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July 12, 2021

Marin County Board of Supervisors  
3501 Civic Center Drive, Suite 329  
San Rafael, CA 94903

*Via Electronic Mail:*                    *BOS@marincounty.org*  
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Re: Agenda Item 17: Marin County Local Coastal Program Amendment

Dear Supervisors,

The Environmental Action Committee of West Marin (EAC) and Surfrider Foundation submit the following comments regarding the consideration of placing previously certified Marin County (County) Local Coastal Program (LCP) amendments into effect.

Since 2008, EAC has been actively involved in the County's LCP amendment process, participating in both County and California Coastal Commission (Coastal Commission) public hearings. Our mission is to protect and sustain the unique lands, waters, and biodiversity of West Marin. Surfrider is a non-profit grassroots organization dedicated to the protection and enjoyment of our world's oceans, waves, and beaches for all people and is fueled by a powerful network of activists. Surfrider's Marin County Chapter has also been extensively involved with the Marin LCP amendment process.

We are writing to express our concerns with the proposal by the Community Development Agency (CDA) to the County Board of Supervisors (Board) to advance the LCP amendments without an updated environmental hazards (hazards) chapter.

**We are supportive of the LCP amendment that our communities have worked so hard to develop. However, we do not support this proposal by the CDA to finalize the LCP amendment with outdated hazards policies, as it raises considerable implementation issues and questions on this process.**

Our letter expands on the following six main concerns:

- 1) It is unacceptable to finalize the LCP amendment with policies from the 1980s.
- 2) Why not implement the full LCP amendment as a complete package in the spring 2022?
- 3) Using 1981 hazards policies will result in inconsistencies and problematic implementation.
- 4) The 1981 policies will not enhance the safety of residents in potentially hazardous areas, and interpretation fails to guide development in a manner that does not exacerbate hazards.
- 5) Procedural issues
- 6) Request to edit draft resolution language

In EAC's last letter to the BOS on the LCP topic (November 18, 2018), we reiterated the importance of completing the critical hazards chapters in saying "Our greatest focus is on the overriding importance of Marin County working with the Coastal Commission and stakeholders on Environmental Hazards."

**1) It is Unacceptable That the County Would Agree to Finalize Their LCP Amendment With an Environmental Hazards Chapter That was Written Forty Years ago (In 1981).<sup>1</sup>**

In 2008, the CDA undertook an enormous task when it decided to update the LCP comprehensively. Today, after 13 years of effort, the County does not have a newly certified LCP. Yet the CDA is proposing yet another delay in a full update with the proposal to place into effect the LCP amendments that were certified by the Coastal Commission in 2016 and 2019 without an updated hazards chapter.

The hazards chapter is "intended to enhance the safety of residents in potentially hazardous areas, while allowing carefully designed and sited development that would not exacerbate hazards."<sup>2</sup>

The public has engaged and supported the County in their efforts to update the LCP and include a proactive and comprehensive update to the hazards chapter in the face of a changing climate. Unfortunately, the timeline for this critical update has been fraught with six years of delays, withdrawals, and a lack of urgency, resulting in a loss of trust in this process and concerns with transparency and accountability. Examples of County-caused delays related to the hazards process follow:

**2015 Environmental Hazards Delayed due to C-SMART Effort**

In 2015, the CDA proposed the Board withhold the resubmittal of hazards at that time to, "ensure that Environmental Hazards policies ultimately reflect the findings of the C-SMART effort and provide clear, reasonable, and fair provisions for guiding development in areas subject to hazards."<sup>3</sup> While C-SMART was a valuable process, which EAC participated in, this is the first example of a County-caused delay related to hazards. LCPs are supposed to guide development in the Coastal Zone and plan for hazards regardless of other perhaps related planning processes.

**2016 - 2017 Environmental Hazards Withdrawn**

At the November 2, 2016 Coastal Commission hearing, the County withdrew hazards, planning to come back in the first half of next year (2017) per former Supervisor and Commissioner Steve Kinsey.<sup>4</sup> Following the Commission hearing, a requirement was created that the County come

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<sup>1</sup> Please note this letter typically refers to the Existing Certified LCP as 1981 (the year it was written). We understand it is also referred to as the 1982 Certified LCP.

<sup>2</sup> Staff Report, *Resubmittal of Local Coastal Program - Land Use Plan Amendments (LUPA) and Implementation Program Amendments (IPA) to California Coastal Commission*, Marin County Community Development Agency, Page 5, August 25, 2015, available at:

[www.marincounty.org/-/media/files/departments/cd/planning/local-coastal/lcp-amendment/82515-board-letter.pdf?la=en](http://www.marincounty.org/-/media/files/departments/cd/planning/local-coastal/lcp-amendment/82515-board-letter.pdf?la=en)

<sup>3</sup> *Id.*

<sup>4</sup> See Coastal Commission hearing video, November 2, 2016, available at: <https://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2016-11-02>, starting at 6:34.

back by September 29, 2017 with hazards.<sup>5</sup> On July 26, 2017, rather than resubmitting, the County officially withdrew hazards. The County withdrew the hazards sections with the intention to re-submit them in 2018, citing no practical way of finishing discussions and holding a stakeholder meeting before the September 29th deadline for Coastal Commission action.

### **2017 - 2019 The County Makes no Progress on Environmental Hazards, Instead Prioritizing Small Changes**

Shortly after the 2016 Commission hearing, an extended discussion between the County and the Coastal Commission staff over former Commissioner Kinsey's ad-hoc modifications of the definition to "ongoing agriculture" developed. During that time, the primary focus of the County was to challenge the Commission's interpretations of this language, further delaying work on hazards. The County failed to initiate meetings with local stakeholders and environmental groups to discuss hazards revisions. Finally, in April 2018, the County accepted some of the LCP amendments (1, 2, and 6), delaying approval of amendment 3 (agriculture) and 7 (definitions).

Throughout this entire process, EAC advocated to move forward with the amendments and focus on hazards. The timeline in the staff presentation indicated that the staff would finalize amendments 3 and 7 before the end of 2018 and plan to work on hazards in 2019.

In October 2018, the County's Planning Commission moved forward with amendments 3 and 7, making some small changes. The Board held two hearings on these amendments, and they voted unanimously in December to move the LCP amendments to the Coastal Commission with revisions that include supportive language for carbon sequestration and clarifying language for the definition of irrigation. Then in 2019, the Coastal Commission certified all of the non-hazards amendments.

### **2020-2021 Additional Delays in Working on Hazards**

The County formed a Coastal Communities Working Group in 2020 comprised primarily of village associations with a couple of NGOs including EAC and Surfrider; however, the environmental hazards sections were not meaningfully raised until April 22, 2021.

**During these five years, coastal Marin County has already experienced the impacts of a changing climate with rising sea levels, severe storms, flooding, erosion, increased wildfire risks, and drought. EAC has continuously advocated moving the LCP Amendment process forward, so there could be an urgent focus on the development of an environmental hazards chapter that includes the best available science and sea level rise projections.**

The proposal before the Board on July 13th to accept a convoluted LCP amendment package with a 40-year old hazards chapter comes alongside yet another promise to work on updating hazards within a year to complete the process.

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<sup>5</sup> STAFF REPORT ADDENDUM for F11a Marin County Local Coastal Program Amendment Number LCP-2-MAR-15-0029-1 Revised Findings, Page 3, July 13, 2017, *available at*: <https://www.marincounty.org/-/media/files/departments/cd/planning/local-coastal/newdocs/ccc-revised-findings-staff-report-and-addendum-71417.pdf?la=en>

We are not encouraged by the County's schedule for completing hazards (included as Attachment 4 to the Staff Report: "Schedule: Environmental Hazard Policies LCPA").<sup>6</sup> We are not assured that the timeline is realistic based on the last six years of missed deadlines.

## **2) Why Not Implement the Entire Update in Spring 2022?**

We also have concerns related to the LCP amendment implementation process. The Board's proposed action in July would cause two phases of implementation, rather than one clean rollout that would occur if the County first completes environmental hazards and then implements a fully updated LCP.

The County's proposed process – first implement a hybrid LCP with 1981 hazards followed by a fully updated LCP with updated hazards – is likely to cost more, use more staff time, and cause more confusion to the public regarding these new procedures. Rolling out a comprehensive LCP update is a complicated process that will require significant public education and staff training that will need funding and time to develop materials and conduct public outreach. The CDA would need months to prepare for this type of implementation plan to ensure compliance with the new policies, and it seems wasteful and counterproductive to do this process twice.

We also point out by approving the remaining amendments in advance of submitting updated hazards will only shave off a few months at most. If the Board approves the action July 13, 2021, the Coastal Commission's review and likely public hearing will take a couple of months. Yet the County's proposed timeline for hazards ("Schedule: Environmental Hazard Policies LCPA") culminates with submission to the Coastal Commission by the end of this year or early 2022, meaning the full LCP could be made available in early to mid-2022.

Dedicating CDA resources to engaging with the public in a robust stakeholder process to address the challenges in the hazards chapter should be the priority, rather than implementation of the non-hazards policies, which will also take significant resources. We understand the CDA also has lost two LCP-update and resiliency planning staff members recently.

We are unclear why the CDA is proposing this convoluted and wasteful process, rather than completing hazards and the full update by next year, resulting in only one implementation.

The County has received significant funding to complete hazards over the years, including a grant from the Coastal Commission, and these sections should be completed as soon as possible. The certification of the non-hazards sections of the LCP creates a disincentive for the County to complete the hazards chapter and allows continued interpretation of 1980s policies.

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<sup>6</sup> Note the Staff Report incorrectly refers to this Attachment 8.

### **3) Using 1981 Hazards Policies will Result in Inconsistencies and Problematic Implementation.**

The 2019 LUP and IP contain several references to draft updated environmental hazards policies that were never finalized and do not exist, for example: 2019 Land Use Policy C-DES-5 includes a reference to C-EH-5 (Standards for Shoreline Development).<sup>7</sup>

The 1981 hazards chapter does not address our current risk of wildfire, as EAC indicated to the CDA and Marin County Fire in a letter dated June 29, 2021. The 2019 IP includes protections for terrestrial environmentally sensitive habitat area (ESHA).<sup>8</sup> This policy intended that a corresponding environmental hazards chapter would be included that contained policies that compliment wildfire defensible space and vegetation management allowances. But under the current proposal – updated ESHA protection while relying on 1981 hazards policy – removal of any vegetation in an ESHA or its buffer area would be prohibited. Without an updated hazards chapter or a County Forest Health and Fire Resilience Public Works Plan this will lead to conflicts with wildfire preparedness.

Implementing these amendments without the accompanying updated hazards policies will lead to non-compliance and public confusion while our fire teams are working to implement defensible space initiatives and launch a public information campaign for vegetation management.

Additional conflicts may be presented by this process, which may require a closer review, including potential conflicts around Easkoot Creek and the siting of affordable housing.

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<sup>7</sup> See p. 52 of PDF of County Staff Report Attachment, 2019 Land Use Plan.

<sup>8</sup> Please note EAC strongly supports the designation of Terrestrial ESHA for the protection of our unique coastal resources. We are just as strongly committed to the creation of policies that mitigate environmental hazards, such as wildfires, to protect those resources in balance with the health and safety of our communities.

The amended policies include the designation of a new type of Environmentally Sensitive Habitat Area (ESHA), called Terrestrial ESHA. Terrestrial ESHA is defined as: "...habitats of plant and animal species listed under the Federal or California Endangered Species Act and existing populations of the plants listed as 1b or 2 by the California Native Plant Society; coastal dunes; groves of trees that provide colonial nesting and roosting habitat for butterflies or other wildlife; and riparian vegetation that is not associated with watercourse." LCP Implementation Plan, Section 22.130.30, [Page 156], available at: <https://www.marincounty.org/-/media/files/departments/cd/planning/local-coastal/2021/marin-county-2019-certified-implementing-program-except-envhazards.pdf?la=en>.

The policies also establish a protective buffer of 50 feet around any Terrestrial ESHA.

Identification of Terrestrial ESHA will require site surveys by qualified biologists. Removal of vegetation from a Terrestrial ESHA or its buffer area is generally prohibited. As a consequence, the creation of defensible space will become more complicated including permit requirements, and, in some instances, may be entirely unlawful.

**4) The 1981 Policies will not Enhance the Safety of Residents in Potentially Hazardous Areas, and Interpretation Fails to Guide Development in a Manner That Does not Exacerbate Hazards.**

1981 policies fail to address current-day planning and development challenges, including sea level rise, increased frequency of severe storm events, flooding, and erosion. During EAC’s participation in the April 2021 Coastal Communities Working Group, we were concerned to hear the CDA Planning Manager explain that the County planners broadly interpret the existing 1981 policies and could continue to do so.

This is extremely problematic, as it leads to inconsistent interpretation. The policies of the hazards chapter should provide a framework of guidance for development in potentially hazardous areas and include a vision of the future for those areas. This is why it is essential that the policies are updated and include the current information on rising sea levels, emergent groundwater flooding concerns, and flood maps to inform where and how development occurs in our sensitive coastal areas.

We understand there have been numerous appeals to date on proposed development projects in the Coastal Zone. Inconsistent application of permit requirements leads to questions of fairness, and may open County planning decisions to legal challenges by permit applicants.

**5) Procedural Issues**

We also note that the package for approval (Attachment to Staff Report) does not include the <sup>9</sup> Categorical Exclusions, which are still in effect. The draft resolution also appears to be defective, because it does not fulfill the requirements of 14 CCR § 13544.

**6) Request to Edit Draft Resolution Language**

We recommend two revisions to the resolution in paragraph 5 as outline below to read:

*WHEREAS, ~~upon the advice of Commission staff the current~~ 1981/1982 certified environmental hazards policies and implementing measures will serve as the effective policies until such time as revised environmental hazard provisions are submitted to and certified by the Commission.*

- a) Strike the reference to the Coastal Commission's advice.
- b) Strike “current” and replace with “1981/1982” before “current certified environmental hazards policies” to make it clear to the public what documents will be used going forward.

**Conclusion**

In closing, the County lacks comprehensive policies to adapt to the changing conditions presented by climate change including sea level rise, storm surges, and flooding. Despite the County’s progressive

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<sup>9</sup> 2019–2020 Marin County Civil Grand Jury, 2020, pp. 1-4; 9-18.

Re. Agenda Item Agenda Item 17: Marin County Local Coastal Program Amendment

stance toward climate change mitigation and adaptation, a centralized, comprehensive, and countywide approach to addressing the climate threats is still needed.

*The staff report calls Marin County a “national leader in coastal adaptation planning,” but how can Marin be a national leader with hazards policies written in 1981? As the County moves forward with large-scale green infrastructure projects to protect property and beaches, the missing hazards policies will lack a foundational legal framework for the projects and result in a piecemeal approach to development in the Coastal Zone rather than a long-term plan and vision for a future that seeks to adapt to changing climate conditions.*

EAC and Surfrider ask your Board to continue the County’s focus on hazards and complete a full LCP submission update with one implementation process, as that LCP update was initially proposed. Thank you for your work on this important issue and your consideration of our comments.

Sincerely,

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Bridger Mitchell  
EAC Board President

Mandy Sackett  
California Policy Coordinator  
Surfrider Foundation

cc: Supervisor Dennis Rodoni, Marin County  
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