



August 23, 2015

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

Dear Supervisors:

The Environmental Action Committee of West Marin (EAC) respectfully submits the following comments on your staff's recommended resubmittal of the modified Land Use Plan that was approved by the California Coastal Commission at a public hearing in April 2014 (Resubmittal) and on and portions of the modified Implementation (IP) Plan.

EAC has been continuously engaged throughout the Marin Local Coastal Plan Update for the past seven (7) years. We have reviewed the 5,000+ pages of draft development code and policy language, staff reports, and errata. We have participated in countless hours of public workshops, meetings, and hearings. EAC is heavily invested in this process, and is committed to ensuring that Marin County maintains strong coastal policies that protect our priority coastal resources.

EAC has reviewed the August 21st letter from the California Coastal Commission staff to you. We strongly agree with the Commission staff that "there are several proposed policy changes . . . which we do not believe to be consistent with the Coastal Act." Additionally, your staff has deleted entirely the Environmental Hazards policies and now urges you to approve the Resubmittal with no environmental hazards standards. **As a result, we believe that it is imperative that you delay your vote on the Resubmittal and direct County staff to continue working with the Coastal Commission staff and all stakeholders to work out the numerous issues of concern outlined in the Commission's letter and EAC's letter below.**

Summary of Specific Comments:

EAC supports the County amending the Categorical Exclusion Orders to:

1. Delete vineyard development from the category of agricultural development excluded from the requirement to apply for a coastal permit.

2. Require Design Review for agricultural structures subject to Exclusion Orders to ensure protection of public views.

EAC opposes the following provisions included in County staff's recommendations for Board of Supervisor action:

1. The Resubmittal strikes entirely the chapter on Environmental Hazards. It would be premature for the Board to approve the Resubmittal without any chapter on Environmental Hazards, and doing so would represent a piece-meal approach to the LCP update that is not conducive to public input or informed decision-making, and will needlessly prolong this process at even further expense to taxpayers.
2. The Resubmittal removes the "and necessary for agricultural production" requirement for agricultural structures and agricultural uses in C-APZ. The logic of changing this to "or necessary for" is flawed and should be rejected.
3. The Resubmittal ignores the Coastal Commission's prior clear distinction between "agricultural use" and "agricultural production" in 22.65.040.C.1.d.
4. The Resubmittal includes multiple references to a program to develop approval of non-agricultural residential housing on C-APZ lots in return for affirmative agricultural easements. The goal – affirmative agricultural easements – is a worthy one but the proposed route to it is misguided and all references beyond the initial program mention should be struck.
5. The Resubmittal expands the definition of "Ongoing Agriculture" from agricultural production to all types of agriculture without recognition of permit streamlining available through the *de minimis* waiver provision.
6. The Resubmittal would delete the requirement that the applicant show public facilities and services are available and adequate to serve each new development proposal.

Discussion

Issue: EAC supports the County amending the Categorical Exclusion (CatEx) Orders to:

1. Delete vineyard development from the category of agricultural development excluded from the requirement to apply for a coastal permit.
2. Require Design Review for ag structures subject to Exclusion Orders to ensure protection of public views.

Analysis: The CatEx is the appropriate place to expressly exclude vineyard development or initial vineyard work since this type of agriculture use would require an intensification of the use of land and water, is considered "development" under the Act, and thus would be subject to a development permit. Additionally, at the May 2015 Coastal Commission hearing on the Marin Implementation Plan, the Commissioners gave direction to County staff to ensure that even if agricultural structures are subject to the CatEx, they still must be subject to Design Review. In doing so, the County would ensure that one of the key priorities of the Coastal Act – protection of scenic public views – is upheld and enforced.

Issue: The Resubmittal strikes entirely the chapter on Environmental Hazards and puts forward a piece-meal approach to coastal policy approval that is inconsistent with informed decision-making. This alone is sufficient reason to delay the Board's vote on the proposed Resubmittal.

Analysis: The County staff has not included any Environmental Hazards policies in the Resubmittal, thus it would be premature for the Board to vote on or approve the Resubmittal. The Environmental Hazards chapter is an essential component of the Land Use Plan that considers impacts to existing and new development from sea level rise, greater storm surges, coastal bluff erosion, and other hazards. By presenting the Resubmittal without these important policies, major considerations for new development are absent, and the public is deprived of the opportunity to consider these policies in concert with the rest of the LUP.

As an example, the County staff recommends deleting reference to policy C-EH-5 within Community Development Policy 5, Non-Conforming Structures and Uses. The consequence is that this deletion would allow redevelopment of non-conforming structures without requiring that redevelopment be brought into compliance with the LCP. This makes no sense.

Further, simply carrying the Certified LCP's Environmental Hazards chapter forward at this time, even as a placeholder, is insufficient. The policies are not based on best available science. A wealth of new science has been presented and must be incorporated into the policies and reflected in the development code regulations dealing with environmental hazards.

Rather than subjecting the public to this piece-meal, incomplete document and requiring the public to go back yet again through the entire LCPA once the Environmental Hazards chapter is complete, the Board should delay approval of the Resubmittal. This delay will not cause any harm to the overall process of getting to an amended LCP. On the contrary, it would streamline the process, since in any event none of the updated Agriculture chapter policies can be implemented until the entire LCP process is completed and the result is certified by the Coastal Commission's Executive Director.

Issue: The Resubmittal removes the “and necessary for agricultural production” requirement for agricultural structures and agricultural uses in C-APZ. The logic of changing this to “or necessary for” is flawed and should be rejected.

Analysis: EAC agrees with Coastal Commission staff that the language “and necessary for agricultural production” is the essential requirement for any development in C-APZ. See definitions of Agriculture and Agricultural Production Activities in 22.130. Defining the principal permitted use for the C-APZ zone as agriculture and including both production (the physical use of land to grow a commodity) and structures necessary for its operation (barns, worker housing, and facilities used for storage and processing of the commodity) furthers the Coastal Act’s objective of protecting agricultural viability in the state’s coastal zone. ... it is appropriate to classify development other than agricultural production itself as a form of the principally permitted use of agricultural, so long as there are appropriate standards to ensure that they are in fact necessary to agricultural operations.”

Further, as submitted, “the County’s policies that seek to protect agriculture do not fully meet Coastal Act Sections 30241 and 30242 requirements that protect against conversion of prime agricultural land and land suitable for agricultural uses because they do not specifically protect land in agricultural production. ... modifications are necessary throughout Policy C-AG-7 to ensure that while, even though such as barns and processing facilities may be necessary for agricultural production considered agricultural uses, **all development in the C-APZ zone must protect and maintain land for agricultural production.**”

Contrary to the County staff’s assertions, retaining the “and necessary for” is essential to allowing development in the C-APZ district while meeting the Act’s agriculture protection goals. This minimal affirmative showing that the agricultural use is necessary as a principal permitted use would not be a burden. As the Commission staff points out, both County and MALT easement agreements contain similar language. The fact is, the amended Land Use Plan proposed by the County would allow a significant amount of new development potential on agriculture production zone lands – development that currently is either not allowed or is a conditional use within this zoning district. The “and necessary for agricultural production” language should be retained as modified by the Coastal Commission staff.

Issue: Resubmittal ignores the Coastal Commission’s prior clear and important distinction between “agricultural use” and “agricultural production” in 22.65.040.C.1.d.

Analysis: The Coastal Commission staff has given a precise explanation of the difference between “agricultural use” and “agricultural production” and why they should be understood distinctly.

The Commission’s prior staff reports have stated that, “[i]f the policy simply protected agricultural use, then structural development such as farmhouses and processing facilities would not need to minimize their footprint on the land since they are defined as agriculture. Conversely, Policy C-AG-5 requires agricultural dwelling units to be owned by a farmer or operator actively and directly engaged in agricultural use of the property. The term agricultural *use* is used here to allow for the owner to be engaged in the broad agricultural activities undertaken on the farm, including presiding over agricultural leases, without having to be actively working the fields for production activities. Thus, **the terms agricultural use and agricultural production are distinct terms that have different meanings with respect to the LUP’s policies.**”

The County has not presented substantive reasoning for changing the terms agricultural use and agricultural production and its proposed changes should be rejected.

Issue: The Resubmittal includes multiple references to a program to develop approval of non-agricultural residential housing on C-APZ lots in return for affirmative agricultural easements. The goal – affirmative agricultural easements – is a worthy one but the County’s proposal to allow new residential development in C-APZ lands as a way of attaining it violates the Coastal Act.

Analysis: The Resubmittal has again included the language for conditional uses in C-APZ that was expressly deleted by Coastal Commission staff modifications. The Resubmittal makes numerous references to “residential” development in C-AG-7B, C; C-AG-8; and C-AG-9, all of which are very problematic and would violate the Coastal Act.

The Coastal Commission’s staff report for the Marin LUP stated:

Single-family **residences owned by persons unrelated to the farming operation cannot meet the required test** that such use is necessary for agricultural production. Since single-family dwellings are inherently not necessary for agricultural production, nor can they meet Coastal Act 30241’s requirements, they must be deleted as an allowable land use. Thus, a suggested modification is required in Policy C-AG-2 which deletes such residential development as an allowed conditional use.

The one reference by County staff to Coastal Commission approval of residential development (Sterling appeal) says this in the Commission staff report:

“Finally, since there is evidence in the record that continued or renewed agriculture is feasible the applicant’s parcel and permitted uses are prohibited from impairing or diminishing the agricultural viability or productivity of agricultural lands on and adjacent to the site, the conversion of agricultural lands to a non-agricultural use is not permitted.”
(A-2-SMC-07-001 (Sterling) De Novo Staff Report, W11a-8-2010)

Permitting residential development on C-APZ land in return for an affirmative agricultural easement would constitute residential development not necessary to agricultural production. The County could include a reference to the program in the Resubmittal, but every other reference to residential development should be deleted as instructed in the Commission’s recent August 21st letter.

Encouraging the use of affirmative agricultural easements is a worthy goal but the means by which the County promotes it should not be conversion of agricultural lands to residential development. The County should strike all references to residential housing development within the C-APZ district.

Issue: The Resubmittal expands the definition of “Ongoing Agriculture” from agricultural production to all types of agriculture.

Analysis: The Resubmittal defines “ongoing agriculture” to include all routine agricultural cultivation practices that have not been expanded into ESHA and ESHA buffers. Changes in nature or intensity of use of land or water constitute “development” under the Coastal Act sec. 30106, so grading and changes in nature of use of land cannot be summarily excluded. **The streamlined *de minimis* waiver procedure will be available to minimize permitting requirements for ongoing agricultural activities that qualify, an important point that the Resubmittal fails to recognize.** Thus, “review and approval” of qualifying activities is not obtaining a coastal permit, only applying for a waiver.

According to the Coastal Commission’s prior staff report, “the IP as modified sets up a structure in which a CDP is not required for ongoing agricultural production activities, many new agricultural activities may be excluded from requiring a CDP, and, even if a CDP is required, it can be waived or deemed minor.”

Further, the Coastal Commission staff report stated that “[w]hat requires a coastal permit is development that constitutes either a change in use or intensity of use or new grading into an area that has not previously been farmed. In response to public comments that have been received on this topic, the Commission’s suggested modifications expressly acknowledge that existing legally established ongoing agricultural production activities that have been part of a regular pattern of agricultural practices that has not been discontinued (such as ongoing rotational grazing and crop farming) does not constitute a change in intensity of use but is a recognized agricultural practice that helps to further productive use of the land. Therefore, to the extent the rotational crop farming or grazing has been part of a regular pattern of agricultural practices, it is not a change in intensity of use of the land despite the fact that the grazing and crop growing are rotationally occurring on different plots of land. Therefore, ongoing agricultural activities are defined to include an established pattern of agricultural production activities such as ongoing rotational grazing and crop farming.”

Even if an agricultural development is found to require a CDP, the IP as proposed to be modified offers new tools to streamline the permitting process. These streamlined procedures include the County’s use of the *de minimis* waiver of CDP requirements process for non-appealable development (IP Section 22.68.070), and public hearing waivers for appealable development (IP Section 22.70.030(B)(5)).

It seems clear that the Commission staff has gone out of its way to find ways for agricultural activities to benefit from flexible permit requirements. The County has offered no rational basis for rejecting the Commission’s approach.

Issue: Resubmittal would delete requirement that public facilities services be available and adequate to serve new development.

Analysis: The Resubmittal deletes the requirement that new development for non-priority use is allowed only if adequate capacity (water, sewerage) remains for visitor-serving and agricultural uses. The public facilities adequacy requirement should apply to all systems and permits, not just community systems. EAC agrees with the revisions proposed by the Commission staff on this issue.

Thank you for your consideration of our concerns.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Amy Trainer", followed by a horizontal flourish line.

Amy Trainer, Executive Director