



April 14, 2016

Marin County Board of Supervisors
Via email: bos@marincounty.org
marinlcp@marincounty.org

Re: Local Coastal Program Update

Dear Supervisors:

Thank you for the opportunity to comment on the latest draft amendments to Marin County's Local Coastal Program. Since 2009, the Environmental Action Committee of West Marin (EAC) has been an active participant in the amendment process, and has consistently advocated for strong protections of Marin's irreplaceable coastal resources.

We have previously requested that you schedule hearings at the Planning Commission so that the public can consider and comment on the entirety of the Amendments. We reiterate that request. Many interdependent changes and additions have been made since the LCPA was last considered by the Planning Commission in 2012. In addition, much has changed in the coastal zone due to the ongoing drought, the relentlessly increasing influx of visitors, and increasing conversion of the housing stock into vacation homes and high-end rentals, to name a few. The public needs and deserves another opportunity to fully consider this plan before you take final action to adopt the Amendments.

Responding to staff's invitation to submit public comments prior to March 30, 2016, we submitted a number of letters detailing policies and implementation language that we believe must be modified in order to be certified by the Coastal Commission. As best we can determine, none of the substantive comments that we or other members of the public submitted then have been addressed or incorporated into the draft that is now before you. Nor have the Coastal Commission staff's comment from March 23, 2016 been incorporated. Clearly, there has been insufficient time – both for the public to engage with the draft Amendments, and for county staff to take comments into account.

In any event, we offer the following comments on the amendments before your Board on April 19th.

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Environmental Hazards

Requirement to Elevate Structures: FEMA elevation requirements only apply to properties covered by the *National Flood Insurance Program* (NFIP). The county has not provided any evidence that all, or even most, of the properties in the flood hazard and sea level rise (SLR) zones are part of the NFIP. Thus, the suggestion that FEMA requirements drove the County to use elevation as the only strategy to deal with sea level rise is misleading. The County has chosen to require elevation as the only strategy by omitting any possible alternative to complying with the Floodplain Management Ordinance (Chapter 23.09). Moreover, it's disingenuous to suggest that the requirements the county itself is imposing are so onerous that property owners need exemptions or exclusions in order to comply with them.

Staff also suggests [Attachment 1, Page 11] that by relying on FEMA requirements as a uniform standard, hazard reports would not be needed for individual developments, and that this is a benefit. But developments may have individualized impacts, particularly along the shoreline interface, which is dynamic and subject to migration or other change due to sea level rise. Consistency with Coastal Act Section 30253(b) necessarily requires case-by-case evaluation to ensure, for instance, that a particular pier / caisson superstructure will neither “create nor contribute significantly to erosion...”

Individual evaluations are also necessary to account for the ingress and egress to the raised structure, as well as water and septic services, since all of these can have their own effect on the surrounding area.

Additional Building Height: Under CCR 13241, development consisting solely of raising an existing structure is a “category of development”. The staff-proposed “standard findings” are almost precisely those in Coastal Act Section 30610.5(a)(2) which the Coastal Commission must make in order to approve an Exclusion Order. Policies C-EH-3, -5, -8, and -9, and related implementation provisions which pertain to elevating structures, function as an Exclusion Order that the county has unilaterally adopted. If the County wishes to pursue this policy option, it should seek a new Exclusion Order. We also note that Exclusion Order E-82-6 does not include elevation of a structure as a category of development that is excluded.

Definition of Redevelopment: Staff argues [Attachment 1, Page 8] that the definition of “redevelopment” proposed by the Coastal Commission staff is unworkable. We disagree, and note that this definition has been previously approved by the Coastal Commission, for example in 2014 as part of Marin County’s original LUP submission, and in the 2013 Solana Beach LCP.

Revision of other LCP policies: Staff’s assertion [Attachment 1, Page 23] that revising certain other LCP policies to account for sea level rise is impractical (resulting in “redundancy, length and complexity of the bloated language”) borders on the hysterical. No one has suggested that every policy needs to account for sea level rise, but some clearly do. For example, C-DES-6

calls for undergrounding utilities, which may not be desirable in areas subject to flooding or inundation from sea level rise. Other policies that need to be revised include, but are not limited to, C-BIO-19 regarding wetland buffers, C-PA-2 regarding public coastal access, and C-PFS-6 regarding sewage disposal.

We also offer the following comments on specific environmental hazards policy and thereafter for the implementation sections of the proposed LCP Amendments.

Land Use Policy Provisions for Environmental Hazards

C-EH-1 Safety of New Development.

This policy should not focus only on safety, but also on the protection of public access, natural resources, and visual and scenic resources over the lifetime of the development.

The 100-year standard should be maintained. This standard has already been approved by the Planning Commission (2012), your Board (2013), and the Coastal Commission (2014). Now staff says it's not the appropriate standard because the future is unpredictable.

C-EH-2 Applicant's Assumption and Disclosure of Risk

Should specify that the "document" being recorded is a deed restriction, consistent with Section 22.64.060(B)(8).

C-EH-3 Flood Hazards

C-EH-3(1) refers to Chapter 23.09, which has not been certified by the Coastal Commission, and is not included in the Implementation Plan. The specific text of 23.09 should be added to the IP.

C-EH-3(3) After "the stability of the area" insert "nor adversely impact coastal resources including public access, natural landforms, or scenic and visual resources".

The last paragraph of this section is inconsistent with Coastal Act Sections 30251, 30253, and 30610 because it relies on evading the permit process in order to "...minimize risks to life and property..."

C-EH-5 New Shoreline and Blufftop Development

Replace the "is safe from" standard in C-EH-5(A) with the Coastal Act Section 30253(b) standard of assuring stability and structural integrity. "Is safe from" is a vague and undefined standard that will be difficult to administer. The same change should be made in C-EH-5(B) for Shoreline Development.

In the final sentence of (A), insert “based on best available science” after “potential sea level rise estimates”.

In C-EH-5(B), condition the use of caisson / pier foundations on a finding that they do not cause negative impacts on public access, public views, or natural landforms considering likely changes in erosion and shoreline dynamics over time.

As noted previously in our comment on *Additional Building Height*, the last sentence of this policy is inconsistent with Chapter 3 policies regarding protection of coastal resources. The County needs to seek a Categorical Exclusion order to carry out this policy.

C-EH-8 and C-EH-9 Minimum Floor Elevations and Maximum Building Heights in Flood Hazard Areas

Delete “new” before development in the first sentence of each policy.

C-EH-9 is internally inconsistent. It allows a height limit of 25 feet for new structures, but 30 feet for existing structures.

C-EH-11 Maximum Building Heights in the Flood Velocity Zone at Seadrift

Reinsert the final sentence concerning protection of community character and scenic resources.

C-EH-13 Shoreline Protective Devices

Delete “Discourage” and substitute “Except as provided below, prohibit” in the first sentence.

In the second paragraph: regardless of their intent, under some circumstances, deep piers or caissons can function as shoreline protective devices. See our above comment on C-EH-5(B).

C-EH-13(8) should specify that the device should be removed when it is no longer required or allowed (because the structure is gone or a “replacement structure” has taken its place.)

C-EH-15 Accessory Structures in Hazardous Areas

C-EH-15(2) Should say “...easily relocatable and/or removable in their entirety..”

C-EH-22 Sea Level Rise and Marin’s Coast

First sentence should start “The County shall use...”

C-EH-25 Existing Development and Fire Safety

Should be a *de minimis* permit rather than a waiver.

Implementation Plan Provisions

The draft IP amendment includes provisions for implementation of all LUP policies.

Reliance on Best Available Science 22.64.060(A)(1)(b)(3)

Despite the caption “Reliance on Best Available Science,” the section deals with permit exemptions and exclusions; it barely mentions science at all.

Public Facilities and Services (Section 22.64.140)

As detailed below, Staff’s analysis of, and suggested changes to, Section 22.64.140 focus almost exclusively on what it sees as unfair administrative burdens. The analysis ignores or dismisses basic Coastal Act mandates, as well as basic realities of present-day life in Marin’s coastal zone.

Staff’s insistence that 22.64.140.A.1.b only apply to development receiving water from a public water supply is inconsistent with the protections of coastal waters and ground water supplies required by Coastal Act Section 30231, and of coastal resources generally, as required by Section 30250. An analysis of possible adverse effects on these resources may in some cases be “time-consuming and expensive,” as staff notes, but it is still required by the Coastal Act. We note that this analysis is precisely what the Inverness Park community requested in response to a recent large-scale residential development proposal, and that such proposals are likely to become increasingly common in West Marin.

Staff then completely confuses the issue by gratuitously inserting language from Section 30254, which only applies to public works facilities.

Widest Opportunity for Public Participation: 22.70.030. 22.70.040

Section 30006 provides that “the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

Principal permitted use (PPU) applications generally do not receive a public hearing. If a fee is required in order to appeal a county coastal permit decision, that financial barrier impedes public participation and consideration of the project at public hearing. A PPU application should either receive a public hearing, or the appeal of an administrative decision for a PPU should not be subject to fee. The Amendment should: either delete the requirement of a fee for filing an appeal (22.70.080.A.5), or include language in 22.70.030.B.3 and B.4 to require a public hearing for a project that is a principal permitted use.

Categorical Exemption Noticing and Determination 22.68.040.B, 22.68.050

Determination of the categorical exemption status of an application is a discretionary action that determines that the application satisfies the requirements for an exemption; it must be subject to meaningful challenge. In order to provide for meaningful right to challenge an exemption determination, notice must be available. Notice should be provided to members of the public who subscribe to county website notifications and this form of notice would not impose a significant administrative burden.

Exempt Development 22.68.050

Restore boldface: **The Director’s determination of whether a proposed development is exempt from Coastal Permit requirements can be challenged pursuant to Section 22.70.040.**

Exemptions must be subject to challenge. The right to challenge an exempt determination is empty without timely posting of a list of exempt determinations.

Principal Permitted Uses 22.32.026, 22.32.027

To qualify as a PPU a processing facility must not be placed on land designated as prime agricultural land.

Agricultural process facilities and agricultural retail sales must meet the parking standard in order to qualify as a PPU.

Principal Permitted Uses 22.62.060

Add boldface text to conform IP to C-AG-2:

C-APZ District

b. Ag accessory structures and agricultural accessory activities: **appurtenant and necessary to the operation of agricultural uses for agricultural production.**

d. Other Agricultural Uses, if appurtenant **and necessary to the operation of agricultural uses for agricultural production.**

Tables 5-1-a is the go-to summary for permit requirements. It must include the standards that distinguish PPU, P, and U requirements for each use. For example: agricultural processing is a PPU only if it meets particular standards, otherwise it is a permitted or conditional use.

Maximum Height 22.64.030, 22.65.030, 22.54.045

To comply with policy DES-4, any exception to a maximum height standard must be subject to both Design Review and Coastal Variance.

Development near ridgelines needs to set a lower maximum height within the vertical and horizontal setbacks (22.65.030.D.).

Maximum fence height need to be specified for planned districts as well as for conventional districts that specify setbacks (22.64.045.2.A).

Visual Resources 22.60.010 22.64.110, 221.64.04

The word “significant” before “public views” should be deleted in 22.60.010. The same should be done in subsequent sections that specify “significant public views.” Coastal Act Section 30251 protects public “views”, not “significant views.”

Require new development to be “located where it will not have significant adverse impacts ... on ... scenic and visual resources, including coastal resources.”

Categorically excluded development must meet the requirement that “that the new development will not adversely impact public views or scenic coastal areas” (E-81-6).

Variance of C-RSP Zoning District Standards 22.65.060

Additional height on the shoreline of Tomales Bay should only be permitted by Coastal Variance, not at Director’s discretion.

***De Minimis* Waiver** 22.68.070

A development that would be appealable to Coastal Commission should not be eligible for a *de minimis* waiver. Development is classified as appealable because it may potentially impact coastal resources.

Challenges 22.70.040

Determinations of exemptions and *de minimis* waivers (as well as other determinations) must be subject to challenge, otherwise local governmental determinations are not subject to review.

Public Notice 22.70.050

Public notices must be posted to be conspicuously visible to the general public at the property at which development is proposed. Many coastal Marin residents do not have home mail delivery and many are not property owners.

Expiration Date 22.70.120

A coastal permit should expire after three years if not vested or extended. There should be a single, 3-year extension opportunity with the same hearing requirement as the initial permit. The county has had very troubling experiences with projects where work remains uncompleted for years and yet permits have been repeatedly extended.

Emergency Coastal Permits 22.70.140

Any extension of an emergency permit after 6 months should be challengeable. Emergency permits should not provide a path to avoid full coastal permit review.

Variations 22.70.080, 22.70.150

A Coastal Zone Variance must be appealable in order to ensure that developments which, absent a variance, would qualify as PPU, are appealable when they do not meet PPU standards.

A variance that allows development, for example, to exceed the maximum height specified for the zoning district in the LUP removes the use from qualifying as a PPU, and must be appealable. The certified LCP (22.86.025I, 22.86.040I) provides for appeal of both administrative and public hearing variances.

Definitions 22.130

Written request: provide definition that includes email message.

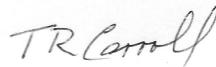
Density: provide definition.

Thank you for considering our comments.

Respectfully,



Bridger Mitchell
President
Environmental Action Committee of West Marin



Terence Carroll
Board Member