

Drumm, Kristin

From: Terry Houlihan <terryjhoulihan@gmail.com>
Sent: Thursday, April 12, 2018 11:21 AM
To: MarinLCP
Cc: Drumm, Kristin; Liebster, Jack; Kiren Neiderberger
Subject: April 24 Meeting of the Board, Local Coastal Program Amendments 3 & 7, Terry J Houlihan OPPOSED

Dear Marin Board of Supervisors (Board),

I write as an owner of a house in the Coastal Zone constructed after January 1, 1977. I oppose adoption of California Coastal Commission (CCC) staff changes in Marin Local Coastal Amendment package 3 and Amendment package 7. The Board should reject the CCC Staff's proposed language in these Amendments, or take no action and retain the existing Local Coastal Plan.

Both Amendment package 3 and Amendment package 7 contain provisions that, if adopted, would impose burdensome permitting requirements not "feasible" as defined in Coastal Act, Public Resources Code (PRC) section 30108.

It would be a fundamental mistake for the Board to accept objectionable CCC staff language on the assumption that issues can be resolved by later amendment. The Coastal Commission has the power to issue regulations but not to write laws. Coastal policies to address sea level rise could have been made CCC regulations, which are subject to judicial review. Instead the CCC has formulated non-reviewable "policies" now presented as suggested county ordinances for a local coastal plan. Until a county adopts a coastal plan ordinance, it has absolute control over all language in it. Legislative power rests in the county not the Commission. The CCC can only reject provisions it disapproves. CCC rejection only makes the law default to the old coastal plan. Once a county accepts language, however, the CCC then has an absolute veto over any change. The county should not surrender its sovereignty to the CCC simply to "move things along". Doing so would fundamentally shift the bargaining positions of the two sides.

Amendment 7 provisions generally present a special issue. They relate primarily, if not exclusively, to the deferred "Environmental Hazards" (EH) issues. The Board should not now accept definitions whose meaning and purpose is understandable only in the context of EH provisions not now before the Board and not explained in the accompanying materials.

The EH issues were deferred because they drew substantial and broad-based opposition from Marin residents and businesses before the Coastal Commission itself. Accepting various definitions now would undercut fair consideration of the EH issues later.

Amendment 7.1, Definition of "Existing", is a key issue meaningful only in Environmental Hazards proposals.

The definition of "existing" proposed by *Marin* Staff — "Extant at the time that a particular Coastal Permit application is accepted for filing" — is the correct meaning of the law.

That definition should also be used in the “Existing Structure” definition — i.e., a structure in existence at the time of a particular Coastal Permit application, without a date limit. (The 1982 language initially proposed by Marin Staff is a holdover from the existing LCP, the logic of which has not been explained and which is contrary to the reading in the *Surfrider* case discussed below.)

The CCC staff proposes in Amendment 7-1 to limit “existing structures” entitled to various protections under the Coastal Act to structures “authorized and in existence as of January 1, 1977.”

For the first time in the long history of work on Coastal Zone policies, the CCC Staff admitted in the March 2018 “Revisions and FAQ Responses for the Draft Residential Adaptation Policy Guidance” (hereafter 2018 Responses) that its proposed definition of “Existing Structure” was a complete reversal of the CCC’s own longstanding interpretation. The CCC’s own brief in *Surfrider Foundation v. California Coastal Comm’n* (Cal. Ct. App June 5, 2006, No. A110033) 2006 WL 1430224, took “the position that ‘existing structure’ means any pre- or post-Coastal Act structure currently in existence.” 2018 Responses at 6. The Court of Appeals upheld that reading of the statute. The Court’s analysis, and the well reasoned CCC brief to the Court, show that this interpretation — the Marin Staff interpretation—is the only viable reading of the statute.

At no time in the process leading up to the CCC 2015 Sea Level Rise Guidance was this stunning reversal revealed to the public or, for that matter, to the Coastal Commissioners. At no time in previous work on the Marin LCP was this fact made public.

Not until members of the public unearthed the CCC *Surfrider* brief in 2017 comments on the Draft Residential Policy Guidance was the complete reversal of position revealed. The failure of the CCC Staff to reveal earlier this change of position precludes reliance on the 2015 Sea Level Rise Guidance on this issue.

The 2018 Responses also acknowledge that an attempt was made in AB 1129 to amend the Coastal Act to add the CCC Staff’s definition of “existing” to the law. The bill failed to pass. 2018 Responses at 20. That was in fact the **second** failed attempt to amend the law in this way. The California legislature does not support this effort.

Defining “existing structure” correctly is important.

Under the Coastal Commission’s longstanding interpretation of “existing structure”—the definition now supported by Marin Staff— all homes are entitled to Public Resources Code section 30235 protection, including permits for shoreline armoring at the owner’s expense, if “necessary” to protect a structure. Under the CCC staff proposed new definition, coupled with the new EH policies governing “redevelopment”, most homes would not be entitled to such “necessary” permits. They would, in addition, be subject to a wide range of new restrictions, including “retreat” and “removal” policies.

Whether or not the CCC itself ultimately chooses to adopt its Staff’s new definition, given the radical change in the CCC staff’s interpretation of “existing structure”, it would be folly for the Board to approve the CCC staff’s proposed language. That definition is plainly wrong and contrary to the Act.

At a minimum, the Board should simply defer action until the CCC itself (as opposed to its staff) makes a fully informed decision on whether to continue to pursue what seems an ultimately futile attempt to change the law.

7-3. Piers and Caissons

As Marin Staff comments show, piers/caissons should not be included in the definition of shoreline protective devices. Piers and caissons may be used for *other* purposes, including foundations for homes. Such other uses occur in the county, including along parts of Tomales bay. The CCC staff concedes that the definition is relevant only to deferred EH policies. The Board should vote no on Amendment 7-3 or defer action.

7-6. Lowest Density Requirement.

For the reasons well articulated by Marin Staff at 19-21 of the Discussion document, the CCC staff position on the extent to which it would apply the “lowest density” requirement makes no sense. CCC Staff itself concedes that this is an EH issue. Accepting the definition “subject to amendment”—never a good idea as explained above—would not advance the process at all here since the fundamental disagreement covers the entire section.

The Board of Supervisors should reject all of Amendment 7.

Respectfully, Terry J Houlihan
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