LUP that requires all signs (including reconstructed and/or modified signs) to be of a size, location, and appearance so they do not detract from scenic areas or views from public roads and other viewing points.

Several policies address exterior lighting and adequately ensure that the impacts of exterior lighting are avoided and minimized, as required by Coastal Act Policies 30250 and 30251 including Policy C-DES-7 and Policy C-CD-18 because they ensure that lighting will not have adverse impacts on significant public views, community character (including the coastal zone's

²² The County accepted all the Commission's 2014 modifications as the underlying "clean" version of their proposed LUP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 5](#).

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rural character defined by dark skies), and other coastal resources. Proposed Policy C-DES-3 requires the protection of visually prominent ridgelines and allows development in a ridgeline-protected area only if there is no other buildable site, and if such development is in the area least visible from public viewing areas. This policy also requires any structure built in the protected area to be sited and designed to limit public view impacts to the maximum extent feasible, including through landscaping and screening and that such development must reduce its visual impacts to the maximum feasible extent. Thus, the proposed policies are consistent with Coastal Act Sections 30250 and 30251 because they require development to avoid adverse impacts on public views and other coastal resources.

Other proposed policies address potential visual impacts by placing limits on the height of new construction more broadly which can only be exceeded under certain conditions. Specifically, Policy C-DES-4 limits the maximum height of all development to 25 feet and clarifies that such structures may only exceed the 25 foot height limit, when findings of consistency with can be made with other LUP policies, including the protection of significant views and community character. Policy C-DES-4 also clarifies that height limits are maximums and not entitlements and that all structures may be limited to lower than the maximum height allowed in order to achieve consistency with LUP view and character policies. These policies together ensure view protection through the siting and design on new development consistent with Coastal Act Section 30251.

The proposed community development policies establish consistency with Coastal Act policies dealing with concentration of development in existing developed areas. Coastal Act Section 30250 requires new development to be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The Section specifies that “land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.” In the C-APZ zoning district of Marin County, 50% of usable parcels in the area have not been developed. Thus, land divisions outside existing developed areas within the C-APZ zoning district shall not be permitted. Policy C-CD-2 implements this provision and states that land divisions must conform with the land use categories and densities of the LUPA and Coastal Act Section 30250(a)’s as well as a general requirement that all new parcels be consistent with all LUPA policies (and not just density). This policy ensures that no land division is allowed if the resulting parcel configuration cannot accommodate LUP-consistent development.

In addition, Policy C-CD-10 lists the required criteria to be considered for any proposed boundary changes to the nine coastal villages. These criteria include: boundaries of existing and proposed public open space (including local, state, and federal parks), areas zoned for agriculture, natural and man-made barriers, and floodplains and includes Coastal Act Section 30254’s requirement that coastal resources, including those protected by the LUP (including public views, public service capacities, and ESHA), be protected. Thus, proposed LUP’s Community Design and Community Development chapters would include appropriate policies

related to land use and development, including related to the kinds, intensities, and densities of uses, consistent with the Coastal Act.

LUP Policy C-CD-21 establishes criteria that apply to commercial/mixed-use development, but allows an exemption from those criteria for renovations that do not result in additional square footage and that are consistent with the Marin County Jobs Housing Linkage Ordinance (Chapter 22.22 of the Marin County Development Code). Because this ordinance is not included in the proposed LCP, this reference must be removed.

e) Applicable Land Use Plan Policies

***C-DES-2 Protection of Visual Resources.** Development shall be sited and designed to protect significant views, including views both to and along the ocean and scenic coastal areas as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes. The intent of this policy is the protection of significant public views rather than coastal views from private residential areas. Require development to be screened with appropriate landscaping provided that when mature, such landscaping shall not interfere with public views to and along the coast. The use of drought tolerant, native coastal plant species is encouraged. Continue to keep road and driveway construction, grading, and utility extensions to a minimum, except that longer road and driveway extensions may be necessary in highly visible areas in order to avoid or minimize other impacts.*

***C-CD-8 Division of Beachfront Lots.** No land division of beachfront lots shall be permitted in recognition of the cumulative negative impacts such divisions would have on both public and private use of the beach. Similarly, the erection of fences, signs, or other structures seaward of any existing or proposed development and the modification of any dune or sandy beach area shall not be permitted except as provided in the Environmental Hazards policies in order to protect natural shoreline processes, the scenic and visual character of the beach, and the use of dry sand areas in accordance with Section 30211 of the Coastal Act.*

f) Proposed IP

The proposed IP implements these LUP policies primarily through Section 22.64.100: Community Design and 22.64.110: Community Development, which cross-references the applicable LUP policy. For example, Section 22.64.100(A)(2) requires that “development shall be sited and designed to protect visual resources per Land Use Policy C-DES-2” and 22.64.110(A)(2) requires “division of beachfront lots shall be restricted per Land Use Policy C-CD-8.” Additionally, Tables 5-4 and 5-5 within Section 22.64.030 lists the coastal zone development standards including maximum residential density, minimum setbacks, and height, with footnotes clarifying when exceptions can be made or when design review may be required. More specific requirements for land divisions and non-conforming uses and structures are implemented in Section 22.70.190 and 22.70.160.

g) Consistency Analysis

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In April 2015, the County's then proposed IP was heard by the Commission. At that time, Commission staff had suggested a series of proposed IP modifications to the proposed IP, and a set of findings supporting those changes (see attached Commission staff IP recommendation in [Exhibit 3](#)). Except as revised herein, the Commission staff recommended 2015 IP findings are incorporated herein by reference as part of these findings, including as the County's proposed IP is based on the Commission staff's recommended certified version with minor changes. Thus, the findings in this section build upon the referenced and incorporated 2015 IP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.²³

In general, the IP implements corresponding LUP visual resource protection policies and community development policies via its general construct of cross-referencing the corresponding LUP policy or adds the necessary specificity to implement the corresponding LUP policy. Therefore, LUP requirements that specify the need to protect views to and along the ocean, and direct the location of new development, are implemented.

For example, with respect to signs, the IP requires that signs be of a size, location, and appearance so as to protect significant public views, including from public roads and other public viewing points, and provides the specificity needed to be effectively implemented, including defining what types of signs are prohibited through Section 22.64.100(A)(5). This Section also requires that signs shall protect and enhance coastal resources, including significant public views and community character consistent with the related LUP policies. Finally, since some signs may be exempt from CDP requirements per Coastal Act Section 30610's exemption for improvements to existing structures, the proposed IP requires a CDP for any sign that could result in a change in the availability of public recreational access, including signs indicating restrictions on parking and signs stating no public coastal access allowed consistent with Coastal Act Section 30106 which qualifies a change in access to coastal waters as development. Section 22.64.110 requires that development conform to the land use categories and density provisions of the LUP Land Use Maps, and clarifies that these are maximums and to not represent an entitlement, consistent with the language of C-CD-10. Section 22.64.110 also allows non-conforming structures to be maintained when consistent with 22.70.165, and more specifically directs development and the allowance of subdivisions in sensitive locations such as the Tomales Bay shoreline, on public trust lands, beachfront lots, and within villages to ensure the protection of coastal resources and consistency with LUP policies.

Therefore, generally speaking, the proposed IP conforms with and adequately implements the conditionally certified LUP visual resource and community character policies, including specifying the types of views that are protected, where development is allowed in relation to ridgelines, and the process by which building height and setback is determined. However, there are some minor modifications made within these sections that clarify and refine policy language and more significant modification which are further addressed in other sections of the staff report (see public access and recreation 22.64.110A(11), and coastal development permit procedures 22.70.160 and 22.70.190).

²³ The County accepted all the Commission staff's 2015 modifications as the underlying "clean" version of their proposed IP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 6](#).

As modified, the IP Update conforms with and adequately implements the 2016 conditionally certified LUP development, visual resource and community character policies. Therefore, the IP, as modified, conforms with and is adequate to implement the 2016 conditionally certified LUP.

h) Response to Public Comment on the LUP and IP

Significant Views

Public concern has been raised about the use of the word significant in policies related to the protection of visual resources. Section 30251 requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas. The County's inclusion of the word "significant" before the phrase "public views" is consistent with Section 30251 of the Coastal Act because the Coastal Act does not require that permits be denied for all projects which infringe in any way, no matter how minimal, on any public view, no matter how limited, from any public vantage point, no matter the proximity of unlimited and expansive public views. By reviewing proposed development on a case by case basis to ensure that significant public views are protected based on the particular facts of each case, the reviewing authority will be able to ensure protection of significant public views in a meaningful, site specific manner.

6. Public Services

a) Applicable Coastal Act Policies

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30254. 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 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.

Section 30260 (part). Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division....

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The Coastal Act policies listed above address the provision of adequate public services to serve new development, the requirement that Highway 1 remain a scenic two-lane road in rural areas of the coastal zone, that development of new or expanded public works facilities be designed and limited only to serve LCP-envisioned growth, and that, if public services are limited, certain land uses, including coastal dependent and visitor-serving uses, be given priority for those scarce services over other kinds of development.

b) 2014 Commission conditionally-certified LUP

The 2014 Commission conditionally-certified LUP implemented Coastal Act Sections 30250 and 30254 by requiring a finding for all proposed development that adequate public services are available to serve such development. Required services included water, sewage disposal, and transportation (i.e., road access, public transit, parking, bicycle/pedestrian facilities). Lack of such services constituted grounds for denial or a reduction in the density/size of the proposed project. Additionally, public service expansions were to be limited to the minimum necessary to adequately serve development otherwise allowed for in the LCP, and not induce additional growth that either is not allowed or that cannot be handled by other public services.

The 2014 conditionally-certified LUP contained numerous other required findings and standards for particular services, including a requirement that development located within a public or private water system service area connect to that system (and not rely on a private well) and a new requirement that development located within a village limit boundary connect to the public sewer system (and not rely on a private septic system). While Policy C-PFS-14 allowed for certain exceptions to the requirement that no wells be allowed within a water service boundary, it clarified some of the potentially allowed exceptions, including for agricultural or horticultural use if allowed by the water provider, if the water provider is unwilling or unable to provide service, or if extension of physical distribution improvements to serve such development is economically or physically infeasible. No exception is allowed, however, because of a water shortage caused by periodic drought. For allowable wells, the 2014 conditionally-certified LUP required a CDP for all wells, with additional standards for wells serving five or more parcels. In terms of other public services, Policy C-PFS-18 prohibited desalination facilities in the coastal zone. For transportation, the 2014 conditionally-certified LUP required all roads in the coastal zone to remain two-lane roads per Policy C-TR-1. Additional transportation policies included new provisions for bicycle and pedestrian facilities (Policies C-TR-4 through 9), as well as a new policy for the County to consult with Caltrans on the impacts of sea level rise on Highway 1, including by studying structural and non-structural solutions (including relocation of the roadway) to protect access should the highway be at risk to flooding.

c) Proposed LUPA Update

For the most part, the LUP's currently proposed public facilities and services policies have not been modified from the 2014 conditionally-certified LUP and are consistent with applicable Coastal Act policies. However, the proposed LUP deletes the portion of C-PFS-4 that limited new development for non-priority uses in areas with limited service capacity unless adequate capacity remained for visitor-serving and other Coastal Act priority land uses.

d) Consistency analysis

In May 2014, the Commission conditionally certified the County's then proposed LUP. It was approved unanimously (see attached Commission-adopted LUP findings in [Exhibit 3](#)). Except as revised herein, the Commission's adopted 2014 LUP findings are incorporated herein by reference as part of these findings, including as the County's proposed LUP resubmittal is based on the Commission's conditionally certified version with minor changes.²⁴ Thus, the findings in this section build upon the referenced and incorporated 2014 LUP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.

Most Public Facilities Policies are consistent with the relevant Coastal Act policies as proposed. For example, proposed Policy C-TR-1 limits all roads in the coastal zone to two lanes, and only allows for shoulder widening for bicycles, turn lanes at intersections, turnouts for slow-moving traffic or at scenic vistas, traffic calming, and similar improvements, and states that such projects may be appropriate provided they are also consistent with the LCP's other coastal resource protection policies. As proposed Policy C-PFS-18 states that desalination facilities are only prohibited consistent with the limitations of Public Resources Code Sections 30260 and 30515.

Proposed Policy C-TR-2 requires the protection of the scenic qualities of Highway 1 by ensuring that road improvements, including the improvements listed previously, do not detract from its rural scenic characteristics. Much of Highway 1 traverses state and federal parkland, including Tomales Bay State Park, Point Reyes National Seashore, and Golden Gate National Recreation Area. Thus, Policy C-TR-2 also states that any improvement, particularly for turn-outs, shoulders, and other expansions, must also minimize encroachment into parkland to the maximum extent feasible. Lastly, in terms of the LUP's transportation policies, the County, Coastal Commission, National Park Service, Department of Parks and Recreation and Caltrans coordinated to develop a set of design guidelines for the repair of Highway 1 in Marin County. These *State Route 1 Repair Guidelines Within Marin County* define the allowable parameters for the repair of Highway 1, including allowable shoulder and lane widths, engineering requirements, and drainage features. Program C-TR-2.a. requires the County to continue working with the relevant agencies and stakeholders in refining and implementing the *State Route 1 Repair Guidelines Within Marin County*, which will ultimately be used to help guide the future physical improvement of Highway 1 in the Marin coastal zone. As described above, consistent with Coastal Act Sections 30254 and 30260, these policies ensure that the expansion of public and industrial facilities is done in a manner consistent with the LUP's coastal resource protection policies. However, The LUP Update as proposed contains some elements that require modification in order to achieve consistency with the requirements of Coastal Act policies related to public services. Therefore, the LUP Update must be denied as submitted and only approved as modified as discussed specifically below.

Policy CPFS-4 requires any extension or enlargement of a water or sewage treatment facility to reserve capacity for properties zoned C-VCR (Coastal Village Commercial/Residential), C-RCR (Coastal Resort and Commercial Recreation), coastal-dependent uses, agriculture, essential public services, and public recreation and requires a finding for all non-priority land uses that adequate capacity remains for priority uses. Additionally, public service expansions

²⁴ The County accepted all the Commission's 2014 modifications as the underlying "clean" version of their proposed LUP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 5](#).

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must be limited to the minimum necessary to adequately serve development otherwise allowed for in the LCP, and not induce additional growth that either is not allowed or that cannot be handled by other public services. The LUP then contains numerous other required findings and standards for particular services, including a requirement that development located within a public or private water system service area connect to that system (and not rely on a private well) and a new requirement that development located within a village limit boundary connect to the public sewer system (and not rely on a private septic system). While Policy C-PFS-14 allows for certain exceptions to the requirement that no wells be allowed within a water service boundary, it clarifies some of the potentially allowed exceptions, including for agricultural or horticultural use if allowed by the water provider, if the water provider is unwilling or unable to provide service, or if extension of physical distribution improvements to serve such development is economically or physically infeasible. No exception is allowed, however, because of a water shortage caused by periodic drought. For allowable wells, the LUP requires a CDP for all wells, and includes required standards such as a sustained pumping rate of 1.5 gallons per minute and that there are no adverse impacts to coastal resources.

The Coastal Act requires new development to be served by adequate public services, including water, sewer, and traffic (Coastal Act Section 30250). In areas with limited public services, Section 30254 explicitly requires that service capacity be reserved for certain priority land uses, including agriculture, public recreation, and visitor-serving uses. As mentioned above, proposed Policy C-PFS-4 requires any extension or enlargement of a water or sewage treatment facility to reserve capacity for properties zoned C-VCR (Coastal Village Commercial/Residential) and C-RCR (Coastal Resort and Commercial Recreation), other visitor serving uses, and other Coastal Act priority land uses. The intent behind the policy is to reserve service capacity for priority uses. However, the policy as written does not address the reservation of water, sewer and traffic for priority uses in areas with limited service capacity. Thus, a suggested modification is required for Policy C-PFS-4 to require a finding in areas of limited service capacity for all non-priority land uses that adequate capacity remains for priority uses, as required by Section 30254. As modified, Policy C-PFS-4 is consistent with the Coastal Act, including Section 30254.

In conclusion, the proposed LUP's Public Service policies, if modified as suggested, would be consistent with the relevant Coastal Act policies related to the provision of public services, and ensures that new development and its attendant service requirements will be consistent with all relevant Coastal Act policies.

e) **Applicable Land Use Plan Policies**

***C-PFS-1 Adequate Public Services.** Ensure that adequate public services (that is, water supply, on-site sewage disposal or sewer systems, and transportation including public transit as well as road access and capacity if appropriate) are available prior to approving new development, including land divisions. In addition, ensure that new structures and uses are provided with adequate parking and access. Lack of available public services, or adequate parking and access, shall be grounds for project denial or for a reduction in the density otherwise indicated in the land use plan.*

C-PFS-2 Expansion of Public Services. *Limit new or expanded roads, flood control projects, utility services, and other public service facilities, whether publicly owned or not, to the minimum necessary to adequately serve development as identified by LCP land use policies, including existing development. Take into account existing and probable future availability of other public services so that expansion does not accommodate growth which cannot be handled by other public service facilities. All such public service projects shall be subject to the LCP.*

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.*

C-PFS-14 Adequacy of Water Supply Within Water System Service Areas. *Ensure that new development within a water system service area is served with adequate, safe water supplies. Prohibit development of individual domestic water wells or other individual water sources to serve new development, including land divisions, on lots in areas served or within the boundaries of a public or private water system, with the following exceptions:*

- 1. For agricultural or horticultural use if allowed by the water system operators;*
- 2. The community or mutual water system is unable or unwilling to provide service;*
or,
- 3. Extension of physical distribution improvements to the project site is economically or physically infeasible.*

The exceptions specified in 1, 2, or 3 shall not be granted because of a water shortage that is caused by periodic drought. Additionally, wells or water sources shall be at least 100 feet from property lines, or a finding shall be made that no development constraints are placed on neighboring properties.

f) Proposed IPA

The proposed IP implements the aforementioned LUP policies through Section 22.64.140, which includes public facility and service standards. These standards define the process for how

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adequacy of services is determined, with provisions specific to development receiving water/wastewater from either a public provider (i.e. a water system operator or community sewer system) or from an individual private well or private septic system. The standards also place limitations on the expansion of public services to the minimum necessary to adequately serve planned development. To address the need for water and wastewater service providers to develop standards to allocate and reserve capacity for Coastal Act priority land uses, the proposed IP includes a program in Section 22.64.140.

g) Consistency Analysis

In April 2015, the County's then proposed IP was heard by the Commission. At that time, Commission staff had suggested a series of proposed IP modifications to the proposed IP, and a set of findings supporting those changes (see attached Commission staff IP recommendation in [Exhibit 4](#)). Except as revised herein, the Commission staff recommended 2015 IP findings are incorporated herein by reference as part of these findings, including as the County's proposed IP is based on the Commission staff's recommended certified version with minor changes. Thus, the findings in this section build upon the referenced and incorporated 2015 IP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.²⁵

The Coastal Act requires new development to be served by adequate public services, including water, sewer, and traffic (Coastal Act Section 30250). In areas with limited public services, Section 30254 explicitly requires that service capacity be reserved for certain priority land uses, including agriculture, public recreation, and visitor-serving uses. These Coastal Act requirements are mostly embodied in LUP Policies C-PFS-1 and C-PFS-4 as modified by the Commission. Detailed implementing language in IP Section 22.64.140 articulates the process by which such determinations would be made including specific findings for public water and wastewater systems, new or increased well production, private sewage disposal systems, and areas with limited water supply.

However, as currently proposed, private wells would be held to a different standard (i.e. consistency with Marin County Code Chapter 7.28) which is a provision outside the LCP that would not consider potential impacts to the water source for agricultural production or other priority land uses. Certain modifications are needed in order for Section 22.64.140 of the IP to be fully LUP consistent. To ensure consistency with PFS-4, modifications are needed to Section 22.64.140(A)(1)(b) to require applications for new or increased well production for a public or private water supply meet the same standards including that applications have a report demonstrating that the well yield meets the LCP-required minimum pumping rate of 1.5 gallons per minute, the water quality meets safe drinking water standards, and that the extraction will not adversely impact other wells located within 300 feet of the proposed well; adversely impact adjacent or hydrogeologically-connected biological resources including streams, riparian habitats, and wetlands on the subject lot or neighboring lots; and will not result in insufficient water supply available for existing and continued agricultural production or for other priority land uses on the same parcel or served by the same water source. These standards, as modified, emanate from other IP Sections (including requirements specified in Section 22.65.050(C)(1)(b)

²⁵ The County accepted all the Commission staff's 2015 modifications as the underlying "clean" version of their proposed IP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 6](#).

that all development within C-APZ have adequate public services *after* provisions have been made for existing and continued agricultural production) or from other LCPs that address these issues, including the 300 feet well standard which is included in Mendocino County's LCP. As a minor modification, the proposed program in Section 22.64.140 has been moved to the LUP to maintain consistency with the location of all other programs in the LCP. Therefore, as amended, the IP includes a series of standards that describe the process and required findings for determining whether new development is able to be served with water and wastewater consistent with Policies C-PFS-1 and C-PFS-4 as modified by the Commission.

The County has asserted that the recommended above requirements would be time-consuming and expensive and a more appropriate regulatory framework for individual private wells is the existing Marin County Code Section 7.28 regulations. While Marin County Code Section 7.28 includes standards for wells, it does not require that applications for new or expanded wells demonstrate that the well would not have significant adverse effects, either individually or cumulatively, on coastal resources. These standards also would not address the availability of water supply for LCP priority land uses. Thus, Marin County Code Section 7.28 is insufficient to carry out the proposed LUP policies.

Public commenters have raised concerns that the standards are insufficient to protect groundwater resources and request additional requirements for new or increased well production to include that sustainable yield be demonstrated during the dry season, that the extraction will not impact hydro-geologically connected wells or resources such as wetlands, and that limits be placed on groundwater extraction. The County has also requested more clarity on Commission recommended modifications referring to "adjacent" resources. In response, the Commission's suggested modifications provide greater specificity which in part address these concerns by requiring that the applicant demonstrate that the extraction would not, "adversely impact adjacent or hydrogeologically-connected biological resources including streams, riparian habitats, and wetlands on the subject lot or neighboring lots."

In preparation of updating the LCP, the County prepared a Land Use Analysis Report, documenting the status of existing and projected public services, including water, sewer, and traffic. While the analysis showed that there remains adequate capacity within the coastal zone's roads and highways to accommodate planned growth, the report showed that water and sewer capacities in many locations are already burdened and will most likely not be able to accommodate planned growth. In particular, the buildout analysis says that "Most of the water agencies are strained to meet peak demands in summer and seek additional supply or storage to meet peak demands" (page 5 of the Land Use Analysis Report). Specifically, the report states that Coast Springs Water Company and Bolinas Public Utility District (which serve water to parts of Dillon Beach and Bolinas, respectively) have moratoria on new water connections, while Stinson Beach County Water District, North Marin Water District-West Marin, Inverness Public Utility District, Estero Mutual Water Company, and private wells serving Marshall are all straining to meet existing capacity and are projected to not be able to serve buildout. Of particular water supply concern is the East Shore of Tomales Bay/Marshall area, where Coastal Act priority agriculture and visitor-serving uses are predominant, where the report states that the area relies on individual wells or springs and four Transient, Non-Community Water Systems:

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Hog Island Oyster Company, Marshall Boat Works, Nick's Cove, Tony's Seafood. Page 30 of the report states that:

*“There continues to be **major public service constraints** on new shoreline development as well. Water is lacking and most lots cannot support on-site sewage disposal systems consistent with established standards from the County and the Regional Water Quality Control Board....Except for a few locations, such as the canyon behind Marconi Cove marina, most of the east side of Tomales Bay has little known potential for development of additional water supplies. The ability of surface sources to provide supply is limited by the fact that many east side streams are intermittent and thus cannot be used year-round. Some of these **streams are already used for agriculture**, a use which has priority over private residential development in the Coastal Act. The potential for obtaining water from groundwater supplies also appears quite limited. Studies of water supply undertaken in the late 1960's by the North Marin County Water District determined that there are **no dependable supplies of groundwater in any quantity in the geologic formations on the east side of the Bay and that groundwater supplies along Walker Creek are severely limited.**”*
(emphasis added)

Thus, the provision of water and other public services is a key issue in Marin's coastal zone, including ensuring that there remains adequate water supply for Coastal Act priority land uses such as agriculture.

County Staff conducted an analysis of the commercial and mixed use zoning districts in the Coastal Zone to determine their locations relative to water and wastewater service areas. These include the C-VCR, C-H1, C-CP, C-RMPC, and C-RCR zoning districts. This analysis concluded that in terms of water, all of the areas containing visitor-serving zoning are served by a water district, except for the village of Tomales and two small commercial areas located in the East Shore/Marshall areas along Tomales Bay, which rely on wells for water service. With regards to wastewater, many of the areas with visitor-serving zoning are not within the boundaries of wastewater service district and, thus, are served by individual septic systems. This includes the mixed use areas in Dillon Beach, Point Reyes Station, East Shore/Marshall, Inverness, Olema, and Muir Beach. However, the commercial areas in Tomales, Stinson Beach, and Bolinas are provided wastewater services from the Tomales Village Community Services District, Stinson Beach County Water District, and the Bolinas Community Public Utility District, respectively.

Most of the water and wastewater service providers have sufficient water on an average annual basis and expect to meet existing and future water demand. Those that do not, such as the Bolinas Community Public Utility District and the privately run California Water Service Company (formerly Coast Springs Water Company) serving Dillon Beach, have moratoriums on new service hookups and expect to maintain them. However, some of the water service providers are strained to meet peak demands during the summer or would experience supply deficits during extended drought periods. The proposed IP mandates that project applicants in areas of limited public water service capacity must offset their anticipated water usage through the retrofit of existing water fixtures. The proposed IP also allows water service providers flexibility to select additional methods to offset water usage beyond replacement of water fixtures, given the diversity of incentives and programs utilized by the different water service

providers. Water in the Marin Coastal Zone is provided by a number of small community water districts, each of which may offer a variety of incentives and programs to encourage water conservation tailored to budget and customer needs, and thus, the IP allows for that flexibility.

As modified, the IP Update conforms with and adequate carries out the public services provisions of the 2016 conditionally certified LUP.

h) Response to Public Comment on the LUP and IP

Adequacy of Public Infrastructure

Public comments have raised concerns that the updated LCP will lead to an increase in traffic and groundwater depletion along the eastshore of Tomales Bay. As described in IP Section 22.65.040, all development in the C-APZ zoning district shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other public services are available to support the proposed development after provision has been made for existing and continued agricultural production. Further, Commission staff prepared build out analysis that found the updated LCP policies will, in fact, reduce development potential on C-APZ lands in Marin's coastal zone.

Further, in areas with limited water service capacity, when otherwise allowable, new development for a non-Coastal Act and LCP priority use (i.e., a use other than agricultural production, coastal-dependent uses, public recreation, essential public services, and, within village limit boundaries only, visitor- serving uses and commercial recreation uses) shall only be allowed if adequate capacity remains for the above-listed priority land uses. In such limited service capacity areas, in order to minimize the reduction in service for and reserve capacity to priority land uses, applications for non-priority uses shall be required to offset their anticipated water usage through the retrofit of existing water fixtures or other appropriate measures within the same service area of the water system operator or the public/community sewer system of the proposed development, whichever is applicable. As set forth in IP Section 22.64.140(A)(1)(e), all Coastal Permits authorizing development that results in increased water usage shall provide to the Reviewing Authority: 1) A list of all existing fixtures to be retrofitted and their present associated water flow (e.g. gallons/second); 2) A list of all proposed fixtures to be installed and their associated water flow; and 3) The estimated annual water savings resulting from the proposed retrofit, showing all calculations and assumptions. The County shall require certification from water service providers that all measures to reduce existing water usage has been implemented in an amount equal to or greater than the anticipated water use of the proposed project.

Additional Density Restrictions

The County asserts that suggested modifications proposed by the Commission staff would further restrict development by applying lowest allowable density and floor area restrictions to properties containing hazardous areas and environmentally sensitive habitat areas (ESHA), by specifying that exceptions to these restrictions can only be considered where development will avoid ESHA and hazards and their related setbacks. The Commission staff modifications are not changing the exceptions outlined in the footnotes for projects that provide significant public benefits as proposed by the County. The suggested modifications only require that when making

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a density determination 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.

7. Visitor Serving Recreational Facilities

a) Applicable Coastal Act Policies

Section 30210. In carrying out the requirement of Section 24 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people, consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby; or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5 Wherever appropriate and feasible, public facilities including parking areas or facilities, shall be distributed throughout an area so as to mitigate against impacts - social and otherwise - of overcrowding or overuse by the public of any single area.

Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214(a). The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics; (2) The capacity of the site to sustain use and at what level of intensity; (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent

residential uses; (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. (b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution. (c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221. *Oceanfront land suitable for recreational uses shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for the area.*

Section 30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30224. *Increased recreational boating use of coastal waters shall be encouraged in accordance with this division by developing dry storage areas, increasing public launch facilities, providing additional berthing space in existing harbors, limiting non-water dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Section 30234. *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

The Coastal Act requires the protection of public access and recreation opportunities, one of its fundamental objectives. The Act requires maximum public access to and along the coast, prohibits development from interfering with the public's rights of access, and protects recreational opportunities and land suitable for recreational use. Several policies contained in the Coastal Act work to meet these objectives. The Coastal Act requires that development not

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interfere with the public right of access to the sea (Section 30211); provides for public access in new development projects with limited exceptions (Section 30212); encourages the provision of lower cost visitor and recreational facilities (Section 30213); addresses the need to regulate the time, place, and manner of public access (30214); requires coastal areas suited for water-oriented recreational activities to be protected (30220); specifies the need to protect ocean front land suitable for recreational use (Section 30221); gives priority to the use of land suitable for visitor-serving recreational facilities over certain other uses (Section 30222); requires the protection of upland areas to support coastal recreation, where feasible (Section 30223); and provides the location and amount of new development should maintain and enhance public access to the coast through various means (Section 30252).

b) 2014 Commission-conditionally certified LUP

The 2014 Commission-certified LUP includes goals, objectives, and policies designed to protect, maintain, and improve a multitude of public access and recreational opportunities in the Marin County coastal zone. It contained policies that facilitate the development of visitor-serving uses, and also listed recommendations for development within the numerous local, state, and federal parks that would help further increase coastal recreational opportunities and access. Specifically, Policy C-PA-2 required all new development between the shoreline and first public road to be evaluated for impacts on public access to the coast, and required new public access to be provided, if appropriate. Policies C-PA-19 and -20 required parking and signage at coastal accessways, including evaluating whether closure of public parking facilities at accessways could impact public access requiring mitigation for any access impact, and stating that changes to parking timing and availability and any signage indicating parking restrictions, must be evaluated for project alternatives or mitigation.

In terms of the Parks, Recreation and Visitor-Serving Uses chapter, Policy C-PK-1 required priority for visitor-serving commercial and recreational facilities over private residential or general commercial development. Policy C-PK-3: 1) designated commercial uses as the sole principal permitted use and residential uses as permitted or conditional uses; 2) directed new residential uses in the commercial core area to either the upper floor of a mixed-use building or the lower floor if not located on the road-facing side of the street; and 3) required a finding for any residential development on the ground floor of a new or existing structure on the road-facing side of the property that the development maintains and/or enhances the established character of village commercial areas. This zoning district is used in the coastal villages to facilitate the development of walkable, mixed-use commercial districts along primary streets, including Highway 1. In many ways, this zoning district implements a type of “Main Street” feel to the coastal villages because it allows a variety of local and visitor serving commercial uses and allows structures to be sited and designed (including through no building setback requirements, for example) so as to facilitate walkability within the village center.

c) Proposed LUPA Update

For the most part, the LUPA’s proposed public coastal access and recreation policies have not been modified from the Commission’s 2014 conditionally-certified LUP and are consistent with applicable Coastal Act policies. The proposed LUPA restores policy, C-CD-14, a policy that had been deleted by the Commission in 2014 because it discouraged the conversion of residential to commercial uses.

d) Consistency analysis

In May 2014, the Commission conditionally certified the County's then proposed LUP. It was approved unanimously (see attached Commission-adopted LUP findings in [Exhibit 3](#)). Except as revised herein, the Commission's adopted 2014 LUP findings are incorporated herein by reference as part of these findings, including as the County's proposed LUP resubmittal is based on the Commission's conditionally certified version with minor changes.²⁶ Thus, the findings in this section build upon the referenced and incorporated 2014 LUP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.

First, consistent with the requirements of Coastal Act Sections 30210 and 30211 that require maximum public access be provided and conspicuously posted and that development not interfere with the public's right of access to the sea, public access signage and parking is important because it provides the public with the opportunity to access coastal resources. Proposed Policy C-PA-20 clarifies that changes to parking timing and availability and any signage indicating parking restrictions must be evaluated for project alternatives or mitigation.

Second, consistent with the requirements of Coastal Act Section 30213 that all lower-cost visitor and recreational facilities be protected, proposed Policy C-PK-7 states that conversion of all existing lower-cost overnight facilities is prohibited unless replaced in kind and conversion of an existing visitor-serving facility on public land to private membership use is also prohibited.

Third, proposed Policy C-PK-11 clarifies that all development, even those recommended projects listed in the policy and in the parks' General Plans, are simply recommended projects and still must meet all applicable LCP standards.

Fourth, proposed Policy C-CD-8 states that on-site public access, or alternative and commensurate public access, shall be provided for all new piers or similar recreational structures, consistent with Coastal Act Sections 30210-30212 and LUPA Policy C-PA-2 (which requires all development between the sea and first public road to provide access if an impact to public access is found).

Finally, proposed Policy C-PA-10 requires full avoidance of significant adverse impacts to agriculture and sensitive environmental resources, consistent with Coastal Act Sections 30240 (which allows only resource dependent uses within ESHA and only when such uses prevent significant disruption of the habitat) and 30241-30242, which protects agricultural land and strictly limits the ability for non-agricultural uses to convert such land.

However, the LUP as proposed contains policies that are not Coastal Act consistent because they are internally inconsistent or need modification in order to achieve consistency with the requirements of Coastal Act policies related to public access and recreation. Therefore, the proposed LUPA must be denied as submitted and only approved as modified as discussed specifically below.

²⁶ The County accepted all the Commission's 2014 modifications as the underlying "clean" version of their proposed LUP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 5](#).

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The C-VCR zoning district implements key Coastal Act and LUPA objectives of prioritizing visitor-serving commercial uses (Section 30222) in existing developed areas (Section 30250). Policy C-PK-3, as proposed, states that the principal permitted use of the C-VCR zone shall include commercial uses. However, under Section 30603(a)(4) of the Coastal Act, in coastal counties, development not designated in the zoning district as *the* principally permitted use is appealable to the Commission. Thus, unless a zoning district identifies one type of principal permitted use, all development in the zoning district would be appealable to the Commission. To avoid this result, suggested modifications identify commercial as “the principal permitted use” in the C-VCR zoning district. Although modifications are required that designate commercial uses as the sole principal permitted use in C-VCR to avoid all development in C-VCR being appealable to the Commission consistent with Coastal Act Section 30603, other permissible uses in C-VCR need not be conditional. Instead, the zoning district can also designate “permitted uses” which though appealable to the Commission do not require a conditional use permit. As modified, commercial would be the principally permitted use and designated commercial development would not be appealable to the Commission. Other uses, such as residential, that are listed as “permitted” would not require a conditional use permit but would be appealable to the Commission. And those uses listed as conditional would continue to require a conditional use permit and be appealable to the Commission. The suggested modifications to PK-3 also help ensure that commercial uses remain the primary use in the zoning district and that residential uses will only be allowed consistent with the requirements of Coastal Act section 30222. Similarly, a modification is needed to C-CD-14 to clarify that the conversion of residential to commercial uses in coastal villages must be consistent with the limitations in C-PK-3.

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.

County staff presented draft maps of the village core commercial area to the Board of Supervisors during its August Board hearing. When transmitted to the Commission, the County indicated that the Maps were intended to be illustrative only and a delineation would only be final after a subsequent rezoning process. Further, the County will be considering how to better address the conversion of existing residential uses to short term vacation rentals through a subsequent LCP amendment.

In the interim, suggested modifications have been added defining the village commercial core textually to include the central portion of each village that is predominantly commercial, i.e. Stinson Beach, Bolinas, Olema, Point Reyes Station, Marshall/East Shore, and Tomales.

Defining the village core commercial area as the central portion of each village that is predominantly commercial is consistent with Section 30222 of the Coastal Act because it clarifies which private lands are suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation. It is important to note that C-PK-3 does not prohibit new or existing residential uses. Existing legal residences are allowed to continue in these areas without any further requirements. Going forward, the policy would allow residential uses located on the upper floors, or on the ground floor of a new or existing structure not fronting the street in the commercial area, as a permitted use. However, if a new residential use is proposed on the ground floor of a road-facing property, a finding would be required to ensure that the residential use maintains and/or enhances the established character of village commercial areas. Residential and Affordable housing would continue to be a permitted use in the C-VCR zoning district, as well as within the proposed village commercial core area.

Suggested modifications also have been made to the PK chapter background section to more accurately describe when a non-federal entity applying for a license or other type of authorization from the federal government is subject to the requirements of the Coastal Zone Management Act. Other minor modifications to C-PA-2, C-PA-3, C-PA-4, and C-PA-12 have been made to clarify the intent of the policies and/or achieve better consistency with the requirements of Coastal Act Sections including Sections 30214 and 30212.

As modified, the LUPA's Public Coastal Access and Recreation policies protect and provide for public access and visitor-serving uses and are consistent with the Chapter 3 access, recreation and visitor serving policies of the Coastal Act.

e) **Applicable Land Use Plan Policies**

***C-CD-14 Residential Character in Villages.** Consistent with the limitations to the village core commercial area outlined in C-PK-3, discourage the conversion of residential to commercial uses in coastal villages. If conversion of a residence to commercial uses is allowed under applicable zoning code provisions, the architectural style of the home should be preserved.*

***C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone.** Continue to permit a mixture of residential and commercial uses in the C-VCR zoning district to maintain the established character of village commercial areas. Principal permitted use of the C-VCR zone shall be commercial. Residential uses shall be limited to: (a) the upper floors, and/or (b) the lower floors if not located on the road-facing side of the property within the commercial core area (i.e. the central portion of each village that is predominantly commercial). Residential uses on the ground floor of a new or existing structure of the road-facing side of the property shall only be allowed provided that the development maintains and/or enhances the established character of village commercial core areas. Existing legally established residential uses in the C-VCR zone on the ground floor and road-facing side of the property can be maintained.*

C-PA-2 Provide New Public Coastal Access in New Development. Where the provision of public access is related in nature and extent to the impacts of the proposed development, require dedication of a lateral and/or vertical accessway, including to provide segment(s) of the California Coastal Trail as provided by Policy C-PK-14, as a condition of development, in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics. (2) The capacity of the site to sustain use and at what level of intensity. (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter,. Impacts on public access include, but are not limited to, intensification of land use resulting in overuse of existing public accessways, creation of physical obstructions or perceived deterrence to public access, and creation of conflicts between private land uses and public access.

C-PA-3 Exemptions to Providing New Public Coastal Access. The following are exempt from the requirements to provide new public coastal access pursuant to Policy C-PA-2:

- 1. Improvement, replacement, demolition or reconstruction of certain existing structures, as specified in Section 30212 (b) of the Coastal Act, and*
- 2. Any new development upon specific findings under Section 30212 (a) of the Coastal Act that (1) public access would be inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate public access exists nearby, or (3) agriculture would be adversely affected.*

C-PA-12 Agreements for Maintenance and Liability Before Opening Public Coastal Accessways. Dedicated coastal accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

C-PA-18 Parking and Support Facilities at Public Coastal Accessways. Where appropriate and feasible, provide parking areas for automobiles and bicycles and appropriate support facilities in conjunction with public coastal accessways. The location and design of new parking and support facilities shall minimize adverse impacts on any adjacent residential areas. The need for parking shall be determined based on existing parking and public transit opportunities in the area, taking into account resource protection policies. Consider opportunities for reducing or eliminating parking capacities if transit service becomes available or increases.

C-PA-19 Explanatory Signs at Public Coastal Accessways. Sign existing and new public coastal accessways, trails, and parking facilities where necessary, and use signs to minimize conflicts between public and private land uses. Where appropriate, signs posted along the shoreline shall indicate restrictions, such as that no fires or overnight camping are permitted, and that the privacy of homeowners shall be respected. Where public

access trails are located adjacent to agricultural lands, signs shall indicate appropriate restrictions against trespassing, fires, camping, and hunting. Where only limited public access or use of an area can be permitted to protect resource areas from overuse, such signing should identify the appropriate type and levels of use consistent with resource protection. The County and CALTRANS shall, as resources permit, post informational signs at appropriate intersections and turning points along visitor routes, in order to direct coastal visitors to public recreation and nature study areas in the Coastal Zone.

C-PA-20 Effects of Parking Restrictions on Public Coastal Access Opportunities.

When considering a coastal permit for any development that could reduce public parking opportunities near beach access points or parklands, including any changes in parking timing and availability, and any signage reducing public access, evaluate options that consider both the needs of the public to gain access to the coast and the need to protect public safety and fragile coastal resources, including finding alternatives to reductions in public parking and ways to mitigate any potential loss of public coastal access.

f) Proposed IPA

The proposed IP implements the LUP's public access and recreation policies in Section 22.64.170, requiring that all development be consistent with the Parks, Recreation and Visitor Serving Uses policies of the LUP, including that development of visitor-serving and commercial recreation facilities shall have priority over residential or general commercial development, and that a mixture of residential and commercial uses shall be permitted in the C-VCR district. Additionally, Section 22.64.180 addresses public coastal access and likewise mandates that development be consistent with all Public Coastal Access policies of the LUP, including those cited above. Consistent with C-PA-2, Section 22.64.180(B)(1) requires that new development located between the shoreline and first public road be evaluated for impacts on public access, and a requirement to dedicate lateral, vertical and or bluff top access where such requirement is related in nature and extent to the impacts of the proposed development. Section 22.64.180(B)(10) provides that parking, signage and support facilities shall be provided in conjunction with public coastal accessways where appropriate and feasible consistent with LUP Policies C-PA-18 and 19, and also requires that that any proposal to restrict public parking near beach access points be evaluated per LUP Policy C-PA-20. Section 22.32.150 provides standards for residential uses in commercial/mixed use areas, which was modified to apply only to commercial development, rather than any type of development.

Finally, Table 5-3 in Chapter 22.62 lists the allowable land uses and their permitting status for the coastal zone's five Coastal Commercial and Mixed-Use Districts, including the Coastal Village Commercial Residential (C-VCR) district and the Coastal Resort and Commercial Recreation (C-RCR) district, two primary districts meant to prioritize visitor-serving and commercial recreation development. Table 5-3 allows residential uses, such as single-family dwellings, and retail trade uses, such as grocery stores, and service uses, such as banks, as either principally permitted or permitted uses in the C-VCR zoning district, with a footnote specifying that commercial uses shall be the principal permitted use within the village commercial core area of the C-VCR zone and residential shall be a permitted use in all parts of the C-VCR zone.

g) Consistency Analysis

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In April 2015, the County's then proposed IP was heard by the Commission. At that time, Commission staff had suggested a series of proposed IP modifications to the proposed IP, and a set of findings supporting those changes (see attached Commission staff IP recommendation in [Exhibit 4](#)). Except as revised herein, the Commission staff recommended 2015 IP findings are incorporated herein by reference as part of these findings, including as the County's proposed IP is based on the Commission staff's recommended certified version with minor changes. Thus, the findings in this section build upon the referenced and incorporated 2015 IP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.²⁷

The proposed IP incorporates, by cross-reference, relevant LUP policies applicable to Parks, Recreation and Visitor Serving Uses and Public Access. However, modifications must be made to 22.64.170 (B) and 22.62's use charts which do not adequately prioritize visitor-serving development. For example, while only commercial uses can be categorized as the principally permitted use in these commercial zoning districts to avoid all development in that zoning district being appealable to the Commission (per Coastal Act Section 30603's provision that, in coastal counties, development not designated in the zoning district as *the* principally permitted use is appealable to the Commission), as proposed, non-commercial uses such as residential uses including single-family dwellings are proposed to be principally permitted in the C-VCR zone. Thus, suggested modifications are required to IP Section 22.64.170 to specify that commercial uses are the principal permitted use in the C-VCR zone, regardless of whether you are in the village commercial core area or not, and to change the non-commercial uses from principally permitted uses to permitted uses in Table 5-3 consistent with requirements of PK-3. Finally, some uses that are inconsistent with the purpose of the zoning district designation must also be deleted. For example, recycling facilities, defined as facilities involved with the collection, sorting and processing of recyclable materials, must not be allowed in a pedestrian-oriented, visitor-serving commercial district such as C-VCR.

Although proposed IP Section 22.64.180 carries out the public coastal access policies by specifying application requirements, such as site plans and establishing public coastal access standards, suggested modifications are necessary to achieve consistency with LUP coastal access policies and ensure that as a first step, development avoids negatively impacting public recreational access facilities and opportunities and if impacts are unavoidable, commensurate public access mitigation consistent with the requirements of state and federal law. Similarly, the addition of Section 22.64.150(A)(6) is needed, to ensure that roads, driveways, parking, and sidewalks associated with new development will not adversely impact existing public parking facilities nor the ability of the public to access existing development or existing coastal resource areas.

In response to public comment regarding the need for community centers in residential zoning districts to be owned and operated by non-profits, the County-adopted proposed IP requires community centers to be designed to enhance public recreational access and visitor-serving opportunities. Thus, regardless of ownership, community centers will serve public recreational access purposes, consistent with Coastal Act Section 30222.

²⁷ The County accepted all the Commission staff's 2015 modifications as the underlying "clean" version of their proposed IP, and made changes in cross through and underline to that version showing what they now propose – see [Exhibit 6](#).

As modified, the IP conforms with and adequately implements the 2016 conditionally certified LUP's public coastal access and recreation policies.

h) Response to Public Comment on the LUP and IP

Coastal Village Commercial Residential Zoning District

Numerous public comments have suggested that the Principal Permitted Use allowed within the Coastal Village Commercial Residential (C-VCR) Zoning District should be residential rather than commercial, or that both residential and commercial should be allowed as principally permitted uses within the C-VCR district depending on their location. Many public comments have also expressed concern over the prioritization of commercial uses in this zone when there are already sufficient commercial services but where residential development is in demand.

As proposed by the County, commercial use was designated as the principally permitted use and residential use (already existing) was designated as a permitted use in the village core commercial area (to be defined on maps not yet finalized or adopted by the Board of Supervisors). Outside of the commercial core area, residential use would be the principally permitted use. Staff notes that County and Commission staff spent considerable time discussing this concept, and were in agreement on it when the Board last considered the proposed LCP update locally. Staff continues to believe that the core village area should remain mostly commercial, but also acknowledges the role that residential uses in these areas play in terms of each community and its character.

At the Board of Supervisors hearing on April 19, 2016, this issue was the subject of some debate, at least partly fueled by some confusion at the time about what County staff was proposing. The submitted proposed language keeps the commercial core concept, but identifies both residential and commercial as principally permitted. Staff's proposed modifications specify that commercial be the principally permitted use, and residential a permitted use. The reason for this is that under Section 30603(a)(4) of the Coastal Act, in coastal counties, development not designated in a zoning district as *the* principally permitted use is appealable to the Commission. Thus, unless a zoning district identifies one type of principally permitted use, all development proposed in the zoning district would be appealable to the Commission. Therefore, if approved as proposed by the County, because two uses are currently proposed in this zone, all new development proposed in the VCR zone would be appealable because there would be multiple principally permitted uses in the C-VCR zone.

After further input from the public, the County has expressed the desire to rezone the village core commercial area resulting in one principally permitted use for both the VCR commercial core area (commercial) and the VCR non-commercial core area (residential). However, until that is accomplished, the Commission staff's suggested modifications establish commercial use in the C-VCR as the principally permitted use for purposes of appealability and includes a description of the village core for the purposes of policy implementation of the residential limitations in the village core area in the interim (before the maps are adopted) consistent with the objective of the County's proposed language.

As described on page 76 of the staff report, the C-VCR zoning district implements key Coastal

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Act and LUP objectives of prioritizing visitor-serving commercial uses (Section 30222) in existing developed areas (Section 30250). The suggested modifications to Policy C-PK-3 also help ensure that commercial uses remain the primary use in the zoning district and that residential uses will be allowed consistent with the requirements of Coastal Act section 30222. Even though new residential uses will be appealable throughout the C-VCR district until the maps are adopted and the rezone occurs, these proposed new uses can still be permitted by the County and if existing the residential use would be allowed to be maintained, repaired, and remodeled regardless of their location.

Community Centers

Some commenters have asked that the Commission specify that community centers be designated for non-profit use only. As described on page 80 of the staff report, in response to public comment regarding the need for community centers in residential zoning districts to be owned and operated by non-profits, the County-adopted proposed IP requires community centers to be designed to enhance public recreational access and visitor-serving opportunities. The Coastal Act question in this regard is not whether it is a for-profit or a not-for-profit enterprise, rather that public recreational access and visitor-serving uses are prioritized. Thus, regardless of ownership, community centers will serve public recreational access and visitor-serving purposes, and additional modifications are not necessary in this respect.

8. Coastal Development Permitting Procedures

The Coastal Act defines the activities that constitute development and requires a coastal development permit (CDP) that is consistent with the Coastal Act or the local government's Commission-certified LCP for the activities that meet the definition of development. The Coastal Act's implementing regulations then offer detailed provisions that specify permitting procedures, including required noticing, hearing dates, and appeals procedures. The revised LUP Update provides policies and provisions to protect coastal resources, and it includes a section describing coastal permits in the Introduction chapter, stating that coastal permits are the primary tool for implementing the LCP, that development requires a coastal permit unless exempted or excluded from permit requirements, and that the Marin County Community Development Agency is responsible for implementing the LCP and for reviewing coastal permit applications.

The implementation and processing of CDPs for all development (with the exception of development that is exempt or excluded from the CDP requirement) is one of the most critical means of implementing the coastal resource protection policies of the LUP. The CDP provisions of the IP are divided into two chapters: Chapter 22.68 (Coastal Permit Requirements) and Chapter 22.70 (Coastal Permit Administration). Collectively, these chapters list coastal development permitting procedures, including specifying what activities in the coastal zone constitute development and therefore require a CDP, the different types of available CDP processes and the types of projects that can be processed according to those CDP types, the applicable noticing and hearing requirements, and the findings required for each permit. In general, the proposed implementation sections are consistent with the Coastal Act and its implementing regulations, and suggested modifications to these Chapters are solely to add terms or requirements that are explicitly stated in the Act and/or its implementing regulations. These modifications include ensuring that certain Categorical Exclusion Orders require development to be consistent with the zoning ordinances in effect at the time that the Categorical Exclusion

Order was adopted; and that the types of improvements and repair and maintenance activities that ordinarily are exempted from CDP requirements per Coastal Act Section 30610 are specifically listed in IP Section 22.68.050 and those that are not exempt are specifically listed in IP Section 22.68.060. Suggested modifications implementing both the coastal resource protection policies and the procedural requirements of the Coastal Act are described below.

Noticing of Exempt Development

IP Section 22.68.050 establishes when a proposed development may be determined to be exempt from the requirement for a coastal permit. However, as submitted, the IP does not provide for any mechanism for noticing of such determination to either the public or the Commission. The provision of public notice 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 have repeatedly asserted the critical importance of adequate and effective noticing of CDP exemption determinations. 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.”

A suggested modification is therefore added to ensure that the Commission and members of the public are made aware of any determination by the Director as to whether a proposed development can be exempt from the coastal permitting requirement by requiring that the County provide notice of all exemption determinations to the applicant, the Commission, and any known interested parties. The notice must include a project description, reasons supporting the exemption/exclusion determination, and the date of the Director’s determination. Additionally, all exemption determinations may be challenged under the IP process specified in Section 22.70.040. Therefore, as modified, the IP ensures that the public and the Commission are appropriately notified of CDP exemption determinations, including a process for potential appeal.

Public Notice of Categorical Exclusion Orders

The County’s Commission-adopted Categorical Exclusion Orders are listed within LCP Appendix 7. However, because all of the Exclusion Orders state that the specified development in the specified geographic area must be consistent with all terms and conditions of the Categorical Exclusion, and some of the Categorical Exclusions require that development be consistent with the zoning ordinances in effect at the time the Categorical Exclusion Order was adopted, a suggested modification also requires that all local zoning ordinances in effect at the time each Categorical Exclusion Order was adopted also be provided within Appendix 7 as Appendix 7a. As modified, the public will both be able to see the types of the development in the specified geographic areas that may be categorically excluded from CDP requirements, and then be able to review the actual Order itself²⁸ to understand all terms and conditions of the Orders that development must meet in order for the exclusion to apply to the proposed development.

²⁸ The County’s three Categorical Exclusion Orders: E-81-2, E-81-6, and E-82-6; are contained within LCP Appendix 7.

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Determination and Challenges to Permit Category Determination

Section 22.70.030 sets forth the procedure in which the Director determines the appropriate permit category (including five types: categorically excluded, de minimis, administrative, public hearing, and public hearing waiver) and Section 22.70.040 sets forth the procedures for challenging such determinations to the Coastal Commission. Article 17 of the Commission's regulations identifies the minimum standards of notice and hearing requirements for LCPs. Section 13569 of the Commission's regulations includes a process to challenge whether a development should be processed as a categorical exclusion or non-appealable or appealable development. As stated above, the provision of public notice in conjunction with an exemption determination 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.

As proposed, the list of permit categories is not complete because it does not include exemption determinations. Therefore, modifications to Section 22.70.030 are required to list exemptions determinations as a type of permit category determination made by the Director that is subject to challenge. Therefore, as amended, the IP includes a process by which the County determines in which of six permit categories a proposed development falls, as well as a process by which those determinations can be challenged, consistent with the Coastal Act and its regulations.

Notice of Final Action

Coastal Act section 30603(d) of the Coastal Act requires that when a local government takes an action on an appealable coastal development permit, the local government shall send notification of its final action to the Commission by certified mail within seven calendar days from the date of making the decision. Section 13571 of the Commission's regulations specify the required materials to be included in the notice, including conditions of approval, written findings, and the procedures for appeal of the local decision to the Coastal Commission. IP Section 22.70.090 lists the process for sending the Notice of Final Action on a CDP, mirroring §13571's requirement that within 7 calendar of the final decision the County is to send to the Commission the conditions, findings, and appeal procedures. However, the Section as proposed does not conform with the requirement in Coastal Act section 30603(d) that notification of final local action be sent by certified mail. In addition, the proposed section does not adequately implement the regulations' requirements, including by not clearly specifying what materials are to be sent to the Commission identifying the development approved and the County's factual basis for determining its consistency with the LCP. Such information is necessary, particularly for appealable development, in order for the Commission and the public to clearly understand both the development approved and the basis for finding it consistent with the certified LCP. Therefore, a modification is required in IP Section 22.70.090 to include the required details. As modified, the IP describes a clear process by which the County is to send the Commission and interested parties notice of their final CDP decisions consistent with the requirements of the Coastal Act and its implementing regulations.

Nonconforming Structures and Uses

The LCP contains one policy for nonconforming uses and structures, Policy C-CD-4, which states that lawfully established uses and structures may be maintained and continued, but cannot be enlarged, intensified, moved to another site, or redeveloped without being brought into conformance with the LCP. The policy is implemented in IP Section 22.64.110(A)(3), which cross-references Section 22.70.160 regarding nonconforming uses and structures. The Section uses language from the County's own nonconforming ordinance (including that such structures can be repaired and maintained, and that they can be enlarged so long as the addition itself conforms with the LCP) but also includes LCP-specific requirements, including describing allowable development on nonconforming structures located in hazardous locations.

A suggested modification is added to the non-conforming use and structure provisions adding to the County's proposed list of actions that would require that nonconforming uses and structures be brought into compliance with all LCP policies. In addition to enlargement, intensification, or relocation triggering the need for a non-conforming use or structure to be brought into LCP conformity as proposed by the County's provisions, redevelopment would also trigger such compliance. Specifically, the modification states that repair and maintenance that replaces 50% of the nonconforming structure, or that constitute redevelopment, result in the structure losing its legal nonconforming status and requires the *entire* structure to be brought into compliance with all LCP policies. Thus, this provision ensures consistency with §13252(b)'s language specifying that replacement of 50% or more of a structure is not considered repair and maintenance but instead constitutes a replacement structure requiring a coastal development permit. Therefore, as modified, the IP implements and clarifies the LUP's requirements pertaining to nonconforming structures and uses.

Land Divisions

The LUP includes numerous policies that are either directly or indirectly applicable to land division, including those that direct new development into already existing developed areas (Policy C-CD-1); require land divisions to be consistent with LCP density, resource protection, and rural land division criteria (C-CD-2); allow land division only where there is adequate water, sewer, traffic, and other public services available to serve it (C-PFS-1); and prohibit land division in sensitive coastal resource areas, including ESHA (Policy C-BIO-2 only allows resource dependent development in ESHA, and land division is a type of development that is not resource dependent).

Modifications to Section 22.70.190 are necessary to implement these LUP policies to clarify the types of land divisions that are considered to be development, including subdivision (through parcel map, tract map, grant deed), lot line adjustments (LLAs), and certificates of compliance. Modifications to Section 22.70.190(B) identify the required criteria that land divisions must meet (in addition to other applicable LCP policies), including a prohibition on land division if located outside of designated village limit boundaries and within an area found to have limited public service capacities (thereby ensuring no new parcels are created in rural areas with limited public services, consistent with both the Coastal Act and the LUP), and that land divisions outside village limit boundaries shall only be permitted where 50% of the usable parcels within the area have been developed and the created parcels would be no smaller than the average size of the surrounding legal parcels. Modifications to the Section also make clear that land divisions, though constituting development, are never the principal permitted use in any zoning district;

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therefore, all land divisions within the Marin County coastal zone are appealable to the Coastal Commission. Therefore, as modified, the IP provisions conform with and are adequate to carry out the LUP policies governing land divisions as they include a clear and concise Section that specifies what types of land divisions constitute development requiring a CDP, and the standards that are required to be met.

Finally, a suggested modification was added to Section 22.70.175, a section regarding violations of coastal zone regulations and enforcement of LCP provisions and penalties, that implements the provisions of section 13053.4 of the Commission's regulations. The suggested modification states that no CDP application shall be approved unless all unpermitted development on the property that is functionally related to the development being proposed is proposed to be removed or retained consistent with the LCP.

Public comments have asserted that the IP as suggested to be modified does not provide for maximum public participation consistent with the Coastal Act, particular with respect to a lack of required public hearings. However, as discussed further below, while development that is reviewed by the Planning Director is not subject to a public hearing, if that initial decision is appealed to the Planning Commission, a public hearing will occur. Interested persons are thereby afforded the opportunity to appeal a Planning Director's action and participate in a public hearing because a CDP that is locally appealable is still required even though the Planning Director's action without a hearing was the first step in the process.

More specifically, the Commission's regulations only require a public hearing for CDPs involving development appealable to the Commission (see Title 14 of the California Code of Regulations (CCR) Sections 13566 and 13568, and Marin County's currently certified IP Section 22.70.080(B)). By designating development as principally permitted, such development will only be appealable to the Commission if it is otherwise appealable based on its geographic location (which, as discussed in detail on page 23 of this report, is a primary reason for suggested modifications to ensure that principally permitted development within the C-APZ district meets objective, enforceable standards). However, even though the County does not require the Planning Director to have a hearing for a CDP involving non-appealable development if no other local hearing is required (again, as is allowed per CCR Sections 13566 and 13568), the Planning Director's action is internally appealable, and if appealed locally, will result in a public hearing before the Planning Commission and/or the Board of Supervisors. Furthermore, development designated as principally permitted that is not otherwise appealable to the Commission and requires no other local hearing still requires a CDP and the Planning Director must still provide interested persons with notice of the Planning Director's prospective action.

As modified, IP Section 22.70.030(B) requires the County to notice all permit category determinations based on the type of determination. Once the County determines and notices the permit category, IP Section 22.70.040, as modified, allows all such determinations to be challenged to the Commission. For example, if an interested person dispute's the County determination to classify a particular development project as non-appealable, arguing instead that the project should be considered appealable to the Coastal Commission, they may challenge the County's determination to the Commission, where ultimately the Commission would decide on the proper determination.

Next, IP Section 22.70.080, as modified, allows *all* CDP decisions to be appealed to either the Planning Commission and/or the Board of Supervisors, triggering a required public hearing. Thus, if an interested person disputes the Director's decision on a non-public hearing CDP application, he/she may appeal that decision to the Planning Commission for public hearing. Finally, after exhausting all local appeals, if the development meets the criteria set forth in IP Section 22.70.080(B)(1), which mirrors Coastal Act Section 30603's listing of the types of projects that are appealable to the Coastal Commission, the interested person may also appeal the County's decision to the Commission.

Therefore, the IP as modified sets up a very robust CDP processing program that allows for maximum public involvement in CDP decisions, including articulating required noticing procedures, allowing a challenge to the Commission regarding the appropriate processing of each of the six types of CDP processes, and allowing for local appeal of all CDP actions, thereby ensuring an interested person's ability to trigger a public hearing.

As modified, the IP's Chapter 22.68 and 22.70 identify what constitutes development requiring a CDP, what is exempt, the six different CDP categories, and the standards that must be met, all consistent with Coastal Act and LUP requirements. In addition, the IP, as modified, maximizes public involvement in coastal permitting decisions, consistent with public comments highlighting the clear need for such maximum public participation. Because the IP Update, as modified, contains permit processing procedures that are necessary to implement the coastal resource protection policies of the LUP consistent with the requirements of the Coastal Act, the IP as modified conforms with, and is adequate to carry out, the conditionally certified Land Use Plan.

a) Response to Public Comment on the LUP and IP

Exemption Noticing and Challenging

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." While Commission staff recognizes workload concerns expressed by the County with regard to exemption noticing, public notice must be provided if there is going to be a deadline required by the County for challenging the exemption determinations. Commission and County staff discussed numerous options for exemption noticing which would meet public participation requirements of the Coastal Act and County procedures but are still unable to come to an agreement. Regardless of the process outlined in the Marin LCP, any determination of

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exemption can still be challenged directly to the Commission per Coastal Act section 30625 and Section 13569 of the Commission's administrative regulations. Importantly, when the County and the Executive Director are in agreement on the exemption, there is no further challenge available under CCR Section 13569.

9. Appendices and Maps

The Appendix of the LCP includes the following eight items:

- Appendix 1: List of Recommended Public Coastal Accessways
- Appendix 2: Inventory of Visitor-Serving, Commercial, and Recreation Facilities in the Coastal Zone
- Appendix 3: Coastal Village Community Character Review Checklist (Local Coastal Program Historic Review Checklist)
- Appendix 4: Design Guidelines for Construction in Areas of Special Character and Visitor Appeal and For Pre-1930's Structures
- Appendix 5: Seadrift Settlement Agreement
- Appendix 6: 1977 Wagner Report "Geology for Planning, Western Marin County"
- Appendix 7: Categorical Exclusions Orders and Maps
- Appendix 8: Certified Community Plans:
 - a. Dillon Beach Community Plan
 - b. Bolinas Gridded Mesa Plan

As previously discussed, nearly all of these documents are not being amended and are simply being retained as is from the existing certified LCP (the exception being the updated inventory of visitor serving facilities). Because IP Sections 22.64.045(4)(A) and (G) reference the Marin County Hillside Subdivision Design Ordinance (Marin County Development Code Section 22.82.050), a suggested modification would add the ordinance as Appendix 9. As mentioned above, the County's Commission-adopted Categorical Exclusion Orders are listed within LCP Appendix 7. However, because all of the Exclusion Orders state that the specified development in the specified geographic area must be consistent with all terms and conditions of the Categorical Exclusion, and some of the Categorical Exclusions require that development be consistent with the zoning ordinances in effect at the time the Categorical Exclusion Order was adopted, a suggested modification also requires that all local zoning ordinances in effect at the time each Categorical Exclusion Order was adopted also be provided within Appendix 7 as Appendix 7a.

The maps included within the County's revised Update show, among other things, the boundary of the coastal zone; locations of special-status species, wetlands, and areas subject to sea level rise and flooding; land use and zoning maps; and maps showing the boundaries of the categorical exclusion orders. However, as stated by the County in the information accompanying their revised Update, the maps are intended to be for planning purposes only and are not intended to be definitive delineations of ESHA or coastal hazards, nor for actual boundaries of the coastal zone. Therefore, suggested modifications are thus necessary to clearly state as such. Thus, a suggested modification is required for all maps to state that they are illustrative only, and also include the following disclaimer (from the Commission's mapping unit):

The Coastal Zone Boundary depicted on this map is shown for illustrative purposes only and does not define the Coastal Zone. The delineation is representational, may be revised at any time in the future, is not binding on the Coastal Commission, and may not eliminate the need for a formal boundary determination made by the Coastal Commission.

Further, a series of suggested modifications are required to ensure the maps are used appropriately. In addition, Maps 28a and b do not accurately depict the location of the first public road. Even though the maps would only be illustrative since the appeal and jurisdiction boundaries are determined by the maps certified by the Commission and on file in the Commission's offices, the maps must be corrected to avoid misinformation. Therefore, a suggested modification is required to replace the proposed maps 28a and b with maps that accurately depict the location of the first public road. See [Exhibit 15](#) for suggested modifications pertaining to the LCP's maps. As modified, the proposed appendices and maps contained within the LCP Update are consistent with the requirements Coastal Act.

10. OTHER

Remaining Area of Deferred Certification

Marin County's Area of Deferred Certification was created on June 3, 1981, and includes 24 parcels totaling 3 1/2 acres on the north side of Calle del Arroyo, adjacent to Bolinas Lagoon at Stinson Beach. At the time the Commission certified the Marin LCP with an area of deferred certification, the principal issues involved the buildout of ten vacant parcels and their inadequacy in size for individual septic systems while maintaining a 100-foot protective setback from the Bolinas Lagoon edge. These issues remain unresolved. Thus, Marin County has not begun work on the LCP for this area. No change in status has occurred.

Response to Miscellaneous Public Comments

Regarding requests for the Marin LCP hearing to be held in Marin County, the hearing in Half Moon Bay was the nearest location planned for the remainder of 2016. Alternative hearing location options were all further away, such as October in Ukiah and December in Ventura.

See [Exhibit 16](#) for all correspondence received prior to October 21, 2016.

a) Response to Public Comment on the LUP and IP

General

Comments have been received asking that the Commission postpone taking any action at this time, including providing interested parties more time to digest the proposed LCP Update and potential modifications to it, and to allow for a more local hearing. On this point staff notes four things. First, the LUP was the subject of a local public hearing in Inverness in Marin County in May of 2014. That hearing culminated several years of local hearings and Commission staff outreach. The Commission unanimously conditionally certified the LUP at that hearing, following substantial public input. The LUP now proposed by the County and as proposed to be modified by staff is mostly the same as was conditionally certified by the Commission in 2014, with the major changes being to the roughly 15-page LUP hazard chapter. Similarly, the IP was

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the subject of a local public hearing in San Rafael in Marin County in April of 2015. That IP was designed to implement the Commission's conditionally certified LUP, and thus the hearing focused on the same general issue areas as debated in the 2014 hearing. Although the County ultimately withdrew its IP update prior to Commission action, preferring to spend more time addressing their concerns with an eye towards resubmittal, again the Commission benefitted from significant local participation, including many of the same groups who continue to be involved today. Thus, while staff appreciates the need for adequate time to review and comment on the proposal, and the desire for local hearings, staff notes that the core issues remain the same, and that the issues have been debated previously at two local hearings in Marin County.

Second, some commenters have suggested that they have not had adequate time to review the proposed LCP Update and staff's suggested modifications because the staff report came out on October 21, 2016. On this it is important to note that the staff report met all Commission hearing and notice requirements. Perhaps just as importantly, and in addition to the observation above that many of the issues and suggested modifications are the same or similar to before, staff went out of its way to make their suggested modifications public well before that date. In fact, all of the suggested modifications (other than those related to hazards) were provided to County staff on September 8 (nearly two months ago), and were made available to the general public (including via the County's email distribution list that goes to some 1,400 parties) on September 23 (nearly 6 weeks ago), well in advance of the hearing for this item. In addition, the hazard related mods were made available to the County on October 4 (almost a month ago), and to the general public on October 13, again well in advance of the hearing. Thus, the proposed LCP and staff's suggested modifications to it have been available for many weeks, almost six weeks prior to the hearing for the vast majority of the mods, and reflect many of the same themes as were previously conditionally certified by the Commission in 2014 and suggested for certification by staff in 2015.

Third, the staff report length has been cited as a confounding review factor. In addition to everything discussed above, it is important to note that the vast majority of the 2,825-page staff report is exhibits (2,713 pages, or 96%), with the largest exhibits being those associated with the 2014 and 2015 hearings (94-pages and 208-pages respectively), the County's submittal (1,622 pages, or 57%), and with the suggested modifications in strike through and underline form (379-pages, or 13%). The written portion of the staff report is 112 pages. Although staff agrees that this is a lot of material, the overwhelming majority is materials from past hearings that is there for reference purposes, and nearly 60% of the report are materials from the County's revised submittal.

And finally, certain commenters suggest that staff has waited until the last minute to engage on the issues and to deliver its own version of what should happen with the LCP Update, which has been characterized as both a 'late hit' and inappropriate. Staff notes that it has actively engaged not only County staff but a variety of interested parties for many years, since well before the County originally acted on its initial LCP Update at the local level, as well as before the prior Commission hearings. Staff has continued that involvement even after the County withdrew its proposal in 2015, including two comment letters providing input as the County reconsidered its proposal locally in 2015 and 2016. Since the 2015 County withdrawal, staff has continued its active engagement on the issues presented, most notably in terms of significant involvement and

comments with respect to the County's revised approach to coastal hazards 2015 (see also below). Staff has participated in literally dozens of meetings with the County and others, and innumerable phone conversations and emails, all leading to this LCP Update hearing. Staff notes that such active participation has led to a series of compromises and changes in the staff position, including as reflected in this addendum. In short, staff has been an active participant, and has raised all of the same issues for many years, including those related to hazards and the Commission's own version of the conditionally certified LUP from 2014 which provided a touchstone for staff. That there remain disagreements is not a reflection of staff's participation in the process so much as a reflection on both the wide range of views on the topics, and the difficulty of the decisions presented, particularly those related to coastal hazards and sea level rise.

C. California Environmental Quality Act (CEQA)

The Marin County Board of Supervisors conducted public hearings on August 25, 2015 and April 19, 2016 and approved the submittal of the proposed LCP Update amendments to the Marin County Local Coastal Program to the California Coastal Commission. As part of their local action on the subject LCP Update amendments, on April 19, 2016, the County of Marin Board of Supervisors found, per Title 14, Sections 15250 and 15251(f) of the California Code of Regulations ("CEQA Guidelines,") that the preparation, approval, and certification of the 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. (See Attachment B for a summary of the local hearing process.)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP submittal to find that the approval of the proposed LCPA, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f) and 13555(b).

The County's LCP Update amendments consists of a Land Use Plan amendment (LUP) and an Implementation Plan (IP) amendment. As discussed herein, the Land Use Plan amendment as originally submitted does not conform with, and is not adequate to carry out Chapter 3 of the Coastal Act. The Commission conditionally certified, with modifications, the LUP Amendment and hereby incorporates its findings on Coastal Act and LUP conformity into this CEQA finding

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as it is set forth in full. . The Commission has, therefore, modified the proposed Land Use Plan to include all feasible measures to ensure that such significant environmental impacts of new development are minimized to the maximum extent feasible consistent with requirements of the Coastal Act. These modifications represent the Commission's detailed analysis and thoughtful consideration of all public comments received, including with regard to potential direct and cumulative impacts of the proposed LUP amendments, as well as potential alternatives to the proposed amendment, including the no project alternative. As discussed in the preceding sections, the Commission's suggested modifications represent the most environmentally protective alternative to bring the proposed amendment into conformity with the policies of the Coastal Act

Further, the Implementation Plan amendment as originally submitted does not conform with, and is not adequate to carry out, the policies of the conditionally certified LUP. The Commission has, therefore, modified the proposed Implementation Plan to include all feasible measures to ensure that such significant environmental impacts of new development are minimized to the maximum extent feasible consistent with the requirements of the Coastal Act. These modifications represent the Commission's detailed analysis and thoughtful consideration of all public comments received, including with regard to potential direct and cumulative impacts of the proposed IP amendments, as well as potential alternatives to the proposed amendment, including the no project alternative. As discussed in the preceding sections, the Commission's suggested modifications represent the most environmentally protective alternative to bring the proposed amendment into conformity with the conditionally certified LUP consistent with the requirements of the Coastal Act. As modified, the Implementation Plan code provisions and zoning maps carry out the policies and programs in the LUP by indicating which land uses are appropriate in each part of the Coastal Zone.

The IP also contains specific requirements that apply to development projects and detailed procedures for applicants to follow in order to obtain a coastal permit. Thus, future individual projects would require coastal development permits, issued by the County of Marin, and in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the coastal zone, specific impacts to coastal resources resulting from individual development projects are assessed through the coastal development review process; thus, any individual project will be required to undergo environmental review under CEQA. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts.

ATTACHMENT A
SUMMARY OF COUNTY ZONING DISTRICTS

The fourteen zoning districts, their intended purpose, and some of their proposed allowed land uses, are as follows:

- **Coastal Agricultural and Resource-Related Districts:** Section 22.62.060 states that the purpose of these three zoning districts is to protect agricultural land, continued agricultural uses and the agricultural economy by maintaining parcels large enough to sustain agricultural production, preventing conversion to non-agricultural uses, and prohibiting uses that are incompatible with long-term agricultural production, among others.
 - Coastal Agricultural Production Zone (C-APZ): The intent of this district is to preserve privately owned agricultural lands that are suitable for land-intensive or land-extensive agricultural production. Principally permitted uses include Agricultural production, Farmhouse, and Agricultural Worker Housing; permitted uses include Home occupations; conditional uses include Mineral resource extraction; and uses not allowed include Residential second units.
 - Coastal Agriculture, Residential Planned (C-ARP): This district provides flexibility in lot size and building locations to concentrate development to maintain the maximum amount of land for agricultural use, and to maintain the visual, natural resource and wildlife habitat values of subject properties and surrounding areas. Principally permitted uses include Agricultural production, Single-family dwellings, and Agricultural product sales facilities of under 500 square feet; permitted uses include Agricultural processing uses within structures of under 5,000 square feet; conditional uses include Schools; and Agricultural Intergenerational housing is not allowed.
 - Coastal Open Area (C-OA): This district provides for open space, outdoor recreation, and other open lands, including areas particularly suited for park and recreational purposes, access to beaches, natural drainage channels, and areas that serve as links between major recreation and open space reservations. Principally permitted uses include Agricultural accessory activities and structures; permitted uses include Agricultural production; conditional uses include Campgrounds; and uses not allowed include Waste disposal sites.
- **Coastal Residential Districts:** Section 22.62.070 describes the purpose of the six residential zoning districts, as follows:
 - Coastal Residential, Agricultural (C-RA): This district provides areas for residential use within the context of small-scale agricultural and agriculturally-related uses, subject to specific development standards. Principally permitted uses include Agricultural production and Single-family dwellings; permitted uses include Home occupations and Bed and Breakfasts of three or fewer guest rooms; conditional uses include the Sale of agricultural products grown on site; and uses not allowed include Multi-family dwellings.
 - Coastal Residential, Single-Family (C-R1): This district provides areas for detached single-family homes, similar and related compatible uses. Principally permitted uses include Single-family dwellings and Affordable housing; permitted

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- uses include Agricultural production; conditional uses include Libraries and Museums; and uses not allowed include Agricultural processing facilities.
- Coastal Residential, Single-Family Planned (C-RSP): This district provides areas for detached single-family homes, similar and related compatible uses, which are designed in compliance with Marin County LCP policies, with maximum compatibility with sensitive site characteristics. Principally permitted uses include Single-family dwellings and Residential second units; permitted uses include Commercial gardening; conditional uses include Community Centers; and uses not allowed include Agricultural worker housing and Two-family dwellings.
 - Coastal Residential, Single-Family Planned Seadrift Subdivision (C-RSPS): This district is applied to areas within the Seadrift Subdivision intended for detached single-family homes, similar and related compatible uses, which are designed for maximum compatibility with sensitive site characteristics unique to the Seadrift sandpit and lagoon, Bolinas lagoon, and the beaches adjacent to the subdivision. Principally permitted uses include Single-family dwellings and Residential second units; permitted uses include Home occupations; and conditional uses include Public Parks and Playgrounds. Uses not allowed include Agricultural production and Multi-family dwellings.
 - Coastal Residential, Two-Family (C-R2): This district provides areas for attached two-family housing units, detached single-family homes consistent with Land Use Plan Policy C-CD-20, and similar and related compatible uses. Principally permitted uses include Two-family dwellings and Affordable housing; permitted uses include Home occupations; conditional uses include Commercial gardening and Plant nurseries; and uses not allowed includes Equestrian facilities.
 - Coastal Residential, Multiple Planned (C-RMP): This district provides for areas for varied types of residential development, and similar and related compatible uses, designed for maximum compatibility with sensitive site characteristics. Principally permitted uses include Single-family and Multi-family dwellings; permitted uses include Bed and Breakfasts of three or fewer guest rooms; conditional uses include Child day-care centers; and uses not allowed include Agricultural processing facilities.
 - Coastal Commercial and Mixed-Use Districts Section 22.62.080 describes the purpose of the five commercial and mixed-use zoning districts, as follows:
 - Coastal Village Commercial/Residential (C-VCR): This district is intended to: maintain the established historical character of village commercial areas; promote village commercial self-sufficiency; foster opportunities for village commercial growth, including land uses that serve coastal visitors; maintain a balance between resident-serving and non-resident-serving commercial uses; protect established residential, commercial, and light industrial uses; and maintain community scale. Principally permitted uses include Single-family dwellings, Restaurants of 40 patrons or less, and General merchandise retail stores; permitted uses include Plant nurseries and Business support services; conditional uses include Bars and drinking places, Used auto sales, and Construction yards; and uses not allowed include Homeless shelters, Tobacco retail establishments, and Residential second units.
 - Coastal Limited Roadside Business (C-H1): This district is intended for rural

areas suitable for businesses that serve the motoring public. Principally permitted uses include Affordable housing and Restaurants serving 40 patrons or less; permitted uses include ATM machines; conditional uses include bed and breakfasts of up to five guest rooms; and uses not allowed include banks and financial services.

- Coastal Planned Commercial (C-CP): This district is intended to create and protect areas suitable for a full range of commercial and institutional uses. Principally permitted uses include restaurants of 40 patrons or less; permitted uses include mariculture/aquaculture; conditional uses include beverage production facilities; and uses are not allowed include golf courses/country clubs.
- Coastal Residential/Commercial Multiple Planned (C-RMPC): This district is intended to create and protect areas suitable for a mixture of residential and commercial uses. Principally permitted uses include grocery stores; permitted uses include business support services; conditional uses include bars and drinking places; and uses not allowed include tobacco retail establishments.
- Coastal Resort and Commercial Recreation (C-RCR): The C-RCR zoning district is intended to create and protect areas for resort facilities, with emphasis on public access to recreational areas within and adjacent to developed areas. Principally permitted uses include hotels and motels; permitted uses include telecommunications facilities; conditional uses include transit stations; and uses not allowed include offices.

**ATTACHMENT B
SUMMARY OF LOCAL HEARING PROCESS**

In October 2008 the Board of Supervisors approved a work program and schedule to prepare amendments to the Marin County LCP. The update process included extensive input from the public. There were over 50 meetings and hearings open to the public regarding the LCPA. Comments and participation were sought from County residents, California Native American Indian tribes, public agencies, public utility companies, and various local community groups and organizations. The LCPA was referred to the California Coastal Commission, National Park Service, California State Department of Fish and Game, public water agencies, the Federated Indians of Graton Rancheria, and a number of other public agencies.

Beginning on March 16, 2009, the Marin County Planning Commission conducted the first of a series of 19 public issue workshops to obtain the public's input on issues of concern in the development of the LCPA. Input was obtained through public meetings on April 27, May 26, June 22, July 13, July 27, August 24, September 28, October 26, and November 23, 2009, and January 25, February 8, March 8, April 12, April 26, June 14, June 28 and July 29, 2010 and through correspondence and consultations through that period. Written correspondence was placed on the LCPA website and made available to all.

A preliminary Public Review Draft of the LCPA was released on June 2011, which was followed by four community workshops that were held on July 12, 18, 20 and 25 to present the Public Review Draft to the public. In conjunction with the release of the Public Review Draft for the LCPA Amendment, the Board of Supervisors and Planning Commission met on June 28, 2011, and adopted a schedule for public hearings to obtain public comment on the LCPA.

Beginning on August 31, 2011, a series of public hearings were held by the Planning Commission to receive testimony on the LCPA and to provide the public and affected agencies and districts with the maximum opportunity to participate in the LCP Amendment process, consistent with California Code of Regulations Sec. 13515 and Public Resources Code Sec. 30503. Public hearings were held on September 19, October 10 and 24, November 7, and December 1, 2011, and January 9 and 23, 2012. Oral and written comments were presented and considered at the hearings.

Following the close of the November 7, 2011, public hearing, the Commission directed that the June 2011 Public Review Draft be revised to reflect the initial recommendations of the Commission at that time. These revisions were presented in the January 2012 Public Review Draft, which was made available for the January 9 and 23, 2012 public hearings. At the close of the January 23, 2012 public hearing, the Planning Commission directed staff to compile all the changes made by the Commission in a new, complete document entitled the "Planning Commission Recommended Draft."

Prior to the February 13, 2012 hearing, the Commission was provided with the complete contents of the Local Coastal Program consisting of the following documents: (1) Marin County Planning Commission Recommended Local Coastal Program Draft LUP Amendments (February, 2012); and (2) Marin County Planning Commission - Recommended Proposed Development Code

Amendments (February 2012). Land Use and Zoning Maps; and Appendices had been previously distributed in June 2012. Both Planning Commission Recommended Amendment documents were also mailed to interested parties who had requested them. All documents were additionally made available to the public on the LCPA website at www.MarinLCP.org.

On February 13, 2012 the Marin County Planning Commission approved the LCPA and directed staff to incorporate all changes into 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.

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. Public hearings were held on November 13 and December 11, 2012, and January 14, February 26, April 16, and July 30, 2013. Oral and written comments were presented and considered at the hearings.

On May 15, 2014, the Coastal Commission unanimously approved, subject to suggested modifications, the County's updated LUP. On April 16, 2015, the Commission conducted a public hearing to consider the County's updated IP. Commission staff recommended approval of the updated IP, subject to suggested modifications, in order for the IP to conform with and adequately carry out the Commission's conditionally approved updated LUP. However, citing the need for additional time to consider the proposed IP modifications, the County withdrew the submitted IP prior to the Commission taking a vote on the submittal. Ultimately, the County chose to resubmit a modified LCP update proposal for Commission consideration.

On August 25, 2015 and April 19, 2016, the Marin County Board of Supervisors held two additional public hearings to receive testimony on the LCPA, concluding with approval of the modified, updated LCP in 2016 and subsequent submittal to the Commission for consideration.