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March 14, 2018

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Marin County Board of Supervisors
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903
Via Electronic Mail: BOS@marincounty.org /
marinLCP@marincounty.org

Re: Marin County Local Coastal Program Amendment, Board of Supervisors Public Workshop, March 20, 2018

Dear Supervisors:

The Environmental Action Committee of West Marin (“EAC”) submits the following comments regarding the Marin County Board of Supervisors’ (“Board”) consideration of the Coastal Commission’s (“Commission”) conditional certification of the Marin County (“County”) Local Coastal Program (“LCP”) Update with suggested modifications. Since 2008, EAC has been actively involved in the County’s LCP amendment process, participating in both County and Commission public hearings.

Prior to the May 2017 County hearing on the LCP, EAC submitted comments, dated May 11, 2017, to the Board urging acceptance of all five of the non-environmental hazards amendments as modified by the Commission. Additionally, EAC expressed support to prioritize work on the environmental hazards amendment revisions.

To date, the Board accepted the non-environmental hazards amendments, but only after including in the adopted resolution express caveats and specific interpretive findings, despite advance notice from the Commission that attaching interpretive findings to an adoption resolution would jeopardize its legality. EAC subsequently asked the Commission’s counsel on May 23, 2017 to advise the County whether the Board’s resolution was legally adequate (*Exhibit 1*).

The Commission, in its December 15, 2017 letter (*Exhibit 2*), informed the County that:

- the Board’s resolution adopted in May 2017 was indeed not legally adequate.

“With respect to legal adequacy, and as we have previously informed you, the Board’s action on May 16, 2017 to accept the Commission’s suggested modifications on the LCP was not legally adequate because it was itself based on a series of specific interpretive findings that were not consistent with the Commission’s action.[] The Board needs to accept the Commission’s modifications as is, without express caveats, to be considered legally adequate.”

- The deadline for completing processing of the amendments, including acceptance by the County and then review by the Commission’s Executive Director is May 2, 2018.

“... the deadline for the Marin County Board of Supervisors to accept the Coastal Commission’s suggested modifications pursuant to the Commission’s conditional approval in November of 2016 of the majority of the LCP update is May 2, 2018, and that deadline cannot be further extended.[]”

- Unless the Board adopts a resolution that accepts the modified amendments without interpretive findings or caveats by May 2, 2018, the Commission’s approval of the amendments will expire. The LCP amendment process would have to begin all over again, and it would likely be some years before a new submission would come before the Commission for review and approval. In the meantime, the certified 1981 LCP would remain in effect.

“In closing, please be cognizant of the upcoming May 2, 2018 deadline. It would be a shame to see the Commission’s conditional approval expire, particularly considering the significant resources that both our agencies have committed to getting to that point over these many years. In addition, and as you are well aware, the North Central Coast District office has severe staffing constraints and is involved with a series of other LCP updates from other local governments, and thus our ability to work with you on a whole new LCP update submittal (should the County miss the deadline) is fairly limited, and you need to be aware of that fact as you consider options.”

EAC cautions the Board against accepting the amendments with the implicit understanding that the County will interpret them in a manner different from the plain meaning of the modifications, or in contradiction to the findings the Commission approved. This would result in a LCP without legal standing. The standard of review for Coastal Development Permits is consistency with the certified LCP as written. In the event of an appeal of a permit or permit category to the Commission by an applicant, the Commission, or an interested person, contrary unilateral interpretations by the County Community Development Agency staff or the County’s review authorities will have no standing.

EAC Letter to Marin County BOS re. Mar. 20, 2018 LCP Workshop
March 14, 2018

EAC's further concern is the urgent need to complete the amendments to the environmental hazards sections of the LCP. Marin's coastal communities cannot adequately plan for sea-level rise without those amendments. Delaying this section years into the future jeopardizes the C-SMART process and our communities' ability to adapt to impending hazards.

EAC strongly recommends the Board accept the amendments at the April 24th hearing, and following that date return to the Commission with any necessary clarifying amendments in the near future when the County will resubmit the environmental hazards amendments.

Respectfully,

A handwritten signature in black ink, appearing to read 'MP', with a long horizontal flourish extending to the right.

Morgan Patton
Executive Director



Board of Directors

May 23, 2017

Bridger Mitchell, Ph.D.
President

Chris Pederson, Chief Counsel
California Coastal Commission
Via electronic mail: chris.pederson@coastal.ca.gov

Ken Drexler, Esq.
Vice-President

Re: Marin County Board of Supervisors Resolution, Adopted May 16, 2017,
Accepting LUP Amendments 1 and 2

Terence Carroll
Treasurer

Dear Mr. Pederson:

David Weinsoff, Esq.
Secretary

The Environmental Action Committee of West Marin (EAC) has been actively participating in Marin County's Local Coastal Program (LCP) update process for more than eight years. We have submitted written comments and public testimony at every stage of the process.

David Wimpfheimer
Director

Jerry Meral, Ph.D.
Director

On May 16, 2017, the Marin County Board of Supervisors (Board) held a public hearing and adopted a Resolution purporting to accept Land Use Plan (LUP) Amendments 1 and 2 as modified by the Coastal Commission (Commission) at its November 2016 meeting. For the reasons explained below, we believe the Resolution¹ is invalid, and does not constitute acceptance of the Modifications under Coastal Commission Regulations, including California Code of Regulations Sections 13551(b) and 13544.5(a).

Daniel Dietrich
Director

Cynthia Lloyd, Ph.D.
Director

Specifically, the Resolution includes the qualifying language:

Staff and Consultants

Morgan Patton
Executive Director

“**NOW, THEN, LET IT BE FURTHER RESOLVED** that the May 16, 2017 Board Letter and attachments set out the interpretations that the County shall apply to the items enumerated therein; ***and that based on these interpretations*** the Board of Supervisors accepts the following Amendments to the LUP as Modified....” (bold emphasis in italics added).

Ashley Eagle-Gibbs, Esq.
Conservation Director

Jessica Reynolds Taylor
Membership Director

Catherine Caufield
Tomales Dunes Consultant

¹ See Resolution available at:

http://marin.granicus.com/DocumentViewer.php?file=marin_0ca868b51375b470048c3cc1c2710146.pdf

May 23, 2017

The referenced Board Letter² and attachments³ outline approximately fifteen “findings” adopted by the Board as part of the Resolution. Most of these finding relate to LUP or Implementation Plan amendments that were not approved by the Board at the hearing. Four of the findings relate directly to LUP Amendments 1 and 2.⁴ In each of the four findings, the Board-adopted interpretations contradict or otherwise redefine the language of the Commission-approved modifications. For the sake of brevity, we focus on two of the interpretations.

1. The Board-Adopted Finding for LUP Policy C-PFS-4 Directly Contradicts the Commission-Approved Modifications

Policy C-PFS-4 pertains to reserving water and wastewater capacity for Coastal Act priority uses. As modified by the Commission, the policy pertains to both public and private services, including new or expanded private water wells. Marin County (County) maintains that C-PFS-4 should only apply to public services, and states that it will not regulate private water wells under the policy:

“For consistency with Coastal Act Section 30254 as well as the remainder of the policy, including the implementing Program C-PFS-4.a, the County will interpret Policy C-PFS-4 to apply to public services, as distinguished from private individual water and wastewater disposal facilities, which are not considered ‘public works’ facilities in the context of Coastal Act Section 30254.”⁵

This interpretation is not consistent with the Commission’s November 2016 action, and does not constitute acceptance of the Commission’s Modifications.

2. The Board-Adopted Finding for LUP Policy C-BIO-4 Directly Contradicts Commission-Approved Modifications and Effectively Restores Language Deleted by the Commission

Under the Commission-approved Modifications, Policy C-BIO-4 requires that “...major vegetation removal shall avoid ~~adverse impacts to an~~ ESHA, ~~its~~ ESHA buffers, coastal waters, and public views....”⁶ The Commission specifically rejected the reference to avoiding adverse impacts, making clear that it is vegetation removal in ESHA and ESHA buffers themselves that must be avoided. Nevertheless, in its findings the County asserts that it “...accepts the modified

² Board Letter available at:

http://marin.granicus.com/DocumentViewer.php?file=marin_5e960ed6add96aad633aa5d14fd4ae98.pdf

³ Attachment to Board Letter available at:

http://marin.granicus.com/DocumentViewer.php?file=marin_f9c088543136728bfac18643f490fb74.pdf

⁴ *Id.* at pages 1-8 of the Attachment to Board Letter

⁵ *See id.* at page 7 of the Attachment to Board Letter.

⁶ Commission-approved Land Use Plan (LUP) Modifications, November 2016 at page 27, available at: http://www.marincounty.org/~media/files/departments/cd/planning/local-coastal/newdocs/161102_ccc_approved_lup_web.pdf?la=en

May 23, 2017

language in Policy C-BIO-4 as stating the County's primary objective is to avoid removing major vegetation that may cause significant impacts to ESHA and ESHA buffers." The County findings further state that "...the modified policy shall not be construed to prevent the County or the Coastal Commission from permitting the removal of major vegetation when determined necessary to protect life and property from the risk of hazard..."⁷ which directly contradicts the Modifications.

The Commission Staff's May 9th letter points out that the Commission addressed the County's concerns through findings adopted by the Commission both in May 2014, and again in November 2016, but the Board adopted its contrary finding regardless.

In these, and other, cases the County is attempting to replace approved Modifications with policies that were rejected by the Commission in November 2016 as inconsistent with the Coastal Act. The Commission staff, in its May 9th letter, explicitly informed the Board that "...changes cannot be made to the conditionally certified language approved by the Commission..."⁸ Nevertheless, the Board is attempting to do just that. In addition, by approving findings unrelated to Amendments 1 and 2, the Board appears to be laying the groundwork for a much larger-scale reinterpretation of the Commission-approved Modifications to the Implementation Plan, an action that has no basis in the California Code of Regulations.

We request that you consider the Board's Resolution⁹ in light of our concerns. We believe that it would be in the best interest of all concerned that the County not continue down what is surely a dead-end road of "interpreting" the Commission-approved Modifications in ways that are inconsistent with the Commission's November 2016 action. We therefore request that you inform the County as soon as possible that the Board's Resolution does not constitute acceptance of the Commission-approved Modifications of LUP Amendments 1 and 2, and that the Board must either accept or reject the Modifications as approved by the Commission, or take no action at all and allow the Modifications to expire.

Respectfully,



Ashley Eagle-Gibbs
Conservation Director

cc: Nancy Cave, California Coastal Commission
Judy Arnold, Marin County Board of Supervisors
Brian Crawford, Marin County Community Development Agency
Brian Washington, Marin Office of County Counsel

⁷ See Attachment to Board Letter at page 1, available at:

http://marin.granicus.com/DocumentViewer.php?file=marin_f9c088543136728bfac18643f490fb74.pdf

⁸ Page 9 of Nancy Cave's May 9 Letter.

⁹ See Resolution available at:

http://marin.granicus.com/DocumentViewer.php?file=marin_0ca868b51375b470048c3cc1c2710146.pdf

CALIFORNIA COASTAL COMMISSION

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December 15, 2017

Brian Crawford, Director
Marin County Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
(415) 473-6278
bcrawford@marincounty.org

Subject: Marin County Local Coastal Program Update Status

Dear Mr. Crawford:

Thank you for a productive meeting on Thursday, December 7, 2017 regarding the development of a new LCP amendment submittal for the hazards section of the Marin LCP update. We look forward to continued progress as you develop an amendment for Board consideration (and ultimately Coastal Commission consideration) and appreciate the collaborative efforts by you and your staff.

As we also discussed (and have conveyed to your staff previously), the deadline for the Marin County Board of Supervisors to accept the Coastal Commission's suggested modifications pursuant to the Commission's conditional approval in November of 2016 of the majority of the LCP update is May 2, 2018, and that deadline cannot be further extended.¹ If the County has not accepted the Commission's suggested modifications by that date, then the conditional approval expires and the County would need to start over with any proposed LCP update or amendments thereto. To avoid expiration of the conditional approval, the Board would need to take final action to accept the Commission's suggested modifications prior to the May 2, 2018 deadline. That would enable the Commission's Executive Director to review and present the Board's action, assuming it is legally adequate (see also below on this point), to the Commission for final certification. Barring objection by a majority of Commissioners that the Board's action does not conform to the Commission's conditional approval action, those parts of the LCP update would be then fully certified. However, based on the way the LCP update was originally submitted and acted upon by the Commission in 2016, such newly certified parts of the LCP would not become effective for the purposes of issuing coastal development permits unless and until the hazards portions of the LCP are certified.² Until that time, the existing LCP will continue to serve as the standard of review for development in the Marin County coastal zone.

¹ The original deadline was May 2, 2017, but, per Marin County's request, the Coastal Commission extended that deadline by one-year to May 2, 2018 as allowed for by the Coastal Act (per Section 30517). The Act and the Commission's regulations do not allow any further extensions of that deadline.

² The County's proposed LCP Update was submitted and heard by the Commission with this requirement.

Brian Crawford
Marin County LCP Update Status
December 15, 2017

With respect to legal adequacy, and as we have previously informed you, the Board's action on May 16, 2017 to accept the Commission's suggested modifications on the LCP was not legally adequate because it was itself based on a series of specific interpretive findings that were not consistent with the Commission's action.³ The Board needs to accept the Commission's modifications as is, without express caveats, to be considered legally adequate. Our suggestion continues to be that the Board rescind or supersede its May 16, 2017 action on the Commission's modifications on the LCP, and accept all the conditionally-approved LCP prior to the May 2, 2018 deadline. To the extent that the County at that point would like to pursue further LCP changes, you are welcome to pursue other amendments that address the Board's specific concerns.⁴ As discussed at last week's meeting, we encourage you to submit any such additional proposed amendments to the LCP update at the same time as you submit the hazards components of the LCP for Commission consideration so that the entirety of the proposed updated LCP would be in front of the Commission at one time in that scenario.

In closing, please be cognizant of the upcoming May 2, 2018 deadline. It would be a shame to see the Commission's conditional approval expire, particularly considering the significant resources that both our agencies have committed to getting to that point over these many years. In addition, and as you are well aware, the North Central Coast District office has severe staffing constraints and is involved with a series of other LCP updates from other local governments, and thus our ability to work with you on a whole new LCP update submittal (should the County miss the deadline) is fairly limited, and you need to be aware of that fact as you consider options.

In conclusion, thank you again for the diligent work by you, your staff, and the County on the LCP update. We hope to move forward and preserve what has been accomplished so far. If you have any questions or would like to discuss these matters further, please contact me at (415) 904-5290 or by email at Nancy.Cave@coastal.ca.gov.

Sincerely,



Nancy Cave
District Manager, North Central Coast District
California Coastal Commission

cc: Judy Arnold, President
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

³ Including as we informed the Board prior to its action via letter dated May 9, 2016.

⁴ Again, as we previously advised in our May 9, 2016 letter to the Board, including wherein we identify our take on the County's then potential proposals to that effect.