East Shore Planning Group P. O. Box 827 Marshall, CA 94940

March 28, 2016

Jack Liebster Planning Manager, Advanced Planning Marin County Community Development Agency 3501 Civic Center Dr., Room 308 San Rafael, CA 94903-4157 (by email)

Dear Jack,

I write on behalf of the East Shore Planning Group to comment regarding the current draft of the Environmental Hazards Chapter of the Land Use Plan Amendments (LUPA)

Many of the homes and businesses of our members in Marshall and along the east shore of Tomales Bay are built over deep pilings with concrete or other hard bulkheads and foundations. These were designed to protect the improvements from the effects of the tide and wave action of the Bay. Some of these buildings date back over a century, and almost all were originally constructed before the enactment of the Coastal Act in 1972.

The proposed draft of the LUP requires mitigation for impacts to shoreline sand supply, public access and recreation, and any other relevant coastal resource impacts from developments that repair or reconstruct existing shoreline protective devices (Subparagraph 9 of Section C-EH-13, "Shoreline Protective Devices"):

9. Shoreline protective devices shall be required to mitigate impacts to shoreline sand supply, public access and recreation, and any other relevant coastal resource impacts in 20-year increments, starting with the building permit completion certification date.

We are concerned about the application of this mitigation requirement for projects that are needed to protect existing homes and businesses along the shoreline. These projects would include repair or reconstruction of pilings, bulkheads and foundations that presently exist. We believe that mitigation should not be required for the impacts of such developments that merely extend the life of existing improvements and that do not materially change the existing impacts to shoreline sand supply, public access, recreation or otherwise.

We also believe that there should be recognition of the positive effects of such repair and reconstruction projects in protecting Highway 1, which runs immediately behind many homes, and in protecting other properties and infrastructure along the Highway. The infrastructure includes utilities, drinking water lines and the septic tanks and sewer lines of the Marshall Community Wastewater System, as well as other parts of that system and individual wastewater

systems. The existing coastal armoring of the homes and businesses and their foundations serve as the first defense for this critical infrastructure.

Our concerns are heightened by the Coastal Commission's mitigation requirements as seen in two recent Coastal Development Permits in Marshall. These are summarized in an attached Exhibit.

For these reasons, we propose the following amendments to the current draft of subparagraph 9 of the LUP Section C-EH-13, "Shoreline Protective Devices":

9. Shoreline protective devices shall be required to mitigate impacts to shoreline sand supply, public access and recreation, and any other relevant coastal resource impacts in 20-year increments, starting with the building permit completion certification date. For existing structures, no mitigation shall be required if the project:

- a. <u>does not have a further significant impact to shoreline sand supply, public</u> <u>access, recreation or other relevant coastal resources beyond the effects</u> <u>of the existing structure, and</u>
- b. <u>if reinforcing or replacing shoreline protective devices results in minimal</u> <u>net increases to the area of the seafloor that would be affected.</u>

In determining mitigation requirements, consideration shall be given to the beneficial impact of the project on nearby properties including, without limitation, public and private structures, roads, septic systems, water systems and power and communications lines that will incidentally benefit from the project's shoreline protective devices. Permittees shall apply for a coastal permit amendment prior to expiration of each 20-year mitigation period, proposing mitigation for coastal resource impacts associated with retention of the shoreline protective device beyond the preceding 20-year mitigation period, and such application shall include consideration of alternative feasible mitigation measures in which the permittee can modify the shoreline protective device to lessen its impacts on coastal resources.

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We submit that mitigation requirements for shoreline protective devices which are to preserve and improve existing infrastructure with no significant additional impacts should be eliminated, and that any mitigation requirements otherwise should be offset by consideration of any incidental benefits to other infrastructure.

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Thank you for your consideration of these comments.

Sincerely yours,

East Shore Planning Group By: *Lori Kyle* Lori Kyle, President

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EXHIBIT

<u>Two recent examples of Coastal Commission application of mitigation requirements to</u> projects designed to protect existing improvements from loss to coastal erosion.

 Replacing failing rip-rap along 115-linear feet of Highway 1 below the Miwok cemetery, between Tony's Seafood Restaurant and the Marshall Boat Works (<u>Application No. 2-11-011</u> (2011)). In this case, the CCC imposed a mitigation fee of \$266,000 on account of loss of sand supply primarily because the project would prevent <u>future</u> erosion into Highway 1:

3) Sand Supply Impacts

As is typically the case with shoreline protective devices, the proposed project would result in negative impacts on shoreline sand supply in several ways. First, the bluffs in this area are eroding at an average rate of about 0.9 feet per year, causing the shoreline to move gradually inland. Therefore, efforts to fix the back beach location with this additional shoreline armoring will both encroach onto existing beach area and halt the future inland migration of the beach through this passive erosion. The new RSP will occupy approximately 1,355 square feet of existing beach and, over the 20-year authorization period, will prevent the development of an additional approximately 2,070 sq ft of new beach due to passive erosion. This combined area of beach loss over time will result in the loss of a portion of the pocket beach adjacent to the new RSP, adversely affecting local beach access and potential beach recreation opportunities.

In our view, there should have been no mitigation required for simply reinforcing an existing shoreline protective device with minimal new impact to the seafloor. Additionally, to impose mitigation requirements for the loss of sand supply that would be generated in the future if the Highway were lost to the sea seems perverse for a project designed to protect the highway from that calamity. Moreover, there was absolutely no recognition of the project's valuable public benefit of protecting the roadway, associated infrastructure and a nearby home at the south of the eroding highway.

2. Permit for the reconstruction of the Marshall Tavern, a derelict historic building dating back to the 19th Century that was to be reconstructed and converted to bed and breakfast rentals, <u>Application No. 2-06-017</u>. In this case, the CCC staff described the project as follows:

The proposed project includes converting the existing structure into an approximately 5,880 square-foot, 5-unit bed-and-breakfast (with an additional manager's unit, for a total of 6 units) and reconstructing an 8-space gravel parking lot on the south side of the tavern building. The proposed development includes: 1) partial demolition, replacement, repair and reinforcement of the existing structure; 2) repair and expansion of existing concrete pilings and one retaining wall <which resulted in a total of 44 sq. ft. of "bay fill">; 3) installation of additional windows on the west (bay) side of the structure; 4) installation of skylights on the west-facing, one-story portion of the structure; 5) interior reconstruction; 6) construction of new exterior decks on the lower and upper floors of the west (bay) side of the structure; 7) installation of roof-mounted solar panels on the south-

facing portions of the roof; 8) demolition of an existing, deteriorated accessory building; and 9) clean-up and maintenance of the site.

The repair and reconstruction of the building and the minimal improvements to its coastal armoring were necessary to save it from destruction by the elements and to repair and rebuild it as a viable visitor-serving facility. There were to be no significant changes in the size of the reconstructed building, its exterior appearance or its footprint.

Nevertheless, the Coastal Commission staff required significant mitigation as conditions to the permit – building and maintaining a new public pier in Tomales Bay.

In the view of many of our members, the mitigation requirement to construct a public pier has had the effect of economically crippling a project to protect and restore the historic building, with the only alternative being its collapse. Most significantly, we believe there should have been no mitigation required on account of the minimal impacts from repair and reconstruction of the building's pilings, bulkhead and other shoreline protection devices, which also protect the highway, components of the Marshall Community Wastewater System and other infrastructure.