



February 25, 2013

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

Dear Supervisors:

The Environmental Action Committee of West Marin (EAC) has been intimately involved in the Local Coastal Program Amendment process since it began in 2009. EAC has attended every workshop, public meeting, all public hearings at the Planning Commission in 2011 and 2012 and the Board's public hearings. EAC strongly believes that the proposed LCP amendments must be measured against the existing Certified LCP, not the Countywide Plan or any other document except the Coastal Act.

We offer the following comments on the staff report for February 26, 2013.

#1 p. 5. Protection of Visual Resources

C-DES-2, as approved by the Planning Commission, fails to include protection against *impairment* of significant views, in addition to prohibiting obstruction of significant views. The current LCP provides that:

To the maximum extent feasible, new development shall not impair or obstruct an existing view of the ocean, Bolinas Lagoon, or the national or State parklands from Highway 1 or Panoramic Highway. [LCP Unit I: LUP Policy 21]

In an appeal of a Muir Beach permit that will be heard March 6, the Coastal Commission staff makes clear that impairment of a significant view is an additional standard, beyond the total obstruction of a view. (WA9-2-2013, pp. 2, 13).

The language approved by the Planning Commission also omits the current LCP's protection for views of national or State parklands.

Recommended revision:

C-DES-2 Protection of Visual Resources. Ensure appropriate siting and design of structures to prevent **impairment or** obstruction of significant views, including views both to and along the coast, **and views of the national or State parklands**, as seen from public viewing areas such as

highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes. The intent ...

As the Board observed in previous hearings, the current LCP includes eloquent language describing the visual resources that require protection, and in particular, the following paragraph:

Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. The magnificent visual character of Unit II lands is a major attraction to the many tourists who visit the area, as well as to the people who live there. New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed. [LCP Unit I, p. 194]

We recommend once again that the LCPA include the timeless “background” language describing visual and environmental coastal resources in the current LCP that provides essential context for LCP policies.

#1, p. 13, Categorically Excluded Projects

The determination that a proposed development is categorically excluded from the requirement to obtain a coastal permit can be appealed directly to the Coastal Commission. However, the recommended change to 22.68.040.B does not provide a meaningful period in which to appeal and review the county’s determination. Thus, an applicant could initiate development that has been determined to be categorically excluded before there is an opportunity for the Coastal Commission to receive an appeal and review the determination.

In order to ensure that an appeal to the Coastal Commission of a determination of categorical exclusion can effectively be made:

We recommend that the LCPA include a timely reporting requirement for (1) posting notice of the determination on the website, (2) notification of subscribers to website of a new determination, and (3) transmittal of notice to the Coastal Commission. Furthermore, the language needs to provide that the determination is not effective until X working days after the notice has been posted and no appeal has been filed.

#1 p. 14 Contiguous properties under common ownership

22.70.030 – Coastal Permit Filing, Initial Processing
A. Application and filing...

The discretion given to the Director to include all contiguous properties under common ownership in a coastal permit has two defects:

(1) the provision needs to provide substantive standards for when contiguous parcels are included. Without standards for making the determination, neither the applicant nor a

member of the public could successfully appeal the Director's determination either to include contiguous parcels, or not include them.

(2) the provision needs to specify mechanisms that will legally restrict development on a legal contiguous lot that is itself not the subject of the coastal permit application. If ownership of that contiguous lot is subsequently transferred, what legal provision will ensure that the conditions (for example, no development within 100 feet of an ESHA) will continue to bind the new owner?

Example 1: Contiguous Lot 1 and Lot 2 have the same owner and Lot 2 is entirely within an ESHA buffer. A coastal permit is issued which specifies building envelopes for development on Lot 1, outside of the buffer, and requires that there be no development on Lot 2. Lot 2 is later transferred to a new owner, who applies for a coastal permit on the grounds that the lot is entirely within the buffer and thus not subject to the requirement of no development within a buffer.

Example 2. In the C-APZ district, contiguous Lot 1 and Lot 2 have the same owner. The owner applies for a coastal permit to develop intergenerational housing on Lot 1. That permit is issued and specifies building envelopes on Lot 1 with the requirement that Lot 2 have no residential development. Lot 2 is subsequently transferred to a new owner, who applies for a permit to build a farmhouse.

We recommend:

- 1. include substantive standards for a determination that contiguous parcels under common ownership are subject to a single coastal permit**
- 2. specify mechanisms that will legally restrict development on a contiguous lot that is not subject to the coastal permit**

#1, pp. 14-15 Appeal of second unit permits.

Staff will develop, if requested by the Board, a draft provision for an *administrative* streamlined appeal process (with no public hearing) for second unit permits in the coastal zone, and bring language to a future LCPA hearing.

The provision will need to distinguish between the coastal development permit, and the second unit permit for use of a structure. A coastal development permit (for either an addition to an existing structure, or a new structure) is subject to the LCP's public hearing requirements regardless of the use of that structure, and an appeal of that coastal permit requires a public hearing. It is only the separate permit for the use of the structure as a second unit that cannot be required to have a public hearing.

#1, pp. 17- 19. Ag processing and ag retail sales at limited scale.

All agricultural processing and agricultural retail sales uses are currently conditional uses. A key concern accompanying these uses of agricultural parcels in the coastal zone is the potential for increased traffic congestion on rural roads. It is important that these uses be periodically reviewed in order to take account of current and anticipated conditions.

If the Board decides that smaller processing and retail sales uses are to be principal permitted uses:

We recommend: that the coastal permit for agricultural processing and retail sales be time-limited, and specify a date by which the permit will be reviewed and potentially renewed.

#3 p. 13. Appeal jurisdiction areas, Maps 28a, 28b.

The EAC concurs with the comments for today's hearing of the Inverness Association that the draft appeal jurisdiction area Map 28a is incorrectly drawn for Inverness.

There is no "first public road" in the entirety of Inverness that provides continuous access to the north and to the south along the California coast. The current LCP appeal jurisdiction includes the entirety of Inverness.

We recommend: that development throughout the Inverness area conform to the certified LCP and be appealable to the Coastal Commission if it is believed not to meet that requirement.

Thank you for your consideration of our concerns and comments.

Sincerely yours,

A handwritten signature in black ink that reads "B. Mitchell". The signature is written in a cursive, flowing style.

Bridger Mitchell, President, Board of Directors