



April 11, 2016

Marin County Board of Supervisors  
3501 Civic Center Drive  
San Rafael, CA 94903  
Via email: [bos@marincounty.org](mailto:bos@marincounty.org)

**Re: Comments on LCP Amendment Documents for April 19<sup>th</sup> hearing**

Dear Supervisors,

Thank you for the opportunity to provide comments on the latest iterations of the Marin County Local Coastal Program Amendment documents. We appreciate all the work that your staff and the Coastal Commission staff have put into these documents, and significant progress has been made since these documents were last considered by you in August 2015. However, these documents remain incomplete as the public has not been provided with a track-changed version of the complete documents detailing all of the amendments. Staff's letter published April 6<sup>th</sup> addressed the substantial concerns and comments raised by the Coastal Commission staff in its letter dated March 23<sup>rd</sup>, but those comments have not been incorporated into the overall full version of the Land Use Plan (LUP) and Implementation Plan (IP) so that the public has an opportunity to review these documents in their full and clear context. Before the IP and LUP are deemed complete and submitted to the Coastal Commission, the public should be given an opportunity to review all of the last changes to these documents and provide final comments on them before they are submitted to the Coastal Commission.

Despite this, CCPN provides comments with specific recommendations to numerous sections dealing with Agriculture, Biological Resources, Environmental Hazards, and the Permit Notice and Appeal Procedures. Because the Coastal Commission has already provided full list of items, we do not repeat those here. Thank you for your consideration of our comments.

**1. Agriculture Policies and Regulations Are Incomplete**

The Coastal Commission's March 23<sup>rd</sup> letter identified a number of places where the Agriculture policies and regulations are incomplete, contain errors, have not been updated, or are inconsistent with the Coastal Act. Without repeating all of those instances, there are additional areas that must be addressed by the County prior to submitting the LCP Amendment documents for submission to the Coastal Commission. ***The goal of these comments is to fill in the regulatory gaps to ensure that the significant amount of new developed proposed to be allowed as a Principally Permitted Use in the C-APZ district under the definition of "Agriculture" – including a Farmhouse, an Inter-generational House, a Commercial Processing Facility, and a Commercial Retail Sales Facility – has sufficient standards to guide any new development.*** The LUP provisions are addressed first, followed by the IP provisions.

## **A. Agriculture LUP Policy Issues**

### **C-AG-2.B – Coastal Agricultural Production Zone**

Delete reference to “legal lot” and replace with “farm tract.”

### **C-AG-5 – Agricultural Dwelling Units**

Inter-generational homes are supposed to be for persons “authorized by a farm owner or operator” and who are themselves “actively and directly engaged in agricultural use” on the property. This latter qualification should be added to C-AG-5. Otherwise the entire point of an inter-generational home – to support inter-generational farming - is thwarted and has the real potential to be used as a means to build a new home in West Marin’s iconic coastal zone without the substantive basis.

## **B. Agriculture IP Regulations**

### **22.32.023 Agricultural Homestays**

Sub-section 6: should replace “one per legal lot” to “one per farm tract.”

Sub-section 7: should replace “lot” with “farm tract.”

Add a provision here that is already contained in Section 22.32.040.D [Bed & Breakfasts] that:  
“No receptions, private parties, retreats, or similar activities, for which a fee is paid shall be allowed” to ensure purpose of homestays remains true to the definition.

This ensures that an agricultural homestay remains true to the use, and is not used to open up the property for non-agricultural uses without proper review.

### **22.32.024 Agricultural Dwelling Units**

Ensure consistency of “farm tract” where the terms lot, parcel, and legal lot are still used in the draft documents.

### **22.32.025 Farmhouse**

Amend the last sentence of the first paragraph to include the underlined text as follows:

“In the C-APZ, farmhouses also shall be considered necessary for agricultural production when the owner of the farm tract is actively and directly engaged in agricultural use of the property.”

This ensures that the construction of a farmhouse is not perceived as a right or entitlement simply by virtue of owning agricultural production zone land.

### **22.32.026 Agricultural Processing Uses**

A.2. I would strongly encourage the County to ***rewrite this provision in a way that supports Marin coastal zone farms and does not encourage processing of Sonoma County products – like commercial, non-organic grapes – in Marin’s coastal zone.*** This section

can be written to allow local milk producers to share processing facilities without encouraging the additional heavy traffic and commercial development in Marin's unique coastal agricultural zone. Finally, this provision is not conducive with reasonable or safe Sea Level Rise policy decisions, given that Highway 1 is already extremely vulnerable to storms and encouraging additional heavy trucks and more traffic from processing facilities will exacerbate this problem.

B.2.a. Processing facilities are not categorically excluded, only structures like barns and fences are. The County should not allow barns or any other structure to be built without Design Review. The case in point is the construction of barns on the Dougherty property without any permits, yet the County was required by the Exclusion Order to carry out Design Review for these structures but failed to do so. **Policies must be included in the IP that require Design Review for all new structures on C-APZ lands, otherwise there is no way to ensure the scenic viewshed will remain protected.**

#### **22.32.027 Agricultural Retail Sales Facilities/Farm Stands**

B.1. "Sufficient parking" is not a defined term and what constitutes "sufficient parking" should not be determined by the purported demand of consumers or left to a case-by-case basis. A small, limited number of parking spaces should be provided in order to ensure protection of the maximum amount of agricultural land for production.

#### **22.32.028 Agricultural Worker Housing**

Clarify when the property owner needs to complete a worker housing needs assessment and plan for any worker housing proposal, or only if it proposes to surpass the 36 beds/12 units threshold. My understanding is that the County's current practice is to require the needs assessment for all worker housing proposals, and the preference is for that practice to continue for all proposed worker housing. This should not be a cumbersome process, just one that identifies what housing is needed for that particular farm tract's agricultural production activities.

#### **22.32.105 Mariculture**

- A. Amend last sentence of this section to include underlined provision as follows:  
"Support provision of onshore facilities necessary to support mariculture operations in Marin Coastal waters."

As we are all aware, the shellfish companies in Tomales Bay that have onshore facilities periodically and regularly import oysters from Mexico, Washington, and Hawaii. The Tomales Bay shoreline is fragile, and the onshore facilities should be based only on the local, coastal-dependent use, not the overall volume of oysters that includes imported oysters.

#### **22.32.115 Determination of Non-Agricultural**

In order to protect the integrity of agricultural production, non-agricultural development should never be allowed to be a Principally Permitted Use or a Permitted Use in the C-APZ zoning district. The text in this section should make that absolutely clear, and it should be reflected in Table 5-1 as well.

**B.1.** This section lacks adequate standards to make determinations about the non-agricultural status of agricultural lands. The County should incorporate recommendations from its own 2003

agricultural land study that it commissioned leading up to the LCP process. That study recommended looking at factors including the impact of new housing development on taxes and insurance costs, as those can often be tipping points that push farmers and ranchers to the brink of not being able to afford to stay on the land, particularly when a neighboring property develops as it increases land values in the surrounding area.

**B.2.** Additionally, the factors listed in this section are insufficient to protect ongoing agricultural production and use. For example, the reviewing authority “may” ask the questions enumerated in this sub-section but, 1) these factors aren’t required to be considered, 2) protection of the historic rural character and scenic viewshed must be expressly addressed in the decision of the impact of non-agricultural development in the C-APZ district.

### **22.130 Amend Definitions of “Farm” and “Farm Tract”**

“**Farm**” is defined as a place of commercial agricultural production with sales of \$1,000 or greater. The \$1000 is an extremely low denominator and not in keeping with the exponential growth of agriculture sales in Marin County as reported by the Agricultural Commissioner. The County’s 2014 Annual Report states the gross revenue for agricultural sales in Marin County was over \$100 million dollars, up 19% from 2013, even in the midst of the severe drought.<sup>1</sup> It’s unclear on what basis the \$1,000 threshold per farm was established but the County should provide documentation to support this extremely low number and increase the number based on a 5-year average or some type of factual metric.

The definition of “**Farm tract**” should be amended to add the underlined languages as follows:

All contiguous legal lots and/or parcels under common ownership in the C-APZ zoning district.

The reason for this addition is that a property owner can have contiguous legal lots as well as parcels that do not qualify as a legal lot, and thus those parcels should be part of the contiguous, common ownership equation as well as the legal lots.

### **2. Protection of Visual Resources**

LUP Policy C-DES-2 does not comply with the Coastal Act. It provides for development “to protect significant views,” but this is a lesser standard than what the Coastal Act requires.

Section 30251 of the Coastal Act provides, in part, that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (Emphasis added).

The Coastal Act does not protect “significant” views, it protects “views to and along the ocean

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<sup>1</sup> <http://www.marincounty.org/~media/files/departments/ag/crop-reports/2014.pdf?la=en>

and scenic coastal areas,” among many other situations. The purpose of this provision is the protection of the public’s view shed from public areas, not from private property, which is why the types of areas are enumerated. ***But simply enumerating the areas from which the public has protected views “to and along the ocean and scenic coastal resources” in no way means that only “significant” views can or should be protected.*** The Coastal Act is clear – public views are protected – and this policy should be amended to comply with the law.

Numerous subsequent provisions of the IP should be updated to remove the word “significant” as it prefaces “public views,” including in the following:

- 22.65.040.C.4.2 Agricultural Dwelling Unit Impacts and Agriculture Use
- 22.32.165.C.7 Telecommunications Facilities
- 22.60.010 Purpose and Applicability of Coastal Regulations
- 22.64.045.4.A Property Development and Use Standards
- 22.64.060.B.10 Environmental Hazards
- 22.64.140.A.19 Public Facilities and Services – Telecommunications Facilities

### **3. Environmental Hazards Policies and Regulations Lack Supporting Facts**

#### **C-EH-1 and 22.64.060 Safety of New Development**

There are two major issues to address in these policies – the timeframe for considering the “lifespan” of new development to keep it safe and free from needing a shoreline protective device, and the mitigation measures allowed to address changing conditions.

##### **1. Lifespan of a building**

The County has set the timeline for considering the “lifespan” of new development to keep it safe from sea level rise impacts at 50 years. Given the inability to know precisely the rate at which the sea level will rise over the next 100 years, and coastal bluff erosion and other hazards will occur, this may seem like a justifiable timeframe.

However, what we do know is the science of climate change, global warming and sea level rise is rapidly advancing, and with each new study the science all points to one undeniable conclusion: past predictions, even the most conservative ones, have been inaccurate to account for the rapid rate of rising seas and the increasing rise in ocean levels that is in progress.<sup>2</sup>

Accordingly, the timeframe throughout the Environmental Hazards chapters in the LUP and IP must be increased to at least 75 years, and preferably 100 years. **We may not know exactly how fast the ocean is rising, or how extreme the coastal bluff erosion will be, but the facts overwhelmingly point us toward being more cautious than not.** This translates into setting policies that provide for looking at new development over a longer timeframe, making the setback distance from a bluff edge farther back, etc.

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<sup>2</sup> <http://www.nytimes.com/2016/04/01/opinion/the-danger-of-a-runaway-antarctica.html>

This is supported by the Coastal Commission's Sea Level Rise Policy Guidance document.<sup>3</sup> It advises that jurisdictions should ensure that "structures are set back far enough inland from the beach or bluff edge such that they will not be endangered by erosion (including sea level rise induced erosion) over the life of the structure, *without the use of a shoreline protective device*."<sup>4</sup>

It's clear that new structures developed in the coastal zone will have a lifespan greater than 50 years. Thus, **the LCP policies and development code must reflect a more protective strategy to encompass the life of the structure – at least 75 if not 100 years – that is not dependent upon, and does not allow, the use of a shoreline protective device.**

## 2. Mitigation Measures

In the documents that the County published on April 6<sup>th</sup>, partly in response to the Coastal Commission's March 23<sup>rd</sup> letter, Attachment 5 included the following new text but did not include a footnote or comment to explain it. The County staff's last sentence is particularly troubling:

### 22.64.060.A.1.b.3

3) Reliance on Best Available Science. To minimize risks to life and property, and assure stability and structural integrity of existing structures, in recognition of the scientific information represented by FEMA and Potential Sea Level Rise data, modifications of structures consistent with this Policy shall be facilitated by application of Coastal Permit Exemptions, Categorical Exclusions, and Coastal Permits. **Raising structures as provided in Policies C-EH-5, 8 and 9 and limiting the height to that required to provide for BFE and/or sea level rise elevation shall be deemed sufficient to comply with coastal hazard, public view, community character and related provisions of the LCP (emphasis added).**

It is inappropriate to declare in one new statement that elevating structures as a mitigation measure to sea level rise is programmatically deemed as wholesale compliance with the numerous important Coastal Act policies including public views, community character and "related provisions." This goes against the Coastal Commission's Sea Level Rise Policy Guidance document, which states:

As with protection strategies, some accommodation strategies could result in negative impacts to coastal resources. Elevated structures may block coastal views or detract from community character; pile-supported structures may, through erosion, develop into a form of shore protection that interferes with coastal processes, blocks access, and, at the extreme, results in structures looming over or directly on top of the beach.<sup>5</sup>

Accordingly, we strongly urge the County to pull back from this statement and adopt a standard that is much more in line with the Commission's Policy Guidance document and reflects the need to address these issues at some level on a case-by-case basis.

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<sup>3</sup> California Coastal Commission Sea Level Rise Policy Guidance, Adopted August 12, 2015.

<sup>4</sup> Id. at p 129, Ch.7

<sup>5</sup> Id. At p. 124, Ch. 7

### **C-EH-22.a.2 Sea Level Rise and Marin's Coast - Update potential Sea Level Rise Maps**

This section states that current and future hazard areas should be modified “on a five to ten year basis” or as necessary to incorporate new science and information. This is a good provision, except there may be instances where new science is released in between the times when the County is planning to update its maps and policies. Thus, we would suggest including a provision to allow members of the public to petition the County's Community Development Agency to update the regulations in the event that new best available science has been released and to allow the County to take prompt action on that new data and information.

Regarding the remaining Environmental Hazards policies and regulations, we support the Coastal Commission staff's comments in their March 23<sup>rd</sup> letter, and also expect that significant new additional modifications will be necessary to bring these chapters into compliance with the Coastal Act and best available science.

### **4. Permitting and Appeals Notice and Procedures in IP**

We are still reviewing the Implementation Plan Chapters 22.68, Coastal Permit Requirements, 22.70, Coastal Permit Administration for consistency with the comments enumerated in the Coastal Commission March 23<sup>rd</sup> letter and will provide comments on those provisions in a separate letter.

### **5. Other IP Provisions**

#### **22.64.045 Property Development and Use Standards**

Restore deleted text from Parts 2.A.1 to be consistent with LUP policy C-DES-2 which protects scenic resources.

#### **22.64.050 Biological Resources**

Restore the language that has been deleted in 22.64.050 A.1.c.10. This weaker version of that language is not acceptable. The restored language should state:

For buffer reductions, the applicant has provided clear and convincing findings of the need for the reduction, the reduction allowed is absolute minimum necessary, and the reduction will prevent impacts that degrade the ESHA and will be compatible with the continuance of ESHA.

Thank you for your consideration of our comments and concerns.

Sincerely yours,



Amy Trainer, JD  
Deputy Director