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W10a

LCP-2-MAR-15-0029-1

Environmental Action Committee of West Marin
Comments on Agenda Item W10a

October 28, 2016

California Coastal Commissioners
Jack Ainsworth, Acting Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Via US Mail & Electronic Mail

Re: Comments re: Marin County Local Coastal Program Amendment
Number LCP-2-MAR-15-0029-1, W10a

Dear Mr. Ainsworth and Commissioners:

The Environmental Action Committee of West Marin ("EAC") respectfully submits the following comments on Marin County Local Coastal Program Amendment Number LCP-2-MAR-15-0029-1, Agenda Item W10a, for the public hearing and action on request by Marin County to comprehensively update the Land Use Plan ("LUP") and Implementation Plan ("IP"). We will refer to both the LUP and the IP as the Local Coastal Program ("LCP") proposed amendment ("amendment" or "update").

As you know, EAC has been involved in Marin County ("County")'s LCP amendment process since the beginning in 2008. EAC is heavily invested in this process and is committed to ensuring the County maintains strong coastal policies that protect our priority coastal resources. Like the Coastal Commission ("Commission") and its staff ("Commission staff"), EAC wants to ensure that the County's LCP amendment is consistent with the Coastal Act ("Act"). In particular, the LUP must be consistent with Chapter 3 policies of the Act, and the IP must conform to the LUP.

EAC agrees with Commission staff that the LCP as County-submitted was inconsistent with the Act. Although the Commission staff's October 21, 2016 suggested modifications ("Suggested Modifications") contained in the October 21, 2016 Commission staff report ("2016 Staff Report") advance resource protections in many instances, in some key policy and implementation sections the amendment remains inconsistent with the Act and/or diminishes the coastal resource protections contained in the 1981 certified LCP ("Certified LCP"). EAC supports the 2016 Staff Report in several areas including the Environmental Hazards ("Hazards") chapter and the Commission staff's definition of ongoing agriculture. Our comments focus on the remaining critical deficiencies, and where possible include further specific modifications to the amendment that must be made prior to any certification by the Commission to ensure continued protection of coastal resources and consistency with the Act. EAC also raises a particular concern regarding a partial withdrawal of the amendments by the County.

For ease of reference, we have organized this comment letter by six areas of the amendment and/or issues, which are of particular concern to EAC: (I) withdrawal, (II) environmental hazards, (III) biological and water resources, (IV) agriculture, (V) community character, and (VI) visual resources, followed by a brief summary. In addition, please see Attachment 1 for additional specific substantive comments, procedural inconsistencies, and editorial concerns. Many of these comments are included in an effort to ensure that the IP is consistent with the LUP¹.

I. Withdrawal

A. A partial withdrawal of one or more amendments (but not all seven) would be highly problematic.

As an initial point, EAC's analysis presumes that the full update (as a package) is being considered by the Commission. Further analysis would be required by the public and the Commission should one section be withdrawn, since all seven amendments are meant as an integral piece. The below paragraph addresses some of EAC's concerns should a partial withdrawal be proposed at the November 2nd hearing.

It is not possible to adopt and/or certify only some of the seven County-submitted amendments (which make up the update), because the submitted LCP update serves as a complete replacement and total reorganization of the two prior County Certified LUPs (Units I and II) and the Certified IP. To use an analogy, the seven amendments are inextricably linked and they work in harmony together, like strands which weave together to make a single rope. It is impossible to rip out one strand of a rope and have the other strands properly function. If a single amendment is withdrawn, it will be very difficult to proceed and have consistency with Units I and II of Certified LUP and the Certified IP. The County-submitted individual amendments numbers one to seven do not either replace entire chapters or selectively modify

¹ See Coastal Act Section 30513

language in the Certified LUP (made up of Units I and II). To adopt and/or certify only some amendments, but not all seven, would be complete chaos for the public and the County planners. It would be very difficult from the public and the planners to know which potentially conflicting and duplicate sections of policies and implementation measures apply and which policies and measures do not apply. For example, if the update is adopted without the Hazards chapter then planners will have to refer back to Units I and II of the Certified LUP and the Certified IP to address hazards policies and standards. The result would be three LUPs and two coastal zoning codes that planners would have to use when conducting analysis for any development application. With multiple and perhaps conflicting versions, it would be difficult for planners to conduct a complete analysis and thorough analysis.

B. Postponement/Full Withdrawal

As discussed, a partial withdrawal is illogical. Postponement or full withdrawal are the only options that give the public sufficient opportunity for public participation to understand and analyze the implications of this comprehensive and complex LCP amendment. If the Commission decides to move forward in considering the LCP amendment at this time, we provide the following substantive comments.

II. Environmental Hazards

A. Land Use Plan

1. EAC urges the Commission to adopt the Commission staff's Suggested Modifications to the Environmental Hazards chapter.

The County LCP amendment is a matter of statewide importance, as it is one of the first LCPs to address sea-level rise. It is critical that the amendment set a strong precedent for other regions. There is a serious need to address the effects of sea-level rise sooner rather than later, and to adopt policies which address the present, as well as foreseeable and inevitable effects of sea-level rise. Due to its institutional knowledge and statutory authority, the Coastal Commission is uniquely capable of guiding local government's response to sea-level rise in a coherent and consistent manner that protects coastal resources and the for public trust without unlawfully circumscribing private property rights. The Commission has been vigilant on Environmental Hazards in the past in its issuance of Coastal Development Permits ("CDPs"), and can best apply this knowledge to the County's LCP. We believe the Suggested Modifications admirably achieve that purpose.

In contrast, the proposed Hazards policies submitted by County only address the narrow mandate of Section 30253(a) to "[m]inimize risks to life and property..." The County-submitted proposed Hazards policies do not adequately address the coastal resource protection mandates of Sections 30231, 30251, 30253(b), and others. Furthermore, the County-proposed policies put off into the future any meaningful action to adapt to sea-level rise, committing the County only to further study when the problem will be further aggravated. The net result of the County's proposals would be piecemeal adaptations by individual homeowners, exempted from permit

review and “deemed sufficient to comply with...the LCP,” without regard to individual or cumulative impacts on coastal resources or the public trust.

Moreover, the County-submitted proposed LCP update is inconsistent with the Coastal Act and is not protective of public trust resources, marine resources, public access, community character, visual resources or other coastal resources. The County’s proposed Hazards policies fail to follow the Commission’s 2015 Sea Level Rise Policy Guidance² or to effectively use the Commission-provided C-SMART grant funds when drafting the Hazards Chapter, and so failed to include adaptation to sea-level rise measures.

In addition, the County-submitted proposed LCP update refers to “Potential Sea Level Rise Maps” which are an intrinsic part of the County-proposed LUP amendment. However, the “Potential Sea Level Rise Maps” were neither considered nor adopted by the County Board of Supervisors in April 2016, as is required by the Act and California Code of Regulations (“Regulations”). The references have been removed from the Commission’s Suggested Modifications. Therefore, the County-submitted proposed LCP is not eligible for adoption by the Commission.

EAC urges the Commission to adopt the Commission staff’s Suggested Modifications to the Hazards chapter. The Suggested Modifications succeed in providing a framework for the community and planners to address climate change and sea-level rise to protect our beaches, shorelines, and community character, while balancing the rights and needs of property owners. Furthermore, Staff Modifications in the Hazards chapter are consistent with Chapter 3 Act policies, the Regulations, and past Commission determinations³, because they will protect the public trust, visual resources, and other coastal resources while allowing homeowners a reasonable way to cope with the impending challenges of sea-level rise. For example, in Commission staff suggested policy C-EH-17(8), the Sandy Beach Management Plan addresses the Act’s requirement for continued public access to the beaches⁴. In addition, the Suggested Modifications have maintained many of the concepts that were previously certified by the Commission in 2014.⁵

² California Coastal Commission Sea Level Rise Policy Guidance, adopted August 12, 2015, *available at*:
https://documents.coastal.ca.gov/assets/slr/guidance/August2015/0_Full_Adopted_Sea_Level_Rise_Policy_Guidance.pdf

³ California Code of Regulations Section 13540(c) states that for certification the LUP should be consistent with applicable past Commission decisions. *See* references to the Lundberg and Winget staff reports in the 2016 Staff Report for language that supports the Commission staff’s language regarding redevelopment and removal triggers.

⁴ *See* Coastal Act Sections 30210, 30211; *see also* Sections 30200 & 30001.5(c) “maximize public access to and along the coast...”

⁵ *See* 2014 Final Commission Approved LUP, *available at*
<http://www.marincounty.org/~media/files/departments/cd/planning/local-coastal/2014-final-ccc-approved-lup.pdf?la=en>

Specifically, EAC supports the Commission staff's definition of redevelopment in the Suggested Modifications, because it is consistent with past decisions, the Regulations, the Act and is nearly the same language that was previously certified by the Commission in 2014.⁶ During last month's Commission meeting on October 6, 2016, Commissioner Kinsey stated:

regarding the definition of redevelopment, it is important to "...address our legitimate interest in having redevelopment projects that exceed 50% of the structural changes to be bought up to contemporary standards."⁷

The Commission has a long history of distinguishing between limited repair and maintenance of a structure and redevelopment.⁸

2. The state has a continuing duty to reevaluate the public trust as the circumstances change, as is inevitable with sea-level rise.

Pursuant to the public trust doctrine, the state has a continuing duty to evaluate the public trust as the circumstances change⁹, as is inevitable with sea-level rise. The trust duty can even prevent uses on non-public lands if those uses impact the public trust¹⁰ and trust lands must be protected for trust uses, which includes protecting them in their natural state¹¹. As the mean high tide line moves inland due to sea-level rise, the public trust lands will move inland as well. If it is blocked by shoreline protective devices that will pose further problems, as the boundary is meant to be measured as if these protective devices do not exist. Both existing as well as new development must be evaluated in light of the moving public trust boundary.

As the agency responsible for public access to California's beaches, the Commission has already adopted sea-level rise guidance which anticipates the inland move of the shoreline. The Commission's adopted 2015 *Sea Level Rise Policy Guidance* includes the following language as one of its principles: "Recognize that sea level rise will cause the public trust boundary to move inland. Protect public trust lands and resources, including as sea level rises. New shoreline protective devices should not result in the loss of public trust lands."¹² The Guidance further states that:

⁶ See page 30 of 2016 Staff Report.

⁷ See October 6, 2016 Video regarding Item 15a, regarding City of San Diego LCP Amendment LCP-6-SAN-16-0043-3, ~32:38 on the video.

⁸ See California Code of Regulations Section 13252(b)

⁹ See *National Audubon Society v. Superior Court of Alpine County*, 658 P.2d 709 (Cal. 1983); see also *Marks v. Whitney*, 491 P.2d 374, 380 (Cal. 1971)

¹⁰ See *National Audubon Society* at 658 P.2d at 711-12.

¹¹ See *Whitney*, 491 P.2d at 380.

¹² California Coastal Commission Sea Level Rise Policy Guidance, adopted August 12, 2015, at page 16 available at https://documents.coastal.ca.gov/assets/slr/guidance/August2015/0_Full_Adopted_Sea_Level_Rise_Policy_Guidance.pdf

The State holds and manages all tidelands, submerged lands, and beds of navigable waterways for the benefit of all people of the State for statewide purposes consistent with the common law Public Trust Doctrine (“public trust”). In coastal areas, the landward location and extent of the State's trust lands are generally defined by reference to the ordinary high water mark, as measured by the mean high tide line. Public trust uses include such uses as maritime commerce, navigation, fishing, boating, water-oriented recreation, and environmental preservation and restoration.¹³

Pursuant to the Commission’s Guidance and the public trust doctrine, the Suggested Modifications to the Hazards chapter successfully provide adaptation policies for when the public trust boundary moves inland. This is critical, because the Commission is best suited to handle this state issue at the present time. The time for bold decisions is now. The Commission has no choice but to adopt staff’s Suggested Modifications to the Hazards chapter in order to fulfill its constitutional duty to protect the public trust.

3. EAC’s Specific Concerns with Suggested Modification Policies

Policy C-EH-2 should be revised to include the bolded language so that the policy is fully protective and fulfills the Act’s intent.

C-EH-2 Avoid and Minimize Hazard Risks and Related Impacts.

Development shall be avoided in areas potentially subject to hazards to the maximum feasible extent. When development in such areas cannot be feasibly sited in a manner that avoids such areas entirely, then such development shall be sited, designed, and conditioned to minimize risks to life and property while mitigating the development’s impacts to coastal resources, **public access, and visual and scenic resources for at least 100 years.** Mitigation shall include measures to avoid such impacts if feasible, particularly impacts related to public recreational beach access.

While 100 years sounds like a long time, there are opportunities for amendment built into the LCP process.

C-EH-5.2 Standards for Shoreline Development.

As further discussed below under (VI) Visual Resources, please delete the word “significant” before public views for consistency with Act Section 30251:

“...a resulting building height that would exceed the zoning district height maximum may be allowed if the additional height does not adversely affect **significant** public views or community character;...”

¹³ Id. at page 40, n. 13.

III. Biological and Water Resources

A. Land Use Plan

1. The LUP should be further modified to remove any wetland buffer exceptions.

For 35 years, the Certified LCP has worked well to protect important wetland habitats in the local coastal zone. There have not been any studies or evidence to support the creation of wetland buffer exceptions in the proposed LUP. C-BIO-19 is problematic, because it clearly allows for buffer exceptions for any wetland, not just legally constructed wetlands. Commission staff's statement that "However, the proposed LUP clarifies that such a reduction can only be applied to legally constructed wetlands (meaning they were authorized by coastal permit or pre-dated coastal permit requirements)" is incorrect.¹⁴ Perhaps, Commission staff is referring to Policy C-BIO-19(1)(d), but this is only one of the qualifying exceptions. Policies C-BIO-19(1)(a-d) are separated by "OR" not by "AND" so the wetland exceptions *do not* only apply to legally constructed wetlands, but they appear to apply to all wetlands.

Instead of adding in exceptions, we should be doing all we can to preserve and protect our wetlands, especially in light of the anticipated adverse impacts of sea-level rise on wetlands. At a minimum, the LCP update should offer protections at least as strong as the protections in the Certified LCP, rather than weakening existing policy.

2. The LUP should be further modified so that stream buffer adjustments are not too broad.

EAC continues to advocate that in order to ensure that exceptions to stream buffer requirements do not become commonplace, language should be added to policies for *Stream Buffer Adjustments and Exceptions* (C-BIO-25) so that the proposed exceptions to the 100-foot buffer requirement are limited.¹⁵

Proposed exceptions for stream buffer adjustments should be evaluated taking into account all contiguous lots under common ownership. Buffer adjustments should only be considered when the proposed development is a Principally Permitted Use ("PPU"), and a public hearing should be required for any proposed buffer adjustment.

3. The LUP and/or the IP should include language that is consistent with Section 30240 of the Act and state that residential development is prohibited in ESHAs and wetlands because residential development is not a "resource dependent use."

¹⁴ See 2016 Staff Report at page 68.

¹⁵ See pages 12-13 EAC's 7/7/16 letter to the Commission for specific recommended language.

The update is missing a clear statement that the LCP provisions are designed to ensure consistency with Section 30240 of the Act or that residential development is prohibited in Environmentally Sensitive Habitat Areas (“ESHAs”) and wetlands, because residential development is not a “resource dependent use.”¹⁶ This reference is found in the Certified LCP¹⁷ and in the 2016 Staff Report¹⁸, but it should be addressed in the LCP itself. This is important because after the LCP is certified, it is the LCP and not the Act that governs implementation of the protections for ESHAs and wetlands.¹⁹

B. Implementation Plan

1. The IP should be further modified to include specific enforceable standards for biological and water resources and buffer reductions should be further narrowed.

EAC continues to urge the Commission to include specific, enforceable environmental standards to protect biological and water resources.²⁰ Enforceable standards are necessary to ensure long-term ESHA protections and habitat viability and to implement LUP policies.

In regard to IP Section 22.64.050.A.1.c.(10), the reviewing authority should evaluate eligibility for a buffer reduction only when all contiguous parcels under common ownership are considered when making an assessment of unavailability.

2. Regarding wells, EAC supports changes to certain IP sections, which are necessary for the protection of groundwater resources.

Regarding wells, EAC supports Commission staff’s Suggested Modifications to the following IP sections, which are necessary for the protection of groundwater resources: 22.64.080(A)(1), 22.64.140(A)(1.b), 22.64.140(A)(1)(b.3).

IV. Agriculture

A. Land Use Plan

1. EAC supports the Commission staff’s definition of ongoing agriculture, included in the Suggested Modifications and originally presented to the Commission in 2015.

¹⁶ See Coastal Act Section 30240(a).

¹⁷ See Unit I of the Certified LCP at page 31.

¹⁸ See 2016 Staff Report at page 68.

¹⁹ See *McAllister v. California Coastal Commission* (2008), 169 Cal.App.4th 912, 926-930, 931-932

²⁰ Please revise IP Section 22.64.050(B) to include specific enforceable standards.

EAC supports the Commission staff's definition of ongoing agriculture, included in the Suggested Modifications and originally presented to the Commission in 2015.²¹ This definition is a reasonable and balanced way of protecting our farmers and agricultural lands in the face of growing economic and climate challenges.

EAC supports the Commission staff's definition of ongoing agriculture, because it provides protection for coastal resources, such as land and water. The definition provides flexibility for farmers in several areas, while requiring coastal development permits ("CDPs") for agricultural use changes that may have greater coastal resource impacts, which do not qualify for a de minimis waiver. For example, the conversion of grazing crops to crop production still requires a CDP. This makes sense since this type of change involves ripping the land, certain coastal areas are best suited to grazing, and growing crops is much more water-intensive than grazing. Viticulture, which has huge water impacts and involves the potential development of both new water sources and terracing, also requires a CDP. However, the Categorical Exclusion Orders E-81-2 and E-81-6 expressly exclude some of the agricultural activities that under the proposed definition would require a CDP, such as viticulture and water impoundment.

In comparing the update to the Certified LCP, it is important to note that the update provides new flexibility and procedural streamlining for agriculture. Unless categorically excluded, the Certified LCP *currently* requires a CDP for agricultural activities that constitute a change in the intensity of use of land or water, and many routine agricultural activities are already covered by the County's existing Exclusion Orders²². An example of where the update provides increased flexibility, under the Certified LCP, grading currently requires a CDP and under Commission staff's proposed definition of ongoing agriculture, grading would qualify for a de minimis waiver.

The Suggested Modifications succeed in providing a streamlined and balanced approach to the definition of ongoing agriculture that protects coastal resources and allows agricultural operators the continued flexibility to manage their land as markets and other factors change.

²¹ The Commission's April 2015 staff report states (on page 88) that:
"What 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."

²² See Exclusion Orders E-81-2 and E-81-6

2. Some further modifications are needed to the LUP Agriculture chapter.

Some further modifications are needed to ensure that the LUP and IP related to agriculture are consistent with the Act. Recommended revisions are detailed below.

For clarity, a definition of common ownership should be added related to policies C-AG-2.A and C-AG-5.A. (*also see* Attachment 1).

In policy C-AG-9.A, the word “primarily” should be deleted.

a) The LCP update deems new commercial (retail sales) and industrial (agricultural processing) uses on C-APZ lands without the requirement and/or finding that development be “necessary for” agricultural production.

The LCP update deems all new farmhouses, first intergenerational houses, retail sales facilities, commercial processing facilities, and farmworker housing as “necessary for” agricultural viability without findings to support that result. Language should be added to the LUP and IP update that makes it clear that the “necessary for” requirement should be part of the County’s mandatory findings to issue a CDP. The County should be required to make an affirmative statement that the proposed project is “necessary for” continued agricultural production as part of their CDP analysis. A case-by-case determination is logical to ensure, for example that there is a nexus between what is sold and what is produced on a farm and that these findings are consistent with the Act.

b) LUP Program C-AG-2.b. should be deleted, because it is inconsistent with the Act.

Program C-AG-2.b. should be deleted, because it is inconsistent with the Act. Furthermore, the County Planning Commission saw this policy for the first time at the September 26, 2016 Planning Commission hearing. Planning Commissioner, Wade B. Holland made the following statement at the Planning Commission hearing to consider the County’s LCP amendments and provide recommendations to the County Board of Supervisors:

New program appeared...2-AG-2-b LUP Page 13. That clearly is something we never discussed...I find that program quite alarming...This is the option to Secure Affirmative Easements...It’s just a program but it’s really the camel’s nose under the tent’s flap. We are going to let people build non-agriculturally, study the possibility of people building non-agricultural residences on agricultural lands. This is something that never came to the [Planning] Commission, [it] is brand new.²³

²³ Marin County Planning Commission hearing, September 26, 2016, Video Record at 01:08:23, *available at*: <http://www.marincounty.org/depts/cd/divisions/planning/boards-commissions-and-public-hearings/planning-commission-hearings-page>

Mr. Holland's statement is concerning as it is an example of the lack of public participation, where new programs and policies have been added without adequate public review or involvement over the last four years.

B. Implementation Plan

1. The proposed LCP update includes many new entitlements for agriculture, as well as streamlining measures. However, these new entitlements must be balanced by public hearings and/or no fee appeals in order to assure the widest opportunity for public participation.

The LCP update provides new streamlining for agricultural development, in addition to the existing Categorical Exclusion Order provisions, reducing the overall burden on agriculture while providing new entitlements for housing, processing, sales. EAC is concerned by the increased agricultural entitlements in the LCP amendment without adequate opportunities for public participation or review.

The Coastal Act requires the widest opportunity for public participation²⁴, but the proposed LCP amendment drastically limits public participation, including the public's ability to review and appeal PPUs without paying a burdensome fee. The new agricultural entitlements defined as PPUs allow for agricultural operations to construct retail spaces up to 500 square feet, processing facilities up to 5,000 square feet, and farmhouses up to 8,000 square feet. Many of these new developments will not be subject to public hearings or appeal without a high fee. This significantly limits the public's opportunity to voice concerns or question development activities in our communities.

The addition of new entitlements and streamlining procedures must be balanced with public hearings or no fee appeals. While local appeals are permitted in certain cases, the appeal fees are very high. In other words, the proposed policies limit maximum public participation by requiring individuals and organizations to "pay to be heard" at a cost of between \$630 and \$1,250. Furthermore, the Community Development Agency's staff report for an appeal hearing would necessarily support an administrative decision and would likely handicap any public appeal.

Furthermore, public hearing waivers are already available for permitted uses, which is a new streamlining procedure. Hearings should be required for farmhouses, intergenerational homes, and farmworker housing. All other large residential development outside of the C-APZ district requires hearings. Why would the C-APZ be any different?

Public hearings, challenge procedures, and no-fee appeals are critical to uphold the Act's public participation mandate and cannot be diluted. Development proposals must be visible and

²⁴ Coastal Act Section 30006

the public must have the opportunity to challenge development when necessary. If a decision is appealed, then there will likely be an environmental reason behind the appeal.

a) Design Review should be included for Agricultural Dwelling Units and Retail Sales Facilities/Farm Stands.

The Suggested Modifications include language that requires Design Review for agricultural processing. However, for consistency, similar language should be added to the IP sections for both agricultural dwelling units and retail sales facilities/farm stands. Agricultural dwelling units include intergenerational houses, farmhouses, and agricultural worker housing. The increased agricultural housing entitlements should be balanced by Design Review provisions. An IP section such as 22.32.026.C. (*Agricultural Processing Uses*) should be added to IP Sections 22.32.025 (*Farmhouse*), 22.32.027 (*Agricultural Retail Sales Facilities/Farm Stands*), 22.32.028 (*Agricultural Worker Housing*), and 22.32.02x (*Intergenerational Homes*).

b) A clear distinction should be made between “agricultural use” and agricultural production.”

Coastal Act Section 30241 requires that prime agricultural land be maintained in agricultural production and other development be concentrated on non-prime land. To be consistent with Section 30241 a clear distinction should be made between “agricultural use” and “agricultural production,” because agricultural use is broader than production. Two examples are provided below to illustrate this point.

22.65.040 – C-APZ Zoning District Standards

A. Purpose. This Section provides additional development standards for the C-APZ zoning district designed to preserve productive lands for agricultural **use**, and ensure that development is accessory and incidental to, in support of, and compatible with agricultural production. “Appurtenant and necessary for agricultural production” means that the proposed development is needed to sustain an efficient and productive agricultural operation and to ensure continued agricultural viability. (emphasis added).

In the above IP Section, the bolded word “use” should instead say “production.”

22.65.050 – C-ARP Zoning District Standards

A. Purpose. This Section provides development standards for the C-ARP zoning district designed to preserve productive lands for agricultural **use** through the clustering of allowed development. (emphasis added).

The above IP Section is another example where the word use should be changed to production.

c) The IP should be modified so that a farm tract can only have one retail sales facility PPU and one processing facility PPU

As an additional point, the IP needs to be revised so that a farm tract can only have one retail sales facility PPU and one processing facility PPU, so there would be only one retail sales facility PPU and one processing facility PPU per tract even with multiple operators.

V. Community Character

A. Land Use Plan and Implementation Plan

EAC is concerned by the new commercial core zoning requirements. West Marin's coastal village character is threatened by the new Coastal Visitor Commercial Residential Zoning (C-VCR), which would make commercial use the PPU in the entire district. We need to expand residential opportunities, not the commercial use of our hometowns. EAC supports the County's approach of having commercial as the PPU in the core with the residential PPU outside the core, to be addressed in a later amendment to the LUP and the IP.

In addition, regarding community centers, EAC recommends that a revision to the IP be made so that it is clear that in a residential district, community centers be operated by a non-profit and have open-access standards.

VI. Visual Resources

A. Land Use Plan & Implementation Plan

The protection of visual resources is fundamental to the Act²⁵, and the update should uphold these protections. As discussed below, EAC recommends that the IP includes a definition of "significant public view" as certified by the Commission in the 2014 LUP. However, this will not address the lack of visual resource protection related to Categorical Exclusion Orders.

1. The LUP satisfactorily defines significant views as including views both to and along the ocean and scenic coastal areas 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.

C-DES-2 Protection of Visual Resources.

Development shall be sited and designed to **protect significant views, including views both to and along the ocean and scenic coastal areas 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 of this policy is the protection of **significant** public views rather than coastal views from private residential areas (emphasis added).

²⁵ Coastal Act Section 30251

The intent of the last sentence in C-DES-2 was to distinguish public views, which are protected by Section 30251, and private views, which are not. The word “significant” in that final sentence is redundant and confusing and should be removed, consistent with Section 30251.

2. The IP, however, uses, but does not define, “significant public views.” We recommend that Chapter 22.130 expressly include the definition of “significant public view” as certified by the Commission in the 2014 LUP.

22.65.040.C.4.2 Agricultural Dwelling Unit Impacts and Agriculture Use

“Any proposed agricultural dwelling unit and related development ... shall be clustered with existing structures and development on the farm, pursuant to Section 22.65.040(C)(1)(d), and shall be sited and designed to protect **significant public views**”

22.32.165.C.7 Telecommunications Facilities

“New telecommunications facilities shall protect **significant public views** as required by Policy C-DES-2.”

22.60.010 Purpose and Applicability of Coastal Regulations

This Article implements applicable provisions of the Coastal Act and the Marin County Local Coastal Program (LCP) ... This Article implements applicable provisions of the Coastal Act and the Marin County Local Coastal Program (LCP) ... **protect significant public views** ...

2.64.045.4.A Property Development and Use Standards

In all cases, such fences, walls, trellises, or other similar structures shall only be allowed so long as such structures adequately protect **significant public views**

22.64.060.B.3.b Environmental Hazards

Where development consists solely of raising an existing structure by the minimum amount necessary to meet these flood elevation standards, a resulting building height that would exceed the zoning district height maximum may be allowed if the additional height does not adversely affect **significant public views** or community character

22.64.140.A.19 Public Facilities and Services – Telecommunications Facilities

Telecommunications facilities. Ensure through siting, co-location, “stealth” design, and other measures that telecommunications facilities are designed and constructed to protect coastal resources, including **significant public views**, ...

3. However, Categorical Exclusion Orders that exclude agricultural development (barns, ... other necessary buildings, etc.) fail to include conditions that require that they not adversely affect public views.

The below examples from Categorical Exclusion Orders require an update:

“This Commission further finds that agricultural activities are a major contributor to the scenic resources of the coastal zone, and that the excluded developments will serve to enhance that resource. “ (E-81-6, p. 4; E-81-6, Page Ten;)

“Development pursuant this exclusion shall conform, unless otherwise limited by this order, to the zoning in effect in Marin County on the date this this order is adopted by the Commission or zoning adopted by the County pursuant to the LCP certified by the Commission.” (E-81-06, Page Four)

“Development under this exclusion shall conform with the County of Marin Local Coastal Program in effect on the date this exclusion is adopted by the Commission ...” (E-82-6, p. 7)

The 2016 Staff Report supports this finding on page 61:

excludable development must still be found consistent with the zoning in effect at the time of the orders’ adoption (meaning the 1982 certified LCP). As such in order for development to be excluded, it would need to meet the 1982 certified LCP’s requirements that development be clustered on no more than five percent of the gross acreage, to the extent feasible; be outside of wetlands, streams and their 100-foot buffers; and have adequate water supply, among other requirements.

VII. Summary

In sum, EAC urges you to adopt the Suggested Modifications while making additional changes as specified in this letter so that the LCP update is a comprehensive forward-thinking document that will fulfill the Act’s intent of coastal resource protection, the widest opportunity for public participation and maximum public coastal access.

Thank you for your consideration of our continued concerns.

Respectfully,


Morgan Patton
Executive Director


Ashley Eagle-Gibbs
Conservation Director

W10a
LCP-2-MAR-15-0029-1
EAC Comments on Agenda Item W10a
October 28, 2016

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