March 20, 2018

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

SUBJECT: Workshop on Modifications to the County’s Local Coastal Program Amendments (excluding the proposed Environmental Hazards Amendments).

Dear Members of the Board:

RECOMMENDATION:

Conduct a public workshop focused on the remaining issues from the November 2, 2016 California Coastal Commission (CCC) decision to approve Modifications to the County’s five Local Coastal Program Amendments as discussed in Attachment 1. These issues were initially presented in the staff report for the Board of Supervisors’ May 16, 2017 public hearing, and are being brought back to the Board for further consideration following several staff level meetings between the County and Coastal Commission. No specific decisions are requested at this workshop, instead it is intended as an update and a precursor to a public hearing on April 24, 2018 when the Board will consider accepting or rejecting the modifications to each of the five LCP Amendments. The Land Use Plan (LUP) and Implementation Program (IP) Amendments to the Environmental Hazards sections are not before the Board at this time, and are expected to be addressed at a future public hearing.

STATUS UPDATE

Your Board has previously submitted seven separate LCP amendment packages to the Coastal Commission to update policies in the LUP and implementing zoning standards and procedures in the IP. The Coastal Commission approved five of the seven amendments with numerous revisions to the County’s proposal (hereinafter referred to as “modifications”) at its hearing in Half Moon Bay on November 2, 2016, and deferred a vote on Amendments #4 and #5 addressing the Environmental Hazards sections of the LCP to allow additional time to resolve differences.

The Coastal Act provides that after the Coastal Commission approves amendments with modifications, a local government shall act to either accept or reject the Commission’s Modifications within prescribed timelines. The deadline for County action on the non-Environmental Hazard Amendments is May 2, 2018. Because the Coastal Commission chose to defer action on the County’s proposed Environmental
Hazard Amendments, these sections are not subject to a mandatory timeline for action by the County.

Since the November 2, 2016 Coastal Commission hearing, Coastal Commission and County staffs have continued to work closely to clarify the meaning and intent of some modifications currently up for consideration and to gauge the willingness of Coastal Commission staff to support possible corrections or revisions through future Amendments.

In the interest of resolving some of those issues and making meaningful progress toward completing the County’s LCP update process, your Board held a public hearing on May 16, 2017 to accept LUP Amendments #1 and #2 comprising all of the LUP as modified by the Coastal Commission, except for the deferred Environmental Hazards Chapter. The remaining non-Environmental Hazard issues discussed in this report were initially presented in the staff report for the Board of Supervisors May 2016 hearing, although the Board was not being asked by County staff to accept them at that time.

Included in the May 2017 action was a Board Letter, Resolution and attachments that set out the interpretations the County would apply in implementing the Modifications and the statement that the Board was accepting the Modified Amendments based on those interpretations. Although no procedural objections were raised regarding the inclusion of interpretations in the Board of Supervisors Resolution for the LUP Amendments prior to, or at, the Board of Supervisors May 16, 2017 hearing, Coastal Commission staff informed County staff several weeks later that because Coastal Act regulations do not allow for a conditional acceptance of the modified Amendments by local agencies, the Amendments should be re-accepted by the County without conditional language in the Resolution (this position was later affirmed in Coastal Commission correspondence received by the County in December 2017). Coastal Commission staff has further advised that re-acceptance of the LUP modifications is subject to the same May 2, 2018 deadline that applies to the IP modifications discussed in this report. Therefore, County staff will be recommending the Board also reaffirm their May 2017 decision to accept the non-Environmental Hazard LUP Amendments without conditional language in the resolution at the April 24, 2018 hearing. The findings from the May 16, 2017 staff report for the for the LUP modifications are in Attachment 4.

The two staffs returned to the process of discussion, negotiation and clarification of both the LUP and IP modifications. With the May 2, 2018 deadline for the County to accept or reject the modifications approaching, staff is now bringing the remaining issues forward for public input and Board discussion. In addition, staff intends to continue ongoing discussions with CCC staff about their willingness to address the County’s issues with alternative language that would be processed through additional LCP Amendments.
SUMMARY:

This workshop is intended to promote a sufficient understanding of the potential implications of the key modifications and to provide an opportunity for public and Board discussion and input prior to the April 24, 2018 public hearing.

Attachment 1 addresses the remaining issues in each of the five separate Amendments that were acted upon by the Coastal Commission. Most of these issues stem from the modified language adopted by the Commission (Links 12, 13), while some concern the Revised Findings (Link 7) adopted by the Commission related to those modifications.

As submitted to the Coastal Commission, each Amendment is to be acted upon by the Commission independently. However, under Coastal Commission regulations, all the modifications within each individual Amendment must be accepted by the Board - all or nothing - or the Amendment is considered rejected. If no action is taken on an Amendment by the Board by the deadline of May 2, 2018, that Amendment is also considered rejected. Rejection of the Amendments would leave the current certified LCP as the effective set of regulations in the coastal zone.

The Board could accept all the Modifications in each Amendment with the intent to resubmit a future new Amendment to substitute new language to correct the issues the Board may have with the modifications. However, if the Coastal Commission does not choose to accept such changes to its current positions, the Commission’s November 2016 Modifications will continue in effect.

In addition, the Chief Counsel to the Commission has taken the position that “based on the resolutions submitted to the Commission by the County, the certified amendments will not go into effect in this case until after there is “a total amendment to the Implementation Plan which supersedes the existing certified Implementation Plan." As such, certification of the hazards portion of the LCP Update is required to put the LCP Update in its entirety into effect once the non-hazard portion of the LCP Update is accepted by the County." (Attachment 5)

Most of the modifications approved by the Coastal Commission in November 2016 have either been accepted by the County (i.e., May 2017 Board hearing) or are acceptable in staff’s view. It’s also possible that like other extensive code revisions, the need for additional clean-up revisions will become evident as the new rules are implemented should the County eventually accept modifications in all the proposed Amendments. Attachment 1 sets out the issues that remain, taking into account the Commission’s November 2016 action, the Commission staff letter of May 2017, the Revised Findings adopted by the Commission on July 14, 2017 to support their November 2016 action, and continuing discussions with Commission staff. These issues are summarized as follows:

**Amendment 3 IPA Agricultural Provisions**
3.4 "Agriculture Ongoing; Definitions IP Sec. 22.130.030 and Sec. 22.68.050.L

A. "Legally Established:" "Agriculture Ongoing" (hereinafter referred to as Ongoing Agriculture) is a County proposed exemption from Coastal Permit requirements for changes in traditional agricultural production activities in the county. Coastal Commission staff proposed to add "legally established" as a prerequisite to qualifying for the permit exemption. The County objected to this change since most of Marin’s agricultural producers have been allowed to change crops without first having to obtain a Coastal Permit. As part of its November 2016 decision, the Coastal Commission removed "legally established" from the approved definition of Ongoing Agriculture in response to the County concerns. However, the Revised Findings subsequently adopted by the Coastal Commission to support their decision indicate that existing operations should have obtained permits after 1982 (the adoption of the County’s first LCP and implementing coastal zoning regulations). This appears to raise the implication that agricultural producers having either initiated or changed crops since 1982 may not be considered legal merely because they have not been required to first obtain a Coastal Permit.

B. "Conversion of Grazing Areas to Row Crops:" Coastal Commission staff had recommended this activity be added to the list of activities NOT considered Ongoing Agriculture. After considering objections raised by the County and representatives of Marin’s agricultural community, the Coastal Commission removed this provision from their decision to approve the exemption for Ongoing Agriculture. However, the Coastal Commission’s Revised Findings state that "those conversions [of grazing areas to row crops] that would intensify the use of land or water or require grading" will require a Coastal Permit. The Revised Findings do not make specific reference to objective criteria proposed by the County, and approved by the Commission, describing intensification of land and water that would disqualify production activities from the Ongoing Agriculture permit exemption (such as extending farming or ranching into never before used areas, the need for a new water well, or terracing for vineyards). This lack of clarity about if and what type of other unspecified agricultural production activities could be considered may eventually lead to uncertainty and disagreement about compliance with the County’s permit exemption (a process that should be as straightforward and predictable as possible).

C. "Examples" "of activities that are NOT ongoing agriculture:" The intent of the County’s use of "ongoing agriculture" was to provide farmers and ranchers greater predictability in the face a new and more regulated coastal permitting scheme. The list of activities that would not be considered ongoing agriculture was created by working extensively with stakeholders from both the environmental and agriculture communities. Framing this definitive list in terms of "examples" may diminish the predictability the County sought to provide in the regulatory process by opening the regulation to additional unspecified criteria.

AMENDMENT 7- All other sections of the IPA, except Ag. And Hazards
7-1. Definitions of "Existing" and "Existing Structure"
The Modifications specify conflicting and confusing definitions of "existing" and "existing structure". It is unclear why the definitions reference two different dates, February 1, 1973 which presumably represents the effective date of Proposition 20, the Coastal Act's precursor, and January 1, 1977 which is the effective date of the Coastal Act itself. More importantly, use of the phrase "on or after" in the definition of "Existing" essentially makes the date meaningless (i.e. things in existence on February 1, 1973 as well things in existence at any time after February 1, 1973 would include the entire universe of things in existence both prior to and after the LCP Amendment becomes effective). Furthermore, under the Coastal Commission definition of existing, a building or use that existed in 1973 (or sometime after) would qualify as "existing" even if it was subsequently removed or destroyed.

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 May 13, 1982.

7-2 IPA section 22.130: Definition of "Legal Lot" vs. "Legal Lot of Record"
It is unclear why two definitions are required as Modified especially since the definition of "legal lot" on its face could be construed to imply that lots created prior to the Coastal Act (applies to most lots in the Coastal Zone). The Coastal Commission May 9, 2016 letter states "In the Coastal Zone, a lot is only legal if it was lawfully created under both Coastal Act and the Subdivision Map Act." Presumably, this means that even if a lot was legally created under the Subdivision Map Act prior to the adoption of the Coastal Act in 1977, the lot would not be considered legal until the approval of a Coastal Permit. The Coastal Commission staff's May 9, 2016 letter also states that, "As conditionally certified by the Commission in the definition of legal lot, a CDP [Coastal Permit] is only required where necessary", which appears to acknowledge that a lot created prior to the Coastal Act could not have received a Coastal Permit at the time of its creation, since the Coastal Permit process was not yet in existence. However, this is not how the definition actually reads. Without resolving the issue in the definition, County staff sees the need to make extensive corrections in the LCP (to replace "legal lot" with "legal lot of record"). In addition, some modifications to the definition of "legal lot of record" may be inconsistent with the Subdivision Map Act.

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. (See "Legal Lot of Record")

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. The lot was created through a subdivision Final map or Parcel map recorded on or after January 1, 1930. Antiquated subdivisions shall not be deemed to have created lots. A lot depicted created on a subdivision Final map or Parcel map recorded before January 1, 1930 may be considered a legal lot only if it has been reconvened subsequent to January 1, 1930 with references made to the original subdivision Final map or Parcel map.

B. Individual lot legally created by deed. The lot was legally created by deed conveyance into separate ownership and was in compliance with the zoning and subdivision requirements that applied at the time of creation.

C. Government conveyance. The lot was created by conveyance to a government entity.

When historic lots were merged by agency action or pursuant to applicable state law, the merged historic lots comprise a single legal lot of record.

7-3; IPA section 22.130: Piers and Caissons re “Shoreline Protective Device”

The definition of “shoreline protective device” has been modified by the Coastal Commission to include piers and caissons, which are commonly used in the construction of building foundations. Accordingly, foundation work mandated by FEMA and associated with elevating structures would trigger the stringent requirements associated with sea walls, breakwaters, groins and other shoreline protective devices designed to reduce coastal erosion. (This definition is related to the Environmental Hazard Amendments which are still pending approval by the Coastal Commission.) This modification essentially removes the regulatory distinction in the proposed County Amendments between a commonly used building foundation type and shoreline armoring structures. Considering the advanced age of many homes in our coastal communities, the inclusion of piers and caissons in the above definition means that single-family remodel projects, as well as new construction, would be subject to the same extensive submittal requirements, standards and conditions of approval as a proposal to construct a new sea wall.

The Coastal Commission staff’s May 9, 2017 letter indicates that because the Coastal Commission already approved the above definition at their November 2016 meeting, the definition cannot be changed prior to the County either accepting or rejecting it. The staff letter goes on to point out that if the Board of Supervisors approves revisions to the definition (after its acceptance) for processing as an amendment, such revisions would be considered by the Coastal Commission at the time the Environmental Hazard Amendments are brought up for a decision by the Commission. Thus, if the Board were to accept the above definition, County staff strongly recommends that such acceptance be predicated on the intent to submit revisions for further consideration.
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.

7-6; IPA section 22.64.140 – Public Facilities and Services

LUP Policy C-PFS-4 regulates community water or community sewage treatment facilities by requiring that expansion of such systems demonstrate capacity for priority Coastal Act uses (e.g., visitor serving) and, in areas with limited service capacity, new development for a non-priority use shall only be allowed if adequate capacity remains for visitor-serving and other Coastal Act priority uses. However, a zoning standard in Section 22.64.140.A.1.b of the IP, which is presumably intended to implement the above policy, is more expensive by restricting private wells and on-site sewage disposal or sewer systems in a similar fashion. The required report for an individual domestic well could not only be disproportionately expensive for individual property owners, but also may be beyond the ability of an individual applicant to achieve since access to “neighboring lots” is required to accomplish the study. The modification also goes beyond the LUP policy and Coastal Act Section 30254 upon which it is apparently based (Coastal Act Section 30254 requires new or expanded public works facilities retain service capacity for coastal dependent land uses, essential public services and visitor serving uses).

7.7 Section 22.64.170 – Mixed Uses in VCR Zone; Parks, Recreation, and Visitor Serving Uses

This modification restricts the Principal Permitted Use in the VCR zone to Commercial, while the existing LCP zoning code reflects actual conditions—a mix of extensive residential with commercial. Making residential a "permitted use" makes all residential coastal permits in the VCR zone subject to appeal to the Coastal Commission and may reclassify existing homes to legal, non-conforming status. It is unclear whether the restriction of new or existing residential uses to the second floor and ground floor applies throughout the VCR zones. CCC staff has indicated this language needs to be corrected.

7-8. Lowest Density Required for Widespread Areas of Any Hazard

The Modifications would apply "lowest allowable" density and floor area restrictions to properties containing any hazardous areas and setbacks, regardless of whether the hazards can be mitigated or addressed, which is the normal practice. Exceptions to these restrictions for beneficial projects (i.e., land divisions resulting in affordable housing and other public benefits) can only be considered where development “will avoid all hazardous areas and hazard setbacks.” Given the widespread nature of some hazard areas (See Attachment 2, for example, high fire severity zones, tsunami zones, steep/unstable slopes, etc.) flexibility in density and floor area standards would be precluded for affordable housing and other beneficial projects throughout most of the Coastal Zone.
NEXT STEPS

Staff is not requesting the Board vote to accept or reject any of the Coastal Commission modifications at the March 20, 2018 workshop. Rather, the workshop is intended to brief the Board and interested members of the public on the status of the County’s LCP Amendments and to prepare for the Board’s public hearing on April 24, 2018. Staff recommends the Board conduct a public hearing on April 24, 2018 to consider either accepting or rejecting the modifications approved by the Coastal Commission at the Commission’s November 2016 hearing. Staff recommends the Board focus its consideration to the list of issues presented in Attachment 1 of this report. The Board may also consider accepting certain modifications with the intent of resubmitting revisions to correct or clarify meaning and intent. Such revisions could be coupled with any future revisions that may come out of ongoing work to resolve Environmental Hazard issues.

Staff will continue to seek input from Coastal Commission staff to affirm or clarify further how the identified issues might be resolved. If possible, County staff will convey any additional input from the Coastal Commission staff to your Board in advance of the Board’s April 24, 2018 hearing.

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)

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

SIGNATURE:

Brian C. Crawford
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Attachments and Links:
1. Analysis of Remaining Issues re CCC Modifications
2. Hazard Areas Map
3. Adopted 5.16.17 Board Findings re LUP Mods
4. May 16, 2017 BOS Resolution Accepting Marin Co. LUP Amendments #1 and #2 as Modified by CCC
5. CCC Staff Letter, May 9, 2017
6. CCC Staff Letter, Dec. 15.2017

Links to prior documents available at www.MarinLCP.org, Plans and Documents page, panel Board Workshop on Remaining Non-Hazard LCP issues 3/20/18

7. CCC Revised Findings Staff Report and Addendum July 14, 2017
8. CDA Director Letter on CCC Revised Findings, July 10, 2017
10. Summary of changes to LUPA
11. Summary of changes to IPA (informational)
12. Full Text of Full Text of Modified Land Use Plan
13. Full Text of Modified Implementation Program

Previous LCP documents are available on www.MarinLCP.org “Plans and Documents” page.