

COMMUNITY DEVELOPMENT AGENCY  
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April 19, 2016

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

**SUBJECT:** Resubmittal of Local Coastal Program (LCP) – Land Use Plan Amendments and Implementation Program Amendments to California Coastal Commission.

Dear Board Members:

**RECOMMENDATION:**

Staff recommends the Board adopt a Resolution to resubmit to the California Coastal Commission Land Use Plan Amendments (LUPA) and Implementation Program Amendments (IPA) to the certified Marin County Local Coastal Program (LCP) based in part upon the Suggested Modifications offered on the LUPA by the Coastal Commission and by Commission's staff ("CCC staff") on both the LUPA and its IPA, as set forth in Attachments 1-8. The LUP Amendments establish local coastal policies consistent with the State Coastal Act, which are implemented through more specific zoning standards in the IP Amendments.

As described further below, the LUPA (except the Environmental Hazards Chapter), and IPA provisions related to Agriculture (Amendments 1-3) were previously approved by your Board on August 25, 2015, constituting Part 1 of the complete LCP Amendments. The amendments currently before your Board (Part 2) provide the remaining parts of the full LCP Amendments, specifically the Environmental Hazards Chapter of the LUP as well as all remaining IP provisions.

Specifically, the recommended Resubmittal currently before your Board consists of the following Amendments:

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

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

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

**Amendment 7:** All remaining sections of the Marin County Development Code comprising the IPA (e.g., excluding IPA sections regarding Agriculture, Environmental Hazards and Permit Administration)

It is important to note that none of the provisions contained in the recommended Resubmittal will take effect until subsequent action by the Coastal Commission and acceptance of any further Coastal Commission modifications by the Board of Supervisors at a later date. Accepting the Coastal Commission's decision constitutes final action on the LCP by the Board of Supervisors.

**BACKGROUND:**

On August 25, 2015, after a lengthy and thorough review process including more than 50 public meetings, 26 Planning Commission workshops and hearings, and seven Board of Supervisor hearings, your Board approved Amendments to the certified Marin County Local Coastal Program, including: 1) all Land Use Plan (LUP) Chapters excepting Environmental Hazards; and 2) Implementation Plan (IP) measures related to Agriculture. A detailed summary of the process leading up to the Board's August 25, 2015 hearing is contained in the staff report prepared for that hearing (see [www.marinlcp.org](http://www.marinlcp.org)). The Board's August 25<sup>th</sup> decision acknowledged that consideration of LUP Environmental Hazard policies as well as the full range of IP measures necessary to implement the LUP (excepting those already under consideration related to Agriculture) should be deferred so that environmental hazard policies could take into consideration the results of the County's ongoing C-SMART (Collaboration: Sea-level Marin Adaptation Response) program assessing the implications of sea level rise on the Marin Coast, as well as to allow additional time to fully consider the large volume of material contained in the remainder of the IPA.

Throughout the remainder of 2015 and the spring of 2016, County staff has worked cooperatively with Coastal Commission staff to resolve differences between the Environmental Hazard (EH) policies and IP provisions originally approved by your Board in 2013 and the modifications to EH policies approved by the Coastal Commission in May 2014 as well as suggested revisions to the IP proposed by Coastal Commission staff in April 2015. In conjunction with the C-SMART program, staff has also worked to develop Environmental Hazards policies (and related IP measures) which reflect findings and public feedback from the C-SMART program.

County and Coastal Commission staff have been able to agree on many modifications, some of which are in the interest of increasing the likelihood of Coastal Commission approval. As described below, areas of remaining differences focus primarily on Environmental Hazards and Coastal Permitting and Administration which are summarized below and described in detail in Attachments 4-6.

**ENVIRONMENTAL HAZARDS**

**BACKGROUND:**

The LUP policies and IP provisions related to Environmental Hazards (EH) adopted as part of Marin's LCP will have a critical impact on the future of the Marin coast. The Environmental Hazards policies approved by your Board in 2013 were intended

to enhance the safety of residents in potentially hazardous areas, while allowing carefully sited, designed and adapted development that would not exacerbate hazards. These policies also acknowledge the need to undertake further research, planning, monitoring and a long-term adaptation program to respond to evolving environmental hazards related to climate disruption and sea level rise.

### **Coastal Commission Modifications**

In 2014, the Coastal Commission approved a number of significant modifications to the Board-approved EH policies which attempt to address sea level rise through the imposition of new regulations that when compared to the County's existing standards, could further restrict the ability of residents and property owners to construct a range of improvements to their homes over time. Of particular concern in this regard is the new concept of "coastal redevelopment", defined as the alteration of 50% or more of any single major structural component (e.g., foundation, roof, walls) of a structure, or a 50 percent increase in existing floor area of a structure, or any alterations exceeding 50% of the structure's market value, all tracked cumulatively over time from the date of LCP certification. For property located in hazard areas (bluff and low lying coastal areas), the new definition of "coastal redevelopment" could "trigger a Coastal Permit, a new environmental hazards analysis and other potentially difficult to meet requirements to achieve full LCP compliance for projects that otherwise may be considered exempt from Coastal Permit requirements under the County's existing standards as well as the Coastal Act. While both County and Coastal Commission staff agree with the need to update coastal hazard policies to respond to changing environmental conditions, County staff is very concerned about the uncertain outcome the proposed definition and accompanying standards may have on future projects in hazard areas. The new rules proposed by the Coastal Commission staff may have the effect of discouraging improvements to existing homes to comply with public safety requirements of other agencies, namely mandatory flood control standards of the Federal Emergency Management Agency (FEMA). The added time, cost and difficulty to comply would also contribute to the unintended consequence of incentivizing property owners to build illegally, which is already prevalent in West Marin. Proposed modifications also incorporate terminology that County staff has found to be vague, confusing or unnecessary when considering how certain standards would be implemented alone or together under real circumstances. Staff has also found that some of the proposed modifications would create internal inconsistencies between EH provisions and Coastal Permit requirements (Chapter 22.68).

### **County-proposed Revisions**

Given the above concerns, staff is proposing a number of substantive changes to the Environmental Hazards policies and associated IP provisions to strike a better balance between clarity and ease of administration, fairness, enforcement feasibility, legal defensibility, support at the local level, and careful integration with other governmental requirements, especially those of the National Flood Insurance

Program and FEMA. In summary, proposed revisions include the following (as further detailed in Attachments 4 and 5):

- Utilize a more predictable hazard analysis timeframe (50 years) that avoids the uncertainty of sea level rise projections further in the future (C-EH-1 and throughout) while allowing for possible adjustments going forward to reflect changes in data and environmental conditions
- Replace the complicated concept of “coastal redevelopment” with the existing standards and procedures required by and conforming to the County’s current LCP, Coastal Act and its Administrative Regulations
- Create distinct policies to separately address flood, geologic, bluff top erosion, and shoreline erosion hazards (C-EH-3 , C-EH-4 and C-EH-5)
- Provide clear definitions for the following hazard areas:
  - Flood hazard - any property in a mapped FEMA Flood Zone or within a potential sea level rise area as mapped by the County (C-EH-3)
  - Bluff top development (within 150 feet of bluff edge or within slope stability zone 2, 3 or 4 in the Bolinas area) (22.64.060.A.2.a and definition of “bluff top”)
  - Shoreline development - parcels within any FEMA V zone (C-EH-5.B and 22.64.060.A.2.b)
- Add a new requirement to raise homes above FEMA requirements by the amount necessary to accommodate sea level rise. (C-EH-8)
- Adjust certain building height zoning requirements by the minimum amount necessary to allow homes to be raised to meet FEMA and sea level rise safety requirement. (C-EH-9)
- Clarify that “deep piers/caissons” are not considered to be a shoreline protective device when used as structural foundations (C-EH-13)
- Expand the scope and detail of programs related to research on sea level rise in Marin (Program C-EH-22.a)
- Clarify in the IP that “best available science” is currently the US Geological Survey (USGS) CoSMoS model in conjunction with the FEMA Open Pacific Coast Study, and such data sources will be determined by County rather than by applicants on a case by case basis (C-EH-3)

## **COASTAL PERMITTING AND ADMINISTRATION**

### **BACKGROUND:**

Your Board approved the IPA in July 2013, including Chapters 22.68 and 22.70 that address Coastal Permitting and Administration. The IPA was submitted to the Coastal Commission for review in 2015, and the Coastal Commission held a public hearing on April 16, 2015. At that time the Commission staff proposed numerous revisions to Chapters 22.68 and 22.70. At the request of the County, the Coastal Commission did not take action on the proposed revisions. Nevertheless, at the request of Commission staff, those proposed changes have served as a basis for ongoing discussions with County staff, and for this staff recommendation. County staff has met with Commission staff on numerous occasions, with the mutual goal of narrowing differences between the County’s approved Plan and the Coastal Commission staff’s recommendations of April 2015. Tentative agreement by County and Coastal Commission staff has been reached in a number of areas, resulting in improved IPA provisions. In other areas, however, the exchange of ideas and alternatives has not yet led to agreement between agency staffs. The changes

contained in Attachment #6 reflect your staff's recommendations for coastal permitting and administrative procedures that meet statutory requirements for public disclosure while also being workable and efficient from the standpoint of staffing capacity and business systems available to carry out the County's administrative duties under the Coastal Act.

### **Coastal Commission Modifications**

The Coastal Permitting and Administration code provisions apply the Coastal Act's standards for development review to the Marin County coastal zone. The code provisions are densely worded, reflecting layers of Coastal Act requirements and related regulations adopted by the Coastal Commission. The staff recommendations for Coastal Permitting and Administration provisions are similarly complex as a reflection of the level of detail in this area of law. Precisely crafted code language assures not only protection of coastal resources but also consistency and clarity in how regulations affect the rights of property owners and interested citizens who participate in land use decision-making.

Some of the Coastal Commission staff's recommended changes involve relatively minor issues, such as incorporating the full text of applicable procedures rather than simply referring to other sections of the Development Code (and in some cases this practice is completely appropriate). In other instances, recommended changes expand considerably the responsibility of County staff to produce and distribute paper copies of reports and other information that could either be accessed through the agency web site or is excessive in terms of staff capacity and the need to adequately report County decisions on permit requests. In others cases, Coastal Commission staff-recommended changes appear to undercut provisions of the Coastal Act and related regulations that assure the ability of homeowners to improve and maintain existing dwellings without facing a number of regulatory hurdles or procedures.

The changes recommended by Coastal Commission staff of most concern are the following:

- Treating construction projects the Coastal Act explicitly exempts from review as if they were regulated, via public notifications, record-keeping, "challenge" procedures, and 30-day waiting periods.
- Expanding the County's requirements to notify the Coastal Commission and a variety of other parties about day-to-day administrative decisions in cumbersome ways (e.g., mailing paper copies of every County staff report) that exceed requirements and creates inefficiency.
- Creating duplicative procedures for "challenges" by interested parties of County permit decisions as well as determinations that projects are appropriately excluded or exempt from permits.
- A new definition of "coastal redevelopment" that, as discussed above, is problematic for a number of reasons.
- Limiting the County's ability to address emergency situations and to abate nuisances.

- Reducing or eliminating necessary administrative judgment.
- Inserting substantive requirements in inappropriate code sections, such as text concerning land divisions and variances that is recommended for insertion in appeal procedures.
- Using imprecise terminology and redundant provisions.

### **County-proposed Revisions**

Staff recommends administrative procedures regarding exempt activities that reflect staff's opinion that such activities are not regulated by the Coastal Act and thus are not subject to discretionary review through the LCP, although projects that qualify for an exemption from the requirement for a Coastal Permit may require a non-coastal discretionary approval, such as Design Review. Staff revisions are intended to clarify these distinctions.

For projects listed in "Categorical Exclusion Orders" adopted by the Coastal Commission, for which no Coastal Permit is required, staff recommends appropriate provision of notice to the Commission and interested parties, including mailed notice, without assembling unnecessary lists and "evidentiary information and other materials." Furthermore, staff recommends posting on the Community Development Agency's website of Categorical Exclusion determinations, a step which is not required by the Coastal Commission's regulations, but would provide wide notice to anyone who is interested.

Following final action on Coastal Permits, staff recommends that notification be sent to the Coastal Commission and posted on the website, but without extraneous steps such as copying and mailing paper copies all staff reports. Such reports would continue to be available upon request as well as posted on the County's web site. Furthermore, staff recommends procedures allowing objections or challenges to Coastal Permit decisions, including those regarding minor projects subject to a "De Minimis Waiver," and requests for a public hearing for minor developments. Finally, staff recommends improving clarity in various provisions throughout the Code through use of precise rather than vague or open-ended terms.

### **REMAINDER OF THE IMPLEMENTING PROGRAM**

This section addresses the implementation of policies regarding Community Development, Public Facilities and Services, and Parks, Recreation, and Visitor-Serving Uses.

#### **1. Section 22.64.110 – Community Development**

Staff recommends a modification to language implementing Land Use Policy C-CD-15, which discourages the conversion of residential to commercial uses in coastal villages. The change is intended to make this provision consistent with the direction given in the Coastal Commission's Suggested Modification to Land Use Policy C-PK-3, which seeks to assure sufficient opportunities for visitor-serving uses in coastal village areas.

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2. Section 22.64.140 – Public Facilities and Services

Staff recommends a number of substantial modifications to Coastal Commission proposed language to provide clarification regarding the provision of adequate public services and high-priority visitor-serving uses. These recommendations include:

- Coordinate with water service and wastewater service providers to develop standards to allocate and reserve capacity for Coastal Act priority uses;
- Clarify what constitutes substantial evidence regarding the availability of water and wastewater capacity to serve new development;
- Clarify requirements for new wells;
- Clarify measures to offset water usage in areas of limited water service capacity; and
- Delete redundant language related to permit requirements for the expansion of public services.

3. Section 22.64.170 – Parks, Recreation, and Visitor-Serving Uses

The Coastal Act places a high priority on the provision of recreation and visitor-serving facilities. The C-VCR (Coastal, Village Commercial/Residential) zoning district is intended to maintain the historical character of the village commercial areas, foster opportunities for village commercial growth, including land uses that serve coastal visitors, and protect established residential, commercial, and light industrial uses. Land Use Policy C-PK-3 addresses mixed uses in this commercial/residential zone, and limits residential uses in defined commercial core areas. This section provides a status on measures taken in the process to define these commercial core areas.


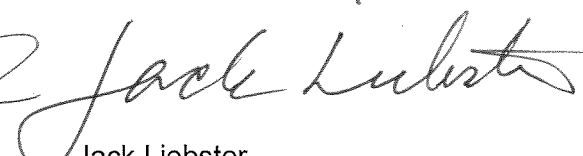
**FISCAL/STAFFING IMPACT:**

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

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

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

**SIGNATURE:**

 Brian C. Crawford Director	 Jack Liebster Planning Manager
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**Attachments:**

1. Staff Recommendation
2. Resolution Approving Resubmittal of the Amendments to the Marin County Local Coastal Program to the California Coastal Commission
3. Full Text of IPA Code Showing Commission Staff Modifications to Board of Supervisors Adopted Text
4. Amendment 4: Environmental Hazards Chapter LUPA (with margin notes)
5. Amendment 5: Environmental Hazards IPA Code (with margin notes)
6. Amendment 6: Coastal Permitting and Administration IPA Code (with margin notes)
7. Amendment 7: Remainder of the Implementing Program (IPA)
8. Marin County Code Section 7.28; State of California Well Standards

**Please Note:** Copies of the above attachments are available online at: [www.MarinLCP.org](http://www.MarinLCP.org). To request hard copies of this material, please contact the Marin County Community Development Agency.