
From: Terry Houlihan [mailto:terryjhoulihan@gmail.com]
Sent: Sunday, October 30, 2016 3:49 PM
To: CoastalMarinLCP
Cc: Kinsey, Steven; Crawford, Brian; Liebster, Jack; Paula Reynolds; Jeff Loomans; Kiren Niederberger; Peter Sandmann
Subject: Item No: W10a Marin County LCP Amendment No. LCP-2-MAR-15-0029-1 OPPOSED

Commissioners of the California Coastal Commission
c/o Shannon Fiala, Planner
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Commissioners,

I write to OPPOSE the amendments to the Marin County LCP and LIP proposed by the California Coastal Commission staff (CCC Staff) for the Environmental Hazards section, including the never before seen language in C-EH-17(8) requiring the addition of Sandy Beach Management plans satisfying CCC Staff theories.

I own property at 123 Dipsea Road in Stinson Beach that would be directly affected by the Marin LCP ultimately adopted.

Political extremism in any form is suspect. Amendments to the Environmental Hazards sections proposed by the CCC staff reflect unlawful bureaucratic extremism. The CCC staff seeks to use the threat of rising sea levels to rewrite the Coastal Act, discourage the maintenance or improvement of any existing homes or businesses in the coastal zone, and force the abandonment of such properties if ocean rise narrows or limits public beach access. The Commission should call a halt to this effort to bypass the state legislature — the entity with the power to amend the statute.

The Coastal Zone Act as written strikes a balance between public in access to and preservation of coastal zone resources and the rights of private owners to build, maintain and protect their property in the Coastal zone. An essential part of that balance was the grant to owners of “existing structures” the right to

build “shoreline protective devices” at their own expense if required to protect such a structure. Public Resources Code (hereafter PRC) 30235.

The Act doesn’t explicitly define “existing structures.” Past Coastal Commission decisions, however, have been based on the interpretation that once a structure is approved and built it is then an “existing structure” entitled to necessary shoreline protective devices.

This long held Commission interpretation of “existing structure” is consistent with both the plain language of the statute and the recognition in PRC 30001(d) that coastal homes and other property are “essential to the economic and social well-being of the people of this state” The economic and social value of homes and businesses built or improved in the last 40 years far outweighs the value of older structures unimproved since 1977.

The CCC staff amendments seek in various ways to reverse the plain statutory meaning -- and established Commission reading -- that “existing structures” entitled to PRC 30235 rights include all homes built to date with CCC permits.

C-EH-12(1), for example, would limit “allowable armoring” to that required to protect a principal structure “in existence prior to the effective date of the Coastal Act (i.e. January 1, 1977)”.

C-EH-4 “Coastal Redevelopment” is a mind-boggling proposal. In substance, any structure that has had a renovation of 50% of a “major structural component” including roofs, exterior walls and floors “measured cumulatively over time starting from January 1, 1977” is no longer an “existing structure” entitled to protection under PRC 30235. Magically, with a stroke of the CCC pen, well maintained existing structures are “considered redeveloped (and deemed new development under this LCP that must be made to conform with all applicable LCP policies)”

The “applicable LCP policies” imposed on remodeled homes and businesses include provisions of C-EH-11(1) requiring that “development”, which now includes “redeveloped” properties, “shall be removed and the affected area restored to a natural condition if . . . the development requires new and/or augmented shoreline protective devices” . . . or “the development encroaches onto public trust land (including as the public trust migrates). . . .” In other words, in the brave new CCC world, nothing can be done to prevent shoreward movement of the ocean’s mean high tideline and if it advances inland, you have to remove your building. C-EH-10 would require waiver of rights to shoreline protective devices, a condition condemned by the court in *Capistrano v. California Coastal Commission*.

The impact of the “redevelopment” provisions is pernicious on existing structures. If a remodel crosses the line to “redevelopment”, then any new permit can only be issued on terms that require the owner to give up his or her existing rights under PRC 30235 to protect the structure and accept the various draconian provisions imposed on entirely new development. Nothing in the statute implies that an existing structure loses statutory rights if it is remodeled or fixed up.

Does this proposed new interpretation of “existing structures” limiting it to unimproved pre-1977 buildings make sense? No. Why would the legislature or anyone else think structures built “after 1976” are less deserving of protection, less “essential to the economic and social well-being of the people” than structures built before 1976? If anything, structures built under the supervision of the Commission should be more structurally and environmentally sound than earlier structures and at least equally deserving of protection.

Is the new interpretation based on newly discovered evidence of legislative intent in the form of Committee reports or other legislative material? No.

To the contrary, the CCC itself has in the recent past recognized that revising PRC 30235 requires state legislative action, not a county ordinance such as now under consideration. The ReCAP Pilot Project Findings & Recommendations:

Monterey Bay Region (September, 1995), Ch. 3 Coastal Hazards, Hazards Problem Five (CCC website) discusses the issue of the scope of both PRC 30235 and PRC 30253. It concludes with recommendations that the CCC “pursue amendments” to PRC 30235 limiting its provisions to “development which had occurred and for which there were an issued building permit *as of the effective date of the amendment*. (emphasis added) No permanent shoreline protective device would be permitted for development receiving a building permit after the effective amendment date.” The recommendations further suggested that the CCC pursue “modifications” of PRC section 30253 so that “all new development be sited and designed to avoid . . . construction of any type of shoreline armoring” Beachapedia (online) notes that legislation was introduced in 2002 that would have changed the word “shall” in section 30235 to “may” to make it permissive rather than mandatory, but goes on “The legislation was withdrawn and is being reworked for possible later introduction and consideration.”

What the CCC itself thought required legislative amendments in 1995, the CCC staff now proposes to force on Marin county.

Some might argue that an administrative agency should take action to fill in gaps in laws were there is a legislative “deadlock” preventing useful amendments or clarifications of existing law. There is no such deadlock in the California legislature, however. There is no legitimate rationale for the modification or denial of statutory rights of existing homeowners that CCC staff seeks to

accomplish by administrative fiat.

For the first time in the recent amendments to the Marin LUP the CCC staff in C-EH-17(8) proposes Sandy Beach Management plans. Whatever the value of such planning, the Commission should not predetermine the outcome of the plans by specifically requiring that plans “shall identify the parameters under which removal and restoration may be required to protect sandy beach values” and for steps, including removal of structures, so that “minimum sandy beach width is maintained.” Condemnation of private property via “beach planning” is not a viable path for Marin county.

In contrast to PRC 30235, PRC 30253 imposes a number of requirements for “new development” as opposed to “existing development.” New development must **not** “in any way require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs.” While the statute by its terms says nothing about protective devices that would alter anything other than “natural land forms along bluffs and cliffs”, the CCC staff amendments would extend this requirement to any new development or "coastal redevelopment" that would require any protective devices anywhere. Again, amendment of PRC 30253 is a matter for the legislature not the Commission or the County.

CCC staff argues that it seeks to harmonize "conflicting" directions in PRC 30235, which requires CCC to permit shoreline protective devices to protect existing structures, and PRC 30253, which they read broadly to discourage protective devices that would alter “natural landforms,” ignoring the limiting language “new development” and “along bluffs and cliffs.”

The two sections of the law do not conflict, they address different things.

PRC 30253 only addresses “new development” and only addresses shoreline protective devices that would “substantially alter landforms along bluffs and cliffs.” As the statute recognizes, bluff and cliff issues posed by “new development” can be addressed by adequate setback requirements. Given that, it is reasonable to prohibit new development requiring shoreline protective devices "along bluffs and cliffs." PRC 30235 addresses construction altering natural shoreline **not** limited to bluffs and cliffs, **not** primarily addressing bluff and cliff issues as the list of such construction shows, and, in pertinent part, addressing existing structures, **not** new development. PRC 30235 is broader in scope than 30253, not the other way around as CCC staff’s logic would have it.

CCC staff’s amendments do conflict with PRC 30235 and are not based on a fair reading of PRC 30253.

Whatever the future may hold for sea level rise, fears of potential requirements for

shoreline protective devices justify neither cumbersome new permits for fixing up existing homes nor a forced abandonment of statutory rights afforded the existing structure. I request that the Commission adopt the Marin LCP as submitted by the county and reject all CCC staff amendments.

Sincerely,

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