

SUPPLEMENTAL INFORMATION # 2

For Planning Commission Agenda of:
December 7, 2017

<input type="checkbox"/>	Consent Agenda Item	}	
<input checked="" type="checkbox"/>	Continued Hearing Item	}	
<input type="checkbox"/>	Public Hearing Item	}	No. 9_
<input type="checkbox"/>	Department Report	}	
<input type="checkbox"/>	Old Business	}	

Re: **Zoning Ordinance Amendments to Allow Improved Floors and Footpaths in Greenhouses on Prime Agricultural Soils**

Ordinance Number 17-005

Case Number/s

Assessor's Parcel Number (APNs)

Address/location or project: Unincorporated Humboldt County

Attached for the Planning Commission's record and review are the following supplementary information items:

1. Letter from the California Coastal Commission of December 4, 2017 regarding the greenhouse floor amendments to the Coastal Zoning Regulation (CZR).

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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December 4, 2017

Mary Milner, Long Range Planning
Humboldt County Planning and Building Dept.
3015 H Street
Eureka, CA 95501

RE: Comments on draft proposed changes to Coastal Zoning Regulations (CZR) section 313-69.1.5.2 related to allowance of greenhouses with improved floors on prime agricultural soils.

Dear Ms. Milner:

Thank you for soliciting input from the California Coastal Commission (Commission) on October 26, 2017 regarding proposed changes to the above-referenced section of the County's coastal zoning regulations (CZR). As you are aware, any changes to the CZR adopted by the County will not be effective until certified by the Commission. The standard of review that the Commission will apply to any proposed changes to the CZR is whether or not the CZR as amended would conform with and be adequate to carry out the provisions of the Land Use Plan (LUP) portion of the County's certified Local Coastal Program (LCP).¹ Please note that the following comments are provided by Commission staff; the Commission itself has not reviewed the proposed zoning code changes.

As we understand the proposal, the County is considering changes to section 313-69.1.5 of the CZR, which is the section of the code that lists the various agricultural accessory structures that may be permitted in the AE, TC, TPZ, and RA zones. One of the agricultural accessory structures currently listed in this section of the CZR is "greenhouses" of unspecified type, size and maximum lot coverage. A change that the County is considering would remove the current prohibition in section 313-69.1.5.2 that disallows greenhouses with concrete slab floors on prime agricultural soils. As proposed, such non-soil-dependent greenhouses would be allowed on prime agricultural soils with a special permit. This proposed change is significant, because the existing CZR allows concrete floors within a greenhouse only for footpaths. The proposed changes would allow "improved floors" throughout a greenhouse as long as such flooring is permeable to air and moisture (including impermeable raised floors), would not result in significant compaction and erosion of the soils, would not involve significant excavation, replacement, or alteration of the soils, and would not involve a concrete slab in contact with the soil, or concrete perimeter design. The proposed changes include requirements for applicants to plan for the ultimate removal of all materials covering or contacting prime agricultural soils and restoration of the soil "to as near its original condition as possible." The proposed changes also specify that greenhouses with improved floors shall not be considered "exempt" under the County's building code provisions.

¹ The County's LCP is comprised of an LUP component along with the CZR and zoning district maps, which implement the LUP. The Commission effectively certified the County's LCP in 1986, after certification of each of the LUPs between 1983 and 1985. The Commission refers to the certified CZR and zoning district maps as the Implementation Plan (IP).

The County has six different LUPs that the Commission has certified for the lands within the County's coastal zone.² As mentioned above, the Commission, in considering any proposed changes to the CZR, must make findings that the CZR as amended would conform with and be adequate to carry out the provisions of the LUPs. We believe that the proposed changes to the CZR that the County is considering potentially would conflict with the LUP requirements related to protection of agricultural lands and timberlands, as discussed further below. A summary of our below comments and recommendations begins on page 6 of this letter.

LCP requirements protecting prime agricultural lands and timberlands

Coastal Act section 30241, which is codified within all of the LUPs except for the TAP, protects agricultural lands and limits the conversion of agricultural lands to non-agricultural uses as follows:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area's 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 30113 of the Coastal Act, which is codified in section 313-136 of the CZR and also is defined in each of the LUPs, defines "prime agricultural land" through incorporation-by-reference of paragraphs (1) through (4) of section 51201(c) of the California Government Code:

Prime agricultural land entails land with any of the follow characteristics: (1) a rating as class I or class II in the Natural Resource Conservation Service land use capability classifications; or (2) a rating 80 through 100 in the Storie Index Rating; or (3) the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; or (4) the ability to normally yield in a commercial bearing period on an annual basis not less than two hundred dollars (\$200) per acre of unprocessed agricultural plant production of fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years.

² The six different LUPs are the North Coast Area Plan (NCAP), Trinidad Area Plan (TAP), McKinleyville Area Plan (MAP), Humboldt Bay Area Plan (HBAP), Eel River Area Plan (ERAP), and South Coast Area Plan (SCAP).

The four different prongs of the above-cited definition of “prime agricultural land” relate to the value and utility of the land in terms of range of agricultural uses and productivity. Land that meets any one of the four criteria in the definition is considered “prime” under the Coastal Act and the County’s LCP.

At least two of the prongs in the above-cited definition of prime agricultural land relate directly to “prime agricultural soils” as referenced in the section 313-69.1.5.2 of the CZR, though it’s unclear from the information provided if the County defines “prime agricultural soil” consistent with the above-cited definition.³ The NRCS land use capability classification referenced in part 1 of the above-cited definition rates the utility of the land based on various physical factors (e.g., rock type, soil type, slope, erosion potential, etc.). The lower the rating the more utility the land is considered to have for various agricultural uses. Ratings of class I or II are considered “prime.” The Storie Index Rating is based on soil characteristics that govern the land’s potential utilization and productive capacity (e.g., characteristics of the soil profile, surface texture, slope, drainage, nutrient level, acidity, alkalinity, etc.) independent of other physical or economic factors that might determine the desirability of growing certain plants in a given location. According to the above-cited definition, ratings of 80 through 100 are considered “prime.” The other two prongs of the definition relate indirectly to soils, in that they pertain to the capacity of the land to (a) produce and sustain animal forage (part 3 of the definition), and (b) generate a minimum commercial revenue per acre (part 4 of the definition).

In addition to the above-cited policies that define and protect agricultural lands, each of the LUPs also include section 30243 of the Coastal Act as an LUP policy. This section of the Act reads in part:

The long-term productivity of soils and timberlands shall be protected and conversions of coastal commercial timberlands in units of commercial size to other uses...shall be limited to providing for necessary timber processing and related facilities.

Long-term soil productivity is critical to the productive capacity of an agricultural site, as the presence of nutrients, minerals, organic matter, and microorganisms directly influence the ability of soil to support plant growth. High soil productivity results in higher carbon storage and conversion to biomass. The protection of soil productivity helps maintain the long-term viability of farming, ranching, and grazing land in the coastal zone.

We believe that the proposed changes to the CZR that the County is considering would conflict with the LUP requirements cited above directing that (1) the “maximum amount of prime agricultural land shall be maintained in agricultural production...”, (2) available lands not suited for agriculture shall be developed prior to the conversion of agricultural lands, and (3) the long-term productivity of soils and timberlands shall be protected and shall not be converted to other uses (specifically with respect to converting timberlands to units of less than commercial size). Even though the County is considering the inclusion of provisions to protect prime agricultural soils from adverse effects associated with

³ Each of the LUPs and the existing CZR include a definition of “prime agricultural land” as discussed above, but none include a definition for “prime agricultural soil.” The definition of “prime agricultural land” included in each of the LUPs is slightly different than the above-cited definition. Instead of four subparts, the definition in the LUPs has five subparts. The first three subparts are consistent with the first three subparts of section 30113 of the Coastal Act. However, subparts (4) and (5) of the definition of prime agricultural land in the LUPs read as follows, inconsistent with subpart (4) of Section 30113: “...4) Land planted with fruit or nut bearing trees, vines, bushes or crops which have a non-bearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than \$200.00 per acre. 5) land which has returned from the production of unprocessed agricultural plant products on an annual gross value of not less than \$200.00 per acre for three of the five previous years.” The definition of “prime agricultural land” included in the existing certified zoning code is consistent with section 30113 of the Coastal Act cited above.

grading, compaction, and placement of concrete on the soils in AE, TC, TPZ, and RA zones where greenhouses with improved flooring may be permitted, the proposed changes would not restrict the allowance of greenhouses in terms of greenhouse type, size, maximum lot coverage, or length of development authorization. As such, the proposed changes could result in the permitted development of greenhouses with improved floors on a majority of lands with prime agricultural soils within the AE, TC, TPZ, and RA zones within the County's CDP jurisdiction.⁴ This would have the effect of preventing the use of those valuable and limited prime agricultural soils for productive agricultural use, such as cultivation of crops and forage production, inconsistent with the LUPs and with section 30241 of the Coastal Act. Allowing greenhouses with improved floors on prime agricultural soils also conflicts with the provisions of 30241(d), which directs that available lands not suited for agriculture should be developed prior to converting such lands to other uses (e.g., to uses involving greenhouses with concrete floors, which alternatively could be sited on non-prime farmlands or other types of lands). Furthermore, with the increased permitting of non-timber-related greenhouses with improved floors on timberlands, which would be facilitated by the proposed CZR changes, the long-term productivity of timberland soils would not be protected, and timberlands potentially would be converted to areas of less than commercial size due to fragmentation resulting from greenhouse proliferation, inconsistent with section 30234 cited above.

In addition to conflicting with sections 30241 and 30243 of the Coastal Act, which are incorporated as policies of the certified LUPs, the allowance of greenhouses with improved floors would directly conflict with other LUP policies related to protection of agricultural lands. For example, the NCAP, MAP, HBAP, and ERAP all include policies that state:⁵

No greenhouse shall be approved for use on prime agricultural land, where the greenhouse has a slab foundation that would cover the underlying soil.

Although the County's proposed CZR standards would require elevation of any permitted slab foundation above the underlying soil, such a foundation still would cover and prevent the use of the underlying prime agricultural land, inconsistent with the intent of this policy.

Moreover, the focus of the existing CZR standard (and the CZR standard as proposed to be amended) on "prime agricultural *soil*" rather than "prime agricultural *land*" is inadequate to fully implement the LUP policy cited above. Unlike "prime agricultural land," the County's LCP does not currently include a definition of "prime agricultural soils."⁶ We recommend the County consider amending section 313-69.1.5.2 of the CZR to change "prime agricultural *soils*" to "prime agricultural *land*," to enable that zoning code standard to better carry out the LUP policies cited above regarding protection of prime agricultural land. The County also might consider updating the LUP definitions of "prime agricultural

⁴ The policies and standards of the County's LCP do not apply to the issuance of coastal development permits (CDPs) on lands within the Commission's retained CDP jurisdiction, though under the proposed CZR changes the County could issue Special Permits for greenhouses on such lands. There are several thousand acres of agricultural lands around Humboldt Bay and the Eel River within the Commission's CDP jurisdiction. In considering a CDP application for a greenhouse with or without improved floors on lands within the Commission's jurisdiction, the standard of review that the Commission would apply to the project would be the Coastal Act. The County's LCP may be used as guidance in the Commission's CDP application review.

⁵ See policies 3.33-B-3 of the NCAP; 3.34-B-3 of the MAP; 3.24-B-2-c of the HBAP; and 3.34-B-3 of the ERAP.

⁶ We note that the County's adopted Medical Marijuana Land Use Ordinance (Phase 4), which has been transmitted to the Commission for certification (but which currently has not been filed as a complete application), does include a definition of "prime agricultural soil." However, as noted in proposed section 313-55.4.3.6, the definitions in that section are intended to apply solely to the regulations in that section.

land” as well to ensure consistency with the definition included in the existing certified zoning code (which is fully consistent with section 30113 of the Coastal Act and the Government Code language cited above). Furthermore, the County might consider adding standards or specifications to the CZR for identifying prime agricultural land in the coastal zone that lacks the requisite land use capability classification or Storie Index rating to be considered “prime” but nonetheless is important to the local economy due to its productivity or value (e.g., subparts (3) and (4) as defined above). Together such LCP changes would enable the County to better protect prime farmland consistent with section 30241 of the Coastal Act and the certified LUPs.

The proposed changes that the County is considering also appear to conflict with policy 3.24-B-3-a of the HBAP and 3.34-C-1 of the ERAP, which designate agricultural land in the Table Bluff area for grazing purposes:

Grazing lands on Table Bluff shall be designated for agricultural use to insure availability of upland grazing sites and minimize conflicts with agriculture from conversion of these lands to other uses...

Much of the agricultural land in the Table Bluff area is classified as prime. Without standards for coverage limits of greenhouses on prime farmlands, upland grazing lands could be adversely impacted via cumulative loss and fragmentation due to greenhouse proliferation. We recommend the County consider the long-term protection of upland grazing lands given the significant inundation and saturation of agricultural bottomlands projected to increase over the coming decades with sea level rise.

Furthermore, the proposed changes potentially would conflict with the compatible use policies included in various LUPs, which specify in part:⁷

The zoning of all agricultural lands shall not permit any use that would impair the economic viability of agricultural operations on such lands; and a conditional use permit shall be required of any proposed use not directly a part of agricultural production of food or fiber on the parcel;...

If the intent of proposed CZR changes is in part to facilitate the development of greenhouses for cannabis cultivation on prime farmlands, the County should consider whether it will require a conditional use permit (and CDP) for cannabis operations on agricultural lands in the coastal zone, as possibly required by the above-cited policy (assuming that cannabis is not appropriately classified as food or fiber). Whether or not cannabis is classified as food or fiber that may necessitate a conditional use permit for its use on agricultural lands, the County might consider adding language to the CZR and/or the LUPs to clarify cannabis’s classification as it relates to agriculture as defined in the LUPs.

Finally, we encourage the County to analyze whether these proposed changes ultimately would diminish the long-term productivity and viability of agricultural lands by changing land use patterns, increasing conflicts between agriculture and other uses, and making it difficult to keep agricultural land in production.

Relationship to Categorical Exclusion Order E-86-4

In 1986, the Commission approved Categorical Exclusion Order No. E-86-4 (hereafter “Order”). The Order exempts certain categories of development in certain geographic areas from CDP requirements. One of the categories of development covered by the Order is “agricultural accessory structures,”

⁷ See policies 3.33-B-1 of the NCAP; 3.34-B-1 of the MAP; 3.24-B-2-a of the HBAP; 3.34-B-1 of the ERAP; and 3.34-B-1 of the SCAP.

including those defined in section 313-69.1.5 (formerly A314-1 G) of the CZR. The Order applies to several thousand acres of AE lands within the County coastal zone. The Order does not apply to those AE lands or portions of AE lands located within (a) a coastal wetland; (b) 100 feet of a stream; (c) 200 feet of a coastal wetland; (d) the Commission's CDP jurisdiction; or (e) the Commission's appeal jurisdiction. All combined, the Order does not apply to several thousand acres of coastal agricultural lands, but it does apply to significant expanses of agricultural lands within the LUP planning areas.

Because the section of the CZR that the County is considering changes to is the same section of the CZR referenced in the Order, which allows for the development of agricultural accessory structures, (including greenhouses) without the need for a CDP, the proposed zoning code changes necessitate additional consideration in terms of how they may implicate the Order. We plan to provide more detailed comments in the coming weeks on issues raised by the County's proposed changes both to (1) section 313-69.1.5.2 of the CZR, and (2) the proposed cannabis coastal ordinance, in terms of how these proposed code changes may relate to the Order. We are concerned that the changes to the CZR that the County is considering may facilitate a proliferation of the development of greenhouses on coastal agricultural lands to the detriment of coastal resources, including visual resources. Each of the LUPs includes various policies to ensure that permitted development in coastal areas is sited and designed to protect the scenic views and to be visually compatible with the character of surrounding areas. Currently, much of the coastal bottomlands around the Eel River and Humboldt Bay consist of open pastures without a proliferation of greenhouses or other development.⁸ Since the Order exempts greenhouses and other agricultural accessory structures from CDP requirements, we encourage the County to carefully consider how such CZR changes may relate to future development and permitting requirements on agricultural lands covered by the Order. We encourage the County to consider whether or not changes to the Order itself may be appropriate.

Summary of comments and recommendations

1. The Commission, in considering any proposed changes to the CZR, must make findings that the CZR as amended would conform with and be adequate to carry out the provisions of the LUPs. We believe that the proposed changes to the CZR that the County is considering would conflict with the LUP requirements related to protection of prime agricultural lands and timberlands, for the reasons discussed above.
2. We recommend including additional specifications in CZR section 313-69.1.5.2 related to maximum structure size, maximum lot coverage, siting of structures (e.g., clustering of structures), and/or length of development authorization to maximize protection of farmland in general for productive agricultural use and to avoid scenarios whereby cumulatively, a proliferation of greenhouses on prime and non-prime farmlands throughout the coastal zone results in the transformation of rural open pasturelands to a structured, quasi-industrial landscape. For example, in the Marin County LCP, on land designated as Coastal Agriculture Production Zone, structures, including greenhouses, are required to be clustered together and limited to 5% of the gross acreage of a property, with the remaining acreage retained in or available for agricultural production or open space.
3. We recommend the County consider amending section 313-69.1.5.2 of the CZR to change "prime agricultural *soils*" to "prime agricultural *land*," to enable that zoning code standard to better carry out the LUP policies cited above regarding protection of prime agricultural land.


⁸ A notable exception to this is the Sun Valley bulb farm development in the Arcata Bottoms (APN 507-162-014, among others), which consists largely of prime farmland covered by greenhouses that were exempted from CDP requirements under the Order. The greenhouses cover an estimated 90% of the subject APN.

The County also might consider updating the LUP definitions of “prime agricultural land” as well to ensure consistency with the definition included in the existing CZR. Furthermore, the County might consider adding standards or specifications to the CZR for identifying prime agricultural land in the coastal zone that lacks the requisite land use capability classification or Storie Index rating to be considered “prime” (under subparts (1) and (2) of the definition) but nonetheless is important to the local economy due to its productivity or value (subparts (3) and (4) as defined above).

4. As required by the Humboldt Bay and Eel River Area Plans, we encourage the County to consider the long-term protection of upland grazing lands given the significant saturation and inundation of agricultural bottomlands projected to increase over the coming decades with sea level rise. Without standards for coverage limits of greenhouses on prime and non-prime farmlands, upland grazing lands could be adversely impacted via cumulative loss and fragmentation due to greenhouse proliferation.
5. If the intent of proposed CZR changes is in part to facilitate the development of greenhouses for cannabis cultivation on prime farmlands, the County should consider whether it will require a conditional use permit (and CDP) for cannabis operations on agricultural lands in the coastal zone, given the LUP policies requiring a use permit for “any proposed use not directly a part of agricultural production of food or fiber” (emphasis added). Whether or not cannabis is classified as food or fiber that may necessitate a conditional use permit for its use on agricultural lands, the County might consider adding language to the CZR and/or the LUPs to clarify cannabis’s classification as it relates to agriculture as defined in the LUPs.
6. We encourage the County to analyze whether these proposed changes ultimately would diminish the long-term productivity and viability of agricultural lands by changing land use patterns, increasing conflicts between agriculture and other uses, and making it difficult to keep agricultural land in production.
7. We plan to provide more detailed comments in the future on issues raised by the County’s proposed changes both to (1) section 313-69.1.5.2 of the CZR, and (2) the proposed cannabis coastal ordinance, in terms of how these proposed code changes may relate to CDP exemptions authorized by Categorical Exclusion Order E-86-4. We are concerned that the changes to the CZR that the County is considering may facilitate a proliferation of the development of greenhouses on coastal agricultural lands to the detriment of coastal resources, including visual resources. We recommend that the County to carefully consider how such CZR changes may relate to future development and permitting requirements on agricultural lands covered by the Order, and we are happy to coordinate with you further on this topic, including providing information on the amendment process for Categorical Exclusion Orders if that is something that the County is interested in pursuing.

Again, thank you for the opportunity to provide comments. We’d be happy to meet to discuss these issues further at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa B. Kraemer". The signature is fluid and cursive, with the first name "Melissa" being more prominent and the last name "Kraemer" written in a similar style.

MELISSA B. KRAEMER
Supervising Analyst