



MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY  
BRIAN C. CRAWFORD, DIRECTOR

November 3, 2011

To: Honorable Members of the Planning Commission

From: Jack Liebster  
Tom Lai

Re: **SUPPLEMENTAL STAFF RECOMMENDATION**  
LCP Amendment, Carryover Issues from Coastal Permit and Administrative  
Structure (8/31/11), Built Environment and Socio-Economic. (9/19/11)  
Nov. 7, 2011, 10:00AM, Marin County Planning Commission Chambers

Dear Members of the Commission:

This Memo updates two parts of your staff report for the November 7 public hearing.

Part A seeks to reconcile changes in Code sections that the Commission considered separately for the LCP and for the general countywide Code update. Having just completed this work, we are releasing it prior to the Nov. 7, 2011 hearing to allow all parties an early review and an opportunity to clarify any issues. However, to assure that the Commission, the public and other agencies have sufficient time to review the recommendations, staff asks the Commission to defer final action on these changes until the Dec. 1, 2011 hearing.

Part B is refined language on the Energy background resulting from collaboration with Coastal Commission staff.

A. Reconciling LCP and general Development Code Changes.

Your Commission has been accomplishing a colossal amount of work on the Development Code along two separate tracks, in the Coastal Zone and in the inland portion of the County. Now those two tracks must be merged.

Attachment 5 (*Revised Staff Recommendation 8/31/11*) compiles changes that overlap the coastal and inland areas. Most of these have already been adopted by the Commission, either on August 22 (for the "inland" sections) or on August 31 and October 24 (for the LCP). Staff has reviewed these sections for consistency and found that most amendments work for both the LCP and the Development Code countywide.

The Commission can most effectively use its time by focusing on the provisions that still must be reconciled, as described below. Of course if there are any other sections the Commission is concerned with, staff is prepared to respond. At the conclusion of the review, staff recommends the Commission provide direction to staff on any changes that are needed. These will be brought back to the Commission for approval on December 1.

The sections below are excerpted from **Attachment #5** to the Nov. 7, 2011 Staff Report, which is marked as **Enclosure 1, Revised Staff Recommendation 8/31/11**. Page and Item numbers refer to that document. Recommended revisions to reconcile the requirements of the LCP and the general Development code are indicated in bold italics.

**Item 2: 22.32.115 – Non-Agricultural Uses** (approved by PC 8/22/11)

In 1<sup>st</sup> paragraph (p. 9), delete table references as follows:

This Section applies only in those instances where Table 2-1, **Table 3-5**, or **Table 5-1** expressly refers to this Section.

**REVISE: The reference to Table 5-1 was inadvertently struck out, and is shown restored.**

**Item 4: Health/fitness facilities (land use)** [see revised tables attached] (approved by PC 8/22/11)

~~In Table 5-1 b (p. 21), add new land use category for “Health/fitness facilities” under Recreation, Education, and Public Assembly Uses, and allow it as a conditional use by Use Permit in the C-OA district.~~

~~\*Note: In Table 5-3 b (p. 34), “Health/fitness facilities” are proposed as a conditional use allowed by Use Permit in the C-VCR, C-CP, C-RMPC and C-RCR districts. However, outside the Coastal Zone in the VCR, CP and RMPC non-coastal zoning districts, Health/fitness facilities are not permitted.~~

**REVISE: Delete these sections. Health/fitness facilities (gyms) are inappropriate in C-OA open space areas. The “note” was redundant; these uses were already shown in the indicated table.**

**Item 10: 22.65.030 – Planned District General Development Standards** (approved by PC 8/22/11)

In Subsection C.1 *Height limits for structures*, revise items (b) – (e) as follows:... **[Only (d) shown for revision]**

- (d) Where allowed, agricultural ~~accessory~~ structures in an agricultural zone sited in compliance with the requirements of Subsection D.2 below ~~located below ridgetops~~ may exceed the above height limits if determined to have no significant visual or resource impacts...

**REVISE:** To clarify by using terms defined in the Development Code (structure, agricultural zone).

In Subsection D.2 *Building location - Development near ridgelines*, revise as follows:

**2. Development near ridgelines.** No construction shall occur on top of, or within 300 feet horizontally, or within 100 feet vertically, of visually prominent ridgelines, whichever is more restrictive, unless no other suitable locations are available on the site or the lot is located substantially within the ridgeline area as defined herein. If structures must be placed within this restricted area because of site constraints or because siting the development outside of the ridgeline area will result in greater visual or environmental impacts, they shall be in locations that are the least visible ~~from adjacent properties and view corridors~~ from public viewing areas.

**REVISE:** Views from private (adjacent) properties are not protected under the Coastal Act. As revised at the Planning Commission's direction, "C-DES-2 Protection of Visual Resources" prevents "the obstruction of significant views, including views both to and along the coast as seen from public viewing areas..." Staff recommends this language be utilized in section 22.65.030.D.2 as shown above.

~~... they shall be in locations that are the least visible from adjacent properties and view corridors. from public viewing areas.~~

**ITEMS 11-22 were addressed at the PC Hearing of Aug. 31, and changes made at that time are reflected in the Decision Table for that date, ~~which. These supercede-supersede~~ any conflicting text in the Nov. 7, 2011 Staff Report Attachment #5. However, errata and subsequent additional work directed by the Planning Commission lead to the following recommended changes in Items 18 and 19.**

**Item 18: 22.70.030 – Coastal Permit Filing, Initial Processing** (reviewed by PC 8/31/11)

In paragraph B., ~~in discussion the Commission recognized that exempt activities are not assigned a "permit category" because by definition they do not require a permit, and they are ministerial projects that are not subject to appeal. The word appeal was deleted verbally.~~

- B. Determination of permit category.** The Director shall determine if the proposed project is categorically excluded, ~~exempt~~, qualifies for a De Minimis Waiver, or requires a Coastal Permit that does or does not require a public hearing, as follows. This determination may be appealed in compliance with Section 22.70.040 – Appeal of Permit Category Determination.

*Section 22.70.030 provides for potential waiver of an otherwise-required public hearing if no one requests that the hearing be held, after being given notice of the possibility of a hearing. The public hearing waiver process requires that recipients be given **15 working days**, from the date of sending the notice, to return a written request for the hearing to be scheduled. On 8/31/11, the PC requested that staff review the “15 working days” requirement in **Section 22.70.030.B.5(b)** as it relates to the “10 working days” requirement for provision of public notice in **Section 22.70.050.A – Public Notice** and bring it back for further discussion at a future PC hearing. Both requirements can be satisfied with the provision of one notice document, as long as (a) the notice contains the required information about the possibility that a public hearing will not be scheduled if no one requests such a hearing, and (b) the notice is mailed at least 15 working days in advance of the decision date. The revised section Section 22.70.030.B.5(b) is provided below.*

**Section 22.70.030.B.5(b)** (reviewed by PC 8/31/11)

5. **Public hearing waiver.** A public hearing that would otherwise be required for a minor development shall be waived if both the following occur:

- a. Notice as required by Section 22.70.050 – “Public Notice” that a public hearing shall be held upon request by any person is provided ~~to all persons who would otherwise be required to be notified of a public hearing as well as any other persons known to be interested in receiving notice,~~ and
- b. No written request for a public hearing is received within 15 working days from the date of sending the notice.

In addition to the requirements of Section 22.70.050, the notice shall include a statement that the hearing will be cancelled if no person submits a written request for a public hearing as provided above, and a statement that failure by a person to request a public hearing may result in the loss of that person’s ability to appeal to the Coastal Commission any action taken by the County of Marin on a coastal permit application.

For purposes of this Section, “minor development” means a development that the County Director determines satisfies all of the following requirements:

- ~~a.~~ (1) Is consistent with the certified Local Coastal Program,

**b-(2)** Requires no discretionary approvals other than a Coastal Permit, and

**(3)** Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.

**e. Notwithstanding the waiver of a public hearing, any written comments submitted regarding a coastal permit application shall be made part of the permit application record.**

**Definitions:** *The following sections are arranged alphabetically to correspond with Attachment #5. Only those that may be incompatible are addressed and revised below. All other definitions in Attachment #5 were approved by the Planning Commission for the general Development Code on August 22, 2011, and are recommended for adoption into the LCP as approved.*

**Affordable Ownership Cost, Affordable rent.**

The Commission deleted the following phrase from both definitions:

**for extremely low income households: less than 30 percent of area median income, adjusted for household size.**

**Development Project.** ~~Any project undertaken for the purpose of development.~~ “Development project” includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate. “Development project” does not include any ministerial projects proposed to be carried out or approved by public agencies.

*Ministerial projects often involve “development” as defined by the Code. Deleting the first sentence would remove the internal contradiction.*

~~**Discretionary Action.**~~ **Discretionary Project.** A development project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely ~~has to~~ determines whether there has been conformity with applicable statutes, ordinances, or regulations. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z’berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act Section 21065(c).

*Editorial change.*

**Food Preparation Facilities.** Food preparation facilities may include, but are not limited to, a stove, oven, microwave, hot plate, refrigerator, sink, counters, or cabinets. Wet bars and snack bars are not considered food preparation facilities.

*This definition occurs twice. Retain only the second, which is in alphabetical order.*

**In-Lieu Fee.** A fee paid to the County by developers in lieu of providing required on-site inclusionary units or lots, or a fee paid to the County by developers in lieu of dedicating parkland, or a fee paid to the County to comply with other Code requirements.

*Expanded to allow for other types of in lieu mitigation fees.*

**Local Coastal Program-Plan (LCP).** The Marin County Local Coastal Program, Units I and II, including its Land Use Plan and relevant portions of the County's Development Code, zoning Ordinances and Zoning District maps prepared and adopted by the County and certified by the Coastal Commission in compliance with the California Coastal Act of 1976 (Division 20 of the Public Resources Code).

*Adapted from Section 30108.6 of the Coastal Act.*

**Ministerial Permit.** A permit granted to a development-project after applying fixed, objective standards with little or no subjective evaluation as to the wisdom or manner of carrying out the project. Examples are Sign Permit, Large Family Day-care Permit, Homeless Shelter Permit, Certificate of Compliance, Second Unit Permit, Final Map approval, and most Building Permits. See also "Discretionary Permit."

*"Development" is defined, "Project" is no longer independently defined.*

**Multi-Family Dwellings (land use).** This land use consists of multiple detached dwellings on the same lot, or a building or a portion of a building used and/or designed as residences for two three or more families living independently of each other. Includes: duplexes, triplexes, fourplexes (buildings under one ownership with three or four dwelling units, respectively, in the same structure) and apartments (five or more units under one ownership in a single building); and townhouse development (three or more attached single-family dwellings where no unit is located over another unit); senior citizen multi family housing; and common ownership, attached unit projects such as condominiums Tenants in Common developments. Second units and farm worker housing are not considered in the calculation of the number of units for this definition and do not convert a single-family residential development into a multi-family development.

**Residential Accessory Uses and Structures (land use).** This land use consists of and includes any use that is customarily a part of, and clearly incidental and secondary to, a residence and does not change the character of the residential use. These uses include the following accessory structures, and other similar structures and uses normally associated with a residential use of property:

- garages
- storage sheds
- gazebos
- studios
- greenhouses
- swimming pools
- household pet facilities
- workshops
- spas and hot tubs
- Small-small roof-mounted WECS
- Solar-solar collectors

~~- Rainwater rainwater cisterns and collectors~~

Also includes community gardens and the indoor storage of automobiles (including their incidental restoration and repair), personal recreational vehicles and other personal property, accessory to a residential use. Does not include home satellite dish and other receiving antennas for earth-based TV and radio broadcasts; see "Telecommunications Facilities."

**REVISE:** *Addition of these small devices important to Marin's CWP sustainability efforts will resolve any question that these are accessory uses which are becoming increasingly a customary part of a residence.*

**Structure.** Anything constructed or erected, the use of which requires attachment to the ground or attachment to something located on the ground. For the purposes of this Development Code, the term "structure" includes "buildings." Examples of structures include, but are not limited to:

- residence/guest house
- garage/carport/car deck
- swimming pool/spa
- barn
- arbor/gazebo
- retaining wall
- fence/trellis

(Coastal) In the Coastal Zone, the following additional improvements are considered to meet the definition of a "structure:" also includes any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

**Revised to conform with Section 30106 of the Coastal Act. Per the LCP's introductory provisions, the words, "but are not limited to" are implicit in "include."**

**Tennis and Other Recreational Uses (land use).** Non-commercial facilities constructed for private use on residential single family properties developed with homes or other residences. See also "Hotel/Motel", "Outdoor Commercial Recreation", Private Residential Recreational Facility, and "Sports Facilities and Outdoor Public Assembly".

**REVISE:** *Change clarifies that these uses are not limited to homes on residentially zoned properties. Also corrects reference to "Private Residential Recreational Facility" as defined.*

## ALLOWED USE TABLES

**Pg. 22** (in Attachment #5), **Table 5-1-b:** Delete "U" under C-OA for Health/fitness facilities.

## **B. Revised Text for the Energy Section**

### **Draft LCP Energy Introduction**

*(Proposed revisions are highlighted in yellow, and reflect changes suggested by the PC and CCC.)*

Energy plays a critical role in the function of society. The way it is acquired, produced and utilized can have significant impacts on the health of the economy and community. With mounting concerns about environmental quality and resource conservation, it is necessary to create a sustainable framework within which energy can serve its purpose with minimal impact.

Most of the energy used in Marin County is imported from outside California, and is drawn from non-renewable resources such as nuclear power, natural gas and coal. The necessity for a shift to renewable energy has grown considerably in recent years. Through increased public awareness of energy issues and the establishment of energy-related legislation, the transition to renewable resources is slowly becoming a reality. In addition to shifting energy consumption to more renewable resources, the use of energy continues to become more efficient. Energy efficiency significantly reduces the rate at which limited non-renewable resources are consumed, which consequently reduces negative health and environmental impacts.

The Local Coastal Program (LCP) encourages improved energy efficiency through the implementation of specific energy standards for development, by providing public information about ways to increase energy efficiency, and by offering incentives for practicing energy efficiency and conservation in homes and businesses. The shift to renewable energy resources and the development of energy production facilities are also encouraged as deemed appropriate. While the LCP strongly supports renewable energy, it requires that any production facilities are carefully designed and sited to avoid and minimize potential impacts.

While the continued support of renewable energy has become a priority both locally and nationwide, there remains a concern that some renewable other types of energy production facilities may pose a significant threat to important coastal resources. Nowhere is this more evident than in the Coastal Zone of Marin County, where the abundance of sensitive natural resources creates a delicate setting for the potentially harmful effects that some facilities may impose. For instance, facilities such as power plants and those related to oil and gas drilling are known to inflict serious adverse impacts upon the surrounding environment, and therefore may not be appropriate for the Coastal Zone. However, it is recognized that certain renewable energy facilities (for example, those necessary for solar and wind energy conversion) may be necessary for the continued health and economic well-being of the surrounding community greater public benefit, and thus may be allowed where appropriate.

The Coastal Act stresses the protection of coastal resources, although acknowledges that some development of energy facilities and resources may be necessary for the social and economic well-being of the community. Sections 30260 through 30265 of the Act contain provisions for several types of energy development, including oil and gas development, thermal power plants, liquefied natural gas, and other related facilities. Renewable energy facilities such as those necessary for the use of solar and wind resources are not directly addressed, however any

proposals for facilities of this nature would be subject to Sections 30250 through 30254, which address development in the Coastal Zone.

The Marin County Coastal Zone currently has no major energy or industrial facilities, although the possibility of two types of major energy development has been considered in the past: power plants and offshore oil development. The Coastal Act requires the Coastal Commission to designate specific areas of the Coastal Zone that are not suitable for siting new power plants or related facilities. In September 1978, the State Commission adopted “negative designations” for the Coastal Zone (subsequently revised in 1982). In Marin County, non-federal lands generally north of Olema were negatively designated (or excluded) for potential power plant development except those agricultural lands located north of Walker Creek, despite a recommendation from the Regional Commission supporting total exclusion of all lands north of Olema. Thus, these agricultural areas are still open for potential development of power plants as far as the State Coastal Commission is concerned. Current LCP Unit II Policy 7, however, has been in place since the original adoption of the LCP to prohibit “major energy or industrial development” while allowing the development of alternative energy sources such as solar and wind energy.” In addition, the Gulf of the Farallones and Monterey Bay are federal regulations that protect the bay and ocean waters of the National Marine Sanctuaries have been established to that border the Marin County Coastal Zone since the original LCP. These Sanctuaries enforce federal regulations that protect the bay and ocean waters of the adjacent to Marin. These regulations (CFR, Title 15, §922) prohibit harmful activities such as “exploring for, developing, or producing oil, gas, or minerals...” within the Sanctuaries to protect the sensitive resources found therein. Given The the prohibition of such activities offshore, it is highly unlikely there would be any proposals negates the need for related on-shore facilities in the Coastal Zone, and thus further protects the area from such development.

The Local Coastal Program (LCP) encourages improved energy efficiency through the implementation of specific energy standards for development, by providing public information about ways to increase energy efficiency, and by offering incentives for practicing energy efficiency and conservation in homes and businesses. The shift to renewable energy resources and the development of energy production facilities are also encouraged as deemed appropriate. While the LCP strongly supports renewable energy, it requires that any production facilities are carefully designed and sited to avoid and minimize potential impacts. [Moved to paragraph 3 above]