COUNTY OF MARIN

COMMUNITY DEVELOPMENT AGENCY

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May 16, 2017

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Response to Coastal Commission Modifications to the Board's Local Coastal Program Amendments (LCPA).

Dear Members of the Board,

RECOMMENDATION:

Accept the Land Use Plan Amendments (LUPA) as certified with Modifications by the California Coastal Commission (CCC) based on findings prepared by County staff in Attachment 1. Defer action on the Implementation Program Amendments to allow additional time to resolve serious issues. The Environmental Hazards chapter of the LUPA is not before the Board as action on it was postponed by the Coastal Commission at its hearing of November 2016. These LUP Amendments will become certified after the Commission Executive Director reviews them, reports them to the Coastal Commission and files them with the Secretary of the Resources Agency.

SUMMARY:

Your Board has previously authorized the submittal of seven separate LCP amendments to the Coastal Commission (identified as Amendments #1 - #7). These Amendments address changes to policies in the Land Use Plan and implementing zoning standards and procedures in the Implementation Plan (IP). The Coastal Commission approved five of the seven amendments with modifications at its hearing on November 2, 2016 while deferring a decision on Amendments #4 and #5 which address updated policies and regulations in the Environmental Hazards sections of the LCP. Approval of LUP Amendments #1 and #2 as described herein represents an acceptance of all the policies of the Land Use Plan as modified, except for the Environmental Hazards Chapter, which is still pending. Staff is recommending that your Board defer action on the Implementation Program Amendments (IPA) #3, #6 and #7 to allow continued efforts to resolve serious concerns with the modifications to those sections. The County has until May 2, 2018 to accept or reject these modifications.

According to Coastal Act procedures, after the Coastal Commission approves amendments with modifications, the local government is faced with a choice of accepting or rejecting the modifications. Following the Coastal Commission's November 2016 hearing, County staff has been working with Coastal Commission

staff to clarify the intent and meaning of certain modifications to the County's proposal. In the interest of clarity and to ensure that LCP regulations reflect local conditions, County staff has prepared findings for each of the amended LCP policies and standards being recommended for acceptance. These are detailed in Attachment 1, which describes how each of the Land Use policies will be interpreted.

By way of example, the following summaries highlight four of these issues.

Amendment 7; item 7-1; IPA section 22.130: Definition of "Existing"

The modifications specify two definitions relating to "existing," citing conflicting dates, but just as importantly, it sets a standard for shoreline protective devices, which is premature, as it is the subject of Environmental Hazards provisions, on which the Commission itself directed further work on the part of both our staffs and the community.

> **Existing~~(coastal)~~** Extant on or after February 1, 1973~~. at the time that a particular Coastal Permit application is accepted for filing.~~
>
> **Existing Structure ~~(coastal)~~.** A structure that is legal or legal non-conforming. For the purpose of implementing LCP policies regarding shoreline protective devices, a structure in existence since January 1, 1977 ~~May13, 1982~~.

Amendment 7; item 7-2; IPA section 22.130: Definition of "Legal Lot" vs. "Legal Lot of Record"

The Modifications create a distinction between a "legal lot" and a "legal lot of record:"

> **Legal Lot.** A lot that was lawfully created under both the Subdivision Map Act and the Coastal Act and has received the necessary Map Act approval and a Coastal Permit**.**
>
> **Legal Lot of Record.** A parcel is considered to be a legal lot of record under the Subdivision Map Act if it was created in conformance with any of the following criteria:
>
> A. Recorded subdivision…
>
> B. Individual lot legally created by deed....

Under this modification, it appears that all lots created prior to the Coastal Act (1977) would not qualify as "legal lots." This raises serious questions about the numerous references to "legal lots" in the LCPAs. For example, the Commission modified Land Use Plan Policy C-AG-2.A.4 defining Principally Permitted Uses in the Agricultural Zone as follows:

> **a.** One farmhouse or a combination of one farmhouse and one intergenerational home per farm tract, defined in this LCP as all contiguous legal lots under a common ownership within a C-APZ zoning district, consistent with C-AG-5, including combined total size limits;

b. Agricultural worker housing, providing accommodations consisting of no more than 36 beds in group living quarters per legal ~~parcel~~ lot or 12 units or spaces per legal lot for agricultural workers and their households;

Since most large farm lots in the Coastal zone significantly pre-dated the Coastal Act, these would not qualify as "legal lots" under the modified definition, creating uncertainty about their status. For example, if a ranch under "a." above was not **"***created under both the Subdivision Map Act and the Coastal Act"* and therefore had not received a Coastal Permit, it appears it could not qualify for a farmhouse, which was clearly not the intent of the LUP Amendment.

Amendment 7; item 7-3; IPA section 22.130: Definition of "Shoreline Protective Device"

This provision also clearly should be part of the additional work to address Environmental Hazards. But it includes a critical provision- defining "piers" as a shoreline protective device, and thus subject to intensive standards of review. Your Board-adopted provisions instead seek to support and facilitate the raising of homes, consistent with not only the protection of lives and property, but in support of FEMA's National Flood Insurance Programs objectives, as a viable short-term mean to respond to sea level rise.

> **Shoreline Protective Device.** ~~(coastal).~~ A device (such as a seawall, revetment, riprap, bulkhead, piers/caissons~~,~~ or bluff retention device) built for the purpose of serving a coastal-dependent use, or protecting an existing structure or public beach in danger from erosion.

Amendment 7; item 7-3; IPA section 22.64.140 – Public Facilities and Services

IP Section 22.64.140.A.1.b pertains to development served by a well. The Coastal Commission modifications include, among other things, a new requirement that applicants submit a report demonstrating that a proposed new or expanded well would not "*adversely impact adjacent biological and hydrogeologically-connected resources including streams, riparian habitats, and wetlands that are located on the subject lot or neighboring ~~parcels~~ lots; impact nearby biological resources and would not adversely impact available water supply for agricultural production or other priority land uses*" (such as recreation and visitor-serving commercial uses). The requirement for this type of report for an individual domestic well would not only be be burdensome and expensive, but is beyond the ability of an individual applicant to achieve, as it requires access to "neighboring lots" to accomplish the study. If a neighbor is concerned with privacy or for other reasons does not grant access, the requirement is impossible to meet.

Additionally, Coastal Act Section 30254 does provide that priority land uses "not be precluded by other development," but applies this requirement only to "**public works facilities"** (such as community water or sewage treatment facilities), not private individual water or wastewater disposal facilities. The Commission's modification to remove references to "public water supply" sets a new standard that significantly exceeds the purpose of the Coastal Act.

1. Adequate public services

b. An application for new or increased well production ~~to increase public water supply~~ shall include a report prepared by State Licensed Well Drilling Contractors, General (Class A License) Engineering Contractors, Civil Engineers, or Geologists which demonstrates, to the satisfaction of the Director, that:…

3) The extraction will not adversely impact other wells located within 300 feet of the proposed well; adversely impact adjacent biological and hydrogeologically-connected resources including streams, riparian habitats, and wetlands that are located on the subject lot or neighboring ~~parcels~~ lots; and will not adversely impact water supply available for existing and continued agricultural production or for other priority land uses that are located on the subject parcel or served by the same water source.

These are some examples of issues with the IPA modifications. **Attachment 1** provides findings on these and additional issues.

Attachment 3 provides a legal analysis of what does and does not constitute exempt development under the Coastal Act.

Attachments 4 and 5 provide excerpts of all of the "Suggested Modifications" adopted by the Coastal Commission for the LUP and IP Amendments respectively. Full copies of the LUP and IP Amendments as modified are provided for Board members and available for the public at **www.MarinLCP.org - Board Documents Responding to CCC Modifications** (http://maringovstg.marinpublic.com/depts/cd/divisions/planning/local-coastal-program/plans-and-docs)

BACKGROUND

On July 2013 after extensive involvement with the public, organizations and agencies, numerous hearings before the Planning Commission and your Board and thorough ongoing consultation between Community Development Agency (CDA) and CCC staff, your Board adopted a broad range of LCP Amendments and submitted them for certification to the Commission. The Coastal Commission subsequently separated their actions into two parts, adopting the Land Use Plan Amendments with substantial Suggested Modifications in May 2014. Subsequently it held a hearing on its staff's recommendation for wide-ranging Suggested Modifications to the County's Implementation Program Amendments (IPA) on April 16, 2015. With insufficient time to properly review and consider the substantial number of modifications and supporting findings, the County withdrew its IPA.

Extensive discussions with the CCC staff and interested parties continued, leading to the preparation of revised LUPAs covering all chapters of the Land Use Plan except Environmental Hazards and including IPA provisions to implement the Agriculture

policies. It should be noted the County agreed to use the Commission-modified Amendments as the base documents, thus automatically accepting and incorporating all of the modification suggested by the Commission, except for where County staff proposed alternative language. Your Board approved these Amendments for submittal to the CCC on August 25, 2015.

The remaining LCP Amendments addressing Environmental Hazards and the full IPA (also referred to as the Development Code) were similarly the subject of intense discussion by the public and with CCC staff. Again the vast majority of CCC Suggested Modifications were accepted by using the Coastal Commission-modified documents as the base for consideration. Your Board considered the remaining modifications to these Amendments on April 19, 2016. The Planning Commission held a public hearing on September 26, 2016 while the Amendments were still subject to change by the County.

On November 2, 2017 the Coastal Commission held a hearing on the entire package of seven Amendments submitted by the County, adopting instead the Suggested Modifications proposed by their staff, with the exception of one change to the IPA for Agriculture, and postponing the Environmental Hazards provisions.

Staff has been working with CCC staff to provide a way that Amendments #1 and #2 could be approved by your Board, essentially achieving agreement on the entire Land Use Plan, except for Environmental Hazards which is still in process.

These are significant decisions, as the County will likely live with these rules for many, many years. Hopefully this action will set the stage for continued productive engagement toward the adoption of the rest of the LCP Amendments.

FISCAL/STAFFING IMPACT:

No fiscal or staffing impact as a result of the recommended Resubmittal is expected since the work to complete the LCP amendments is budgeted and included in the Department's Performance Plan for the current fiscal year. The cost of complying with the proposed LCP Amendments would be borne by applicants in the form of user fees and requirements for technical studies demonstrating compliance with updated LCP standards.

REVIEWED BY: **(*These boxes must be checked*)**

[ ] Department of Finance	[X] N/A
[X] County Counsel	[ ] N/A
[ ] Human Resources	[X] N/A

SIGNATURE:

Brian C. Crawford
Director

Jack Liebster
Planning Manager

Attachments:

1. BOS Findings-Action on Coastal Commission Modifications
2. Resolution Accepting Marin County LUP Amendments #1 and #2 as Modified by the California Coastal Commission
3. Memorandum by Steven H. Kaufmann, dated October 31, 2016
4. Summary of changes to LUPA
5. Summary of changes to IPA (informational)
6. Letters received after Nov. 2016

Full Text of LUP as amended showing Coastal Commission Modifications provided to Board Members – public review copies available at **www.MarinLCP**

Land Use Plan:
http://www.marincounty.org/~/media/files/departments/cd/planning/local-coastal/newdocs/161102_ccc_approved_lup_web.pdf?la=en

Implementation Program:
http://www.marincounty.org/~/media/files/departments/cd/planning/local-coastal/newdocs/161102_ccc_approved_ipa_web.pdf?la=en