



COMMUNITY DEVELOPMENT AGENCY

## PLANNING DIVISION

**STAFF REPORT TO THE MARIN COUNTY  
PLANNING COMMISSION**

Marin County Local Coastal Program Amendments

**Recommendation:** **Accept Report and Direct Staff to Provide Comments and Recommendations to the Board of Supervisors**

**Hearing Date:** **September 26, 2016**

Agenda Item: Planning Staff: Jack Liebster, Planning Manager  
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Signature:

Environmental Determination: Pursuant to Sections 15250 and 15251(f) of the California Environmental Quality Act (CEQA) Guidelines, the preparation, approval, and certification of a Local Coastal Program Amendment is exempt from the requirement for preparation of an Environmental Impact Report (EIR) because the California Coastal Commission's review and approval process has been certified by the Secretary of Resources as being the functional equivalent of the EIR process required by CEQA in Sections 21080.5 and 21080.9 of the Public Resources Code.

### SUMMARY

From March 2009 to February 13, 2012, the Marin County Planning Commission conducted a series of public meetings during which the Commission considered draft amendments to the County Local Coastal Program (LCP Amendments) and a number of policy alternatives. These hearings culminated in the Planning Commission recommending a series of Local Coastal Program Amendments (LCPAs) to the Board of Supervisors on February 13, 2012. The Board of Supervisors then held public hearings to consider the Planning Commission recommendation as well as additional alternatives suggested by staff for consideration in response to public and Coastal Commission staff input. The Board adopted a resolution containing a set of LCPAs on July 30, 2013, and submitted them to the Coastal Commission on September 20, 2013. In May 2014, the Coastal Commission itself acted on the County's proposed policy amendments (Land Use Plan) only, deferring action on the implementing zoning regulations (Implementation

Program) to allow staff more time to address issues, while at the same time providing policy direction through the LUP. In October 2014, the Coastal Commission staff provided a set of extensive draft modifications to the County proposal. In response to the Coastal Commission staff modifications to the County's submittals, the Board held two additional hearings on August 25, 2015 and more recently on April 19, 2016. While a broad range of revisions were addressed, the August 2015 Board hearing focused on regulatory issues regarding Agriculture [Board Documents Part 1, 8/25/2015] and the April 2016 Board hearing was centered on Environmental Hazards [Board Documents Part 2, 4/19/2016]. The County's proposed amendments are presently being reviewed by the Coastal Commission staff in anticipation of a Coastal Commission hearing in November 2016.

The purpose of the current Planning Commission hearing is for the Commission to have a focused discussion on key substantive policy issues that were addressed by the Board of Supervisors since the Planning Commission's action in 2012. The hearing will also provide an opportunity for the Planning Commission to offer recommendations to the Board of Supervisors before the Board takes final action on the proposed LCP Amendments.

Under state law, the Board's action is not final until the Amendments are certified by the Coastal Commission, and if modified by that Commission, accepted by the Board.

## **Background**

Consistent with the structure of the Coastal Act, the Marin LCP Amendment process has been an iterative and collaborative one. At each stage it has involved development of policies and implementation programs, public review and input in that development process and extensive discussion and comment by the Coastal Commission staff. The LCP Amendments consist of two major components: 1) land use policies referred to as the Land Use Plan; and 2) more specific implementing zoning regulations referred to as the Implementation Program.

Throughout the period from March 16, 2009 to February 13, 2012, the Marin County Planning Commission conducted extensive public meetings and workshops to consider a wide range of alternatives to potentially include in a series of LCP Amendments (Attachment 1). During this period the Community Development Agency staff hosted a number of additional community workshops and meetings with interested parties to provide additional information and input to the Planning Commission's deliberations. Further, the Coastal Commission and CDA staffs regularly discussed issues in the developing LCP Amendments. This phase of the public hearing and outreach process concluded on February 13, 2012, when the Marin County Planning Commission recommended approval of the LCP Amendments by the Board of Supervisors.

Beginning on October 2, 2012, a series of public hearings were held by the Board of Supervisors to receive testimony and Coastal Commission staff comments on the LCP Amendments and to provide the public and affected agencies and districts with the maximum opportunity to participate in the LCP amendment process. The Board completed the submittal of the LCRA Amendments in November 2013. The Coastal Commission acted on the Land Use Plan Amendments only in May 2014.

After extensive discussions between staffs, the Board acted on August 25, 2015 to submit to the Coastal Commission all chapters of Land Use Plan Amendment except for the Environmental Hazards Chapter. In addition the Board also submitted the Implementation Program

Amendments for Agriculture. Deferring the Environmental Hazard policies allowed for consideration of the results of the County's ongoing C-SMART (Collaboration: Sea-level Marin Adaptation Response) project assessing the implications of sea level rise on the Marin Coast. In the case of Agriculture, providing the related Implementing Program Amendments was intended to provide specific details to help the Coastal Commission understand how the Agriculture Land Use Policies would be implemented through specific zoning standards. The Board's deliberations and submittal particularly focused on providing new language for "ongoing agriculture" that would provide flexibility for routine, traditional and certain diversification of agriculture, while requiring coastal permit review for potentially significant activities such as construction of new wells or surface impoundments, terracing of land, development of viticulture, or expansion into areas never before used for agriculture.

Throughout the remainder of 2015 and the spring of 2016, County staff worked cooperatively with Coastal Commission staff to develop language that might resolve differences between the Environmental Hazard policies and IPA provisions originally submitted by the Board in 2013 and the modifications to Environmental Hazards Land Use Plan policies approved by the Coastal Commission in May 2014, as well as suggested revisions to the Implementation Program Amendments proposed by Coastal Commission staff in April 2015.

The Board held a public hearing on the Environmental Hazards Chapter and the remaining Implementation Plan Amendments on April 19, 2016. Among the principal items addressed were:

- A strategy, policies and implementing measures for the initial response to sea level rise in the County's Coastal Zone.
- A modification to Community Development section 22.64.110 to discourage the conversion of residential to commercial uses in coastal villages while continuing to ensure sufficient opportunities for visitor-serving uses in coastal village areas.
- Provisions to verify the adequacy of public services, including water supply and wastewater treatment, prior to permitting new development.
- Coastal Permitting and Administration procedures that meet statutory requirements for public disclosure while also being workable and efficient from the standpoint of staffing capacity and business systems available to carry out the County's administrative duties under the Coastal Act.

After a public hearing, the Board submitted the Land Use Plan Amendments for the Environmental Hazards Chapter, along with the complete Implementation Program Amendments to the Coastal Commission where it now awaits their action. Once the Coastal Commission makes their decision on the LCP Amendments, including any suggested modifications to the County proposal, the Amendments will return to the Board for final action.

### The Unique Coastal Planning Process

The Coastal Act establishes a planning structure that is unique and substantively different from the General Plan process that governs other County's planning. The Coastal Commission's interaction and ultimate regulatory authority over the final decision-making have in law and practice created a highly iterative procedure where proposals often, as in Marin County's case, go back and forth between the local government and the Coastal Commission several times before a final result is reached.

This process, mandated in part by Coastal Act sections 30501 and 30503, and section 13515 of Title 14 of the California Code of Regulations, is now hopefully nearing its final stages with respect to the seven LCP Amendments currently being considered by the Coastal Commission.

Thus, it is an opportune time to review the substantive policy and code revisions that have been proposed since your Commission last considered the LCP, and to afford you an opportunity to provide the Board input as the final decision-making phase approaches.

## **PUBLIC NOTICE**

The Community Development Agency has provided public notice of the Planning Commission hearing with a display advertisement in the Marin Independent Journal consistent with Govt. Code section 65091, and in addition provided direct mail notice to more than 1100 individuals including all individuals who requested written notice and other individuals who could be affected by the LCP Amendments.

Notice was also posted on the project website and distributed to 4,180 subscribers of the LCP GovDelivery email subscription service.

## **PUBLIC COMMENT**

A letter has been received public from the Environmental Action Committee of West Marin (enclosed).

## **SUBSTANTIVE POLICY ISSUES**

The County has submitted seven separate Amendments for the Coastal Commission to certify. Provided below are short summaries of some of the more substantive policy issues which, for the most part, relate to Agriculture, Environmental Hazards, and Public Facilities and Services.

### **Agriculture**

Coastal Permit Requirements for “On-going Agriculture” – Under the current certified LCP as well as the County’s proposed LCP Amendments approved by the Planning Commission in 2012, the vast majority of agricultural production and related operations in the Coastal Zone would continue to be routinely allowed without the requirement for a Coastal Permit. This policy is intended to maintain agricultural viability by continuing to provide agricultural producers with the flexibility to respond to market conditions. It also recognized that a large number of regulations, including those from the Regional Water Quality Control Board, as well as successful habitat restoration initiatives such as the work led by the Resource Conservation District were steadily improving the environmental quality of Marin agriculture without the need to subject agricultural production to an additional layer of land use restrictions and processes within a zoning district intended to protect and encourage agriculture.

However, modifications to the County’s proposed LCP amendments approved by the Coastal Commission in 2014 would, by way of example, require Coastal Permit review and approval, or at a minimum the submittal and approval of a de minimis waiver application for the conversion of existing agricultural land from grazing to crop production.

Regulations in the LCP should accommodate rather than impede the ability of farmers and ranchers to diversify their operations. Accordingly, the Board of Supervisors supported staff's recommendation to revise the definition of "on-going agriculture" to expressly exempt routine agricultural production and cultivation practices from Coastal Permit requirements, while also defining activities that warrant more careful review through the Coastal Permit process such as land terracing, encroachments into sensitive habitats or the installation of new or expanded wells and irrigation systems. In this regard, the County's proposed LCP Amendments will further Coastal Act Section 30241:

*The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy...*

In addition, creating new procedural hurdles with related startup costs for agricultural production enterprise in Marin may have the unintended consequence of discouraging new farmers and ranchers from entering the market with the unintended and undesirable result of encouraging a gradual transition of existing farms and ranches to predominantly residential or other non-agricultural use. That trend would be contrary to Coastal Act Section 30241:

*All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (I) continued or renewed agricultural use is not feasible.*

Agricultural Dwelling Units on Contiguous Lots in Common Ownership (i.e. the "Farm Tract"): The current certified LCP and the County's proposed LCP Amendments approved by the Planning Commission for the C-APZ zoning district specify the amount of development permitted per "legal lot" (for example, "one farmhouse per legal lot"). Modifications approved by the Coastal Commission in 2014 tightened restrictions within the C-APZ zone by specifying that "all contiguous properties under the same ownership" would be considered as one land holding for purposes of development, regardless of the number of legal lots owned. Implementation Program modifications recommended by Coastal Commission staff in 2015 went further by extending restrictions from "contiguous parcels" to "all parcels owned in either total or partial fee ownership" regardless of adjacency or proximity (unless a "non-contiguous" property could be shown to be a wholly independent farming operation). Although the expressed intent of these modifications was to prevent the proliferation of agricultural dwelling units, staff raised concerns that the provisions could have the unintended consequence of breaking up working farms and ranches by encouraging the sale of separate legal lots to realize their development potential. In light of this concern, County staff consulted with Coastal Commission staff on a mutually agreeable solution. Those discussions lead to a County proposal which allows development on the basis of the "farm tract", defined to include all contiguous legal lots under common ownership (consistent with the Land Use Plan language approved by the Commission) but also incorporating Implementation Program text which clarifies that the sale of legal lots comprising the farm tract is not prohibited, and that any restrictive covenants imposed as a condition of development would only apply to the legal lot within the farm tract on which the development is approved.

Agricultural Product Sales: The on-site sale of agricultural products was a subject of widespread interest during the LCP Amendment process, as reflected in the detailed and somewhat complicated Implementation Program regulations for sales facilities approved by the Planning Commission in 2012. In their review of the issue in 2013, the Board simplified these provisions to allow limited on-site sales as a principally permitted use in the C-APZ zoning district, provided that: 1) the agricultural products are produced on-site or on other Marin County

properties owned or leased by the facility operator, and 2) that the operator is directly involved in their production. The Coastal Commission further eased the regulations to enable an operator to sell products produced on lands they own or lease within the “farmshed” (defined to include both Marin and Sonoma Counties). However, siting restrictions were also imposed that would have made it difficult to establish a “roadside” retail farm stand by restricting sales facilities to a defined “clustered development area”. Ultimately, the Board approved restrictions related to the source of products as well as appropriate performance standards regarding traffic, hours of operation and other related issues, while also allowing the establishment of “roadside” farm stands where such standards can be met.

## **Environmental Hazards**

### Responding to Hazards Resulting from Sea Level Rise –

A central part of the Environmental Hazards strategy Policy C-EH-8 – *Minimum Floor Elevations in Flood Hazard Areas* is a central part of the Environmental Hazards strategy. The policy applies to development requiring a Coastal Permit, based on actual conditions of the site. Its intent is to integrate the hazard science and requirements of the Federal Emergency Management Agency (FEMA) with those of the Coastal Act. FEMA has established “special flood hazard areas” under the National Flood Insurance Program, which seek to elevate homes and other structures up out of the storm hazard area. However, those requirements do not take sea level rise into account Policy EH-8 adds three additional feet to the required Base Flood Elevation (BFE) to accommodate predicted sea level rise well into the latter part of the century. In areas outside FEMA Special Flood Hazard Areas that are nevertheless subject to sea level rise, the elevation of buildings would be set at three feet above current mean sea levels.

Concept of “Coastal Redevelopment” In 2014, the Coastal Commission approved a number of significant modifications to the Planning Commission and Board-approved Environmental Hazard policies that addressed sea level rise through the establishment of new regulations which would significantly restrict the ability of residents to construct a range of improvements to their homes over time compared to the County’s existing standards. Of particular concern was the new concept of “coastal redevelopment”, defined as the alteration of 50 percent or more of any single major structural component (e.g., foundation, roof, walls), or a 50 percent increase in floor area of a structure, or any alterations exceeding 50 percent of the structure’s market value, all tracked cumulatively from the date of LCP certification. The Board shared staff’s concern that the proposed rules could make it difficult and costly for coastal property owners to take reasonable steps to protect their property from flood hazards. For example, compliance with Federal Emergency Management Agency (FEMA) requirements to raise a structure above anticipated flood levels would necessarily entail alteration of 100 percent of the foundation, establishing a barrier to compliance with Federal law. Restrictions on “coastal redevelopment” also appeared to conflict with overlapping Coastal Act provisions, which do not calculate improvements or repair and maintenance on a cumulative basis, by individual structural component, or based on market values. Conflict would arise also because the “coastal redevelopment” provisions would require a coastal development permit for an expansion of more than 50 percent of an existing single-family dwelling anywhere in the coastal zone, whereas the Coastal Act exempts improvements to those existing single-family dwellings (regardless of the improvement’s size) on sites inland of the first public road and not appealable

to the Coastal Commission. Furthermore, the “coastal redevelopment” concept would be at odds with Categorical Exclusion Order E-82-6 that was previously adopted by the Coastal Commission. The Order exempts from a coastal permit throughout much of the coastal zone any addition to an existing single-family dwelling measuring 50 percent of existing floor area or 1,000 square feet, whichever is less. By contrast, the “coastal redevelopment” concept would result in a coastal permit requirement for an addition even less than 50 percent of floor area if the project happened to require, say, replacement of most of the foundation, or involved exceptionally high cost. Accordingly, the Board supported staff’s recommendation to delete the concept of “coastal redevelopment” and instead rely on coastal permitting provisions which closely mirror permitting categories provided for in the Coastal Act..

## **Public Facilities and Services**

### Public Service Capacity for High-priority Visitor-serving and other Coastal Act Priority Uses

Under the current certified LCP as well as the LCPA policies and IP provisions approved by the Planning Commission in 2012, adequate public services (that is water supply, on-site sewage disposal or sewer systems, and transportation including public transit and road access and capacity) are required to be available prior to approving new development. Policies further required reserving capacity to serve to serve VCR and RCR-zoned properties and other visitor serving uses. However, in August 2015 the Board approved policy modifications suggested by Coastal Commission staff to clarify service capacity was required to be set aside for Coastal Act priority land uses. Based upon further input from Coastal Commission staff, in April 2016 the Board approved modifications to Implementation Program Section 22.64.140 to require evidence from service providers that adequate service capacity is available. New standards were also added to require new development for non-Coastal Act and LCP priority land use shall only be allowed if adequate capacity remains for priority land uses.

## **RECOMMENDATION**

Staff recommends your Commission conduct a public hearing to receive staff’s report. The Planning Commission may also provide recommendations to the Board of Supervisors regarding any issues discussed during the hearing.

Attachments:

1. [Timeline of Events - Marin Co. LCPA](#)
2. [Public Comments received from Environmental Action Committee of West Marin and Randall Fleming, Point Reyes Station Village Association Design Review Chair](#)