

Alliance of Coastal Marin Villages

*Bolinas, Dillon Beach, Inverness, Inverness Park, Marshall, Muir Beach, Olema,
Point Reyes Station, Stinson Beach, Tomales*

September 3, 2021

VIA EMAIL

Long-Range Planning Department
Board of Supervisors' Subcommittee on the Local Coastal Program
County of Marin
3501 Civic Center Drive, Suite 308
San Rafael, California 94903

Re: August 18, 2021 Revised Draft of the Local Coastal Program Environmental Hazards Policies

Dear Long-Range Planning Staff and Members of the Board of Supervisors' Subcommittee on the Local Coastal Program:

On behalf of the Alliance of Coastal Marin Villages ("ACMV"), we submit this letter to express our appreciation for the work accomplished by the Long-Range Planning staff on the revised draft of the Environmental Hazards ("EH") policies, but also to express the grave and unanimous concern of the coastal villages of West Marin about four key provisions therein.

We are very grateful for the excellent work done by County staff -- as reflected in the August 18th revised draft EH policies -- to address concerns previously expressed by the ACMV as well as other local stakeholders. We recognize that this good work was accomplished in spite of the regrettable losses of key and knowledgeable County staff earlier this year. We particularly commend and hope to see preserved in the final draft form of EH policies the revisions and additions made to:

- Eliminate "redevelopment" from the draft, which was a source of confusion as to various permitting requirements and which conflicted with terms such as "substantial improvement".
- Provide new and revised provisions that distinguish between maintenance and repair, and new development, the latter of which understandably has stricter permitting requirements.
- Clarify that determining whether the cumulative effect of improvements amounts to new development will be done in terms of market value, with clear dating; this will be very helpful in making such calculations going forward and will likely result in increased permitting compliance.
- Specify that beach nourishment, dredged sediment management, septic tank systems, constructed dunes, and piers/piles, caissons, and associated foundation structures designed and used as architectural foundations are not considered shoreline protection devices.
- Provide a new provision recognizing that on the East Shore of Tomales Bay, repair and reconstruction of historical shoreline protection devices built to protect the railroad and/or highway many years ago and that serve to protect Highway 1, access roads and/or the Marshall Community Wastewater system should not be subject to mitigation requirements where there are no significant new impacts to sand supply.

We also are grateful for this further opportunity to submit comments on the August 18th revised draft EH policies as we wish to reiterate in written form certain comments made during a meeting with Long-Range Planning Staff last Monday, August 23rd with regard to the revised policies:

(1) First, we strongly object to the provisions of revised draft Section C-EH-15(2), which purports to ban shoreline protection devices (“SPDs”) serving “only a single residential structure”. County staff indicated this provision is intended to ban both the construction of such SPDs and the maintenance of such structures, including historic SPDs which have protected many homes (and nearby other coastal resources) in coastal Marin for decades. We believe the revised draft Section C-EH-15 (2), quote below, unfairly and illegally strips single-family homes of protection clearly allowed by the Coastal Act:

“C-EH-15 (2): Individual Shoreline Protective Devices. No shoreline protective device serving only a single residential structure shall be permitted.”

Over the course of the 13+ years during which the Marin LCP update has been debated, such a provision has never previously been proposed, and its rationale and purpose are entirely unclear. That said, the effect of this provision is obvious: the premature destruction of many Marin County residences – individual homes that could be protected for many decades by the installation of appropriately sited and constructed SPDs, or by the maintenance of existing SPDs, well before these residences would be lost to sea-level rise.

Moreover, revised draft Section C-EH-15(2) is plainly contrary to Section 30235 of the Coastal Act, quoted below, which contains no exclusion for the protection of single-family homes and which explicitly contradicts the proposed language by stating that SPDs **shall be permitted** when required to protect existing structures (again, there is no “carve out” for single residential structures):

“Section 30235 Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. [...]”

Revised draft Section C-EH-15(2) is not simply a more restrictive version of a restriction already found in the Coastal Act, as was suggested by Long-Range County Planning staff during our August 23rd meeting. To the contrary, the Coastal Act in Section 30235 explicitly grants the right to owners of existing structures to construct and maintain SPDs when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and that right cannot be revoked by the County at its sole discretion. Marin County should not adopt a policy in its Local Coastal Plan update that directly contradicts California law. Marin County should not adopt a radically new policy at the proverbial “eleventh hour” of the Local Coastal Plan update process that will result in the near-term foreseeable and premature loss of homes when there is a housing crisis, a lack of affordable housing, and a threat to community viability in West Marin.

Coastal communities are coastal resources and deserve to be recognized and protected as such (*see item 4, below*). Our neighbors in Sonoma County, the City and County of San Francisco, Half Moon Bay and San Mateo County have not adopted or proposed provisions to remove protections from their communities’ single-family residences; rather, they have preserved these rights for their coastal homeowners in their updated LCPs and Marin County should do so as well. Revised draft Section C-EH-15(2) should be deleted.

(2) Second, the requirement in revised draft Section C-EH-15 that SPDs must be monitored by an engineer or engineering geologist every five years beginning five years from the time of completion is excessive in terms of both cost and usefulness of the information given the life expectancy of an engineered and properly- permitted SPD.

Bulkheads have been in place on the Marin County coastline for at least 60 – 100 years (and some date back to when the railroad was first built), and new, structurally-engineered and well-constructed (or repaired) SPDs today, properly designed to eliminate or mitigate adverse impacts on local shoreline supply, should be durable enough to last just as long. It is unnecessary and extremely expensive to require structurally sound, newly constructed devices to be re-evaluated by an engineer just five years after they are built or repaired and then again just five years later, notwithstanding the most aggressive sea-level-rise projections. County staff did not offer any engineering-based explanation for the proposed five-year reevaluation timeframe and it therefore appears to be somewhat arbitrary.

We respectfully recommend a non-arbitrary 20-year evaluation schedule that is more consistent with the required engineering and other requirements for such structures and that would conform with the proposed 20-year mitigation evaluation frequency outlined in C-EH-15(3); it makes much more sense to require an engineer's evaluation at the same time. But, in the spirit of compromise, an alternative suggestion could be a ten-year monitoring schedule – beginning ten years after completion and then at ten-year intervals thereafter – such a schedule would still be unnecessarily excessive, but it could be a compromise between a needlessly aggressive and costly five-year schedule, and would more appropriately comport with the mitigation requirements of the chapter and with the durability of properly engineered SPDs.

(3) Third, it was acknowledged during our meeting on August 23rd that there are inherent inconsistencies within the revised draft EH policies concerning the definition of “Existing Structure” that should be resolved; for example the date April 3, 1982 used to define existing structures in C-EH-15 (i.e., those structures entitled to shoreline protection devices), whereas no such date appears in the Definitions section at the outset of the revised draft EH policies, which provides the following two options for consideration:

“Existing Structure” – 2 Options:

- (1) A legal structure in existence as of the time the Environmental Hazards Local Coastal Program is most recently certified.*
- (2) A structure legally constructed prior to the most recent effective date of the Marin County Local Coastal Program, and not Substantially Improved since then.*

And, in the “Repair and Maintenance” definition, the specific date of the certification of the EH policies is used:

“Repair and Maintenance (coastal)”: Consistent with the County Floodplain Management Ordinance, Marin County Code, Chapter 23.09, unless destroyed by natural disaster, repair and maintenance means the repair, reconstruction, or improvement of a structure, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure, the cumulative cost of which is less than fifty percent of the market value of the structure either: •(A) Before the improvement or repair is started; or •(B) If the structure has been damaged and is being restored, before the damage. Such construction costs shall be tracked cumulatively and in perpetuity from the date of certification of this LCP Hazards Amendment (Add Date Here). Future LCP Amendments shall not change the starting date for the cumulative tracking of construction.

While several of our members would prefer the “plain English” definition of “existing structure”, which is simply a structure that exists, it seems that confusion will ensue if the definition of “existing structure” is not specifically defined with reference to a specific date which, in this case, should be consistent with the Repair and Maintenance section. The date for an “existing structure” certainly should not be set arbitrarily back to 1982 -- as this would remove protections for a significant number of homeowners whose homes were improved or rebuilt in the past

40 years – but instead, appropriate to the current LCP update process, to the most recent effective date of the certification of “this LCP Hazards Amendment (Add Date Here).”

(4) Fourth, “coastal communities” should be added to the definition of “Coastal Resources” in the Marin County LCP. As we discussed during our August 23rd meeting, “coastal communities” should be added to the definition of “Coastal Resources” in order to be consistent with the Coastal Act’s definition of “Sensitive Coastal Resource Areas” as follows:

“Section 30116: “Sensitive coastal resource areas” means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. “Sensitive coastal resource areas” include the following:

.....

- (e) Special communities or neighborhoods which are significant visitor destination areas.
- (f) Areas that provide existing coastal housing or recreational opportunities for low-and-moderate-income persons.”

All of the villages of West Marin are “significant visitor destinations” and all of our communities provide (and actively are seeking to provide *more*) coastal housing and recreational opportunities for low-and-moderate income persons. The Coastal Act expressly recognizes the special status of coastal communities and, in so doing, the Act acknowledges that protecting the coast is not a “zero sum game” in which development must be removed in order to protect other coastal resources. To the contrary, the Coastal Act seeks to achieve a balance whereby coastal communities and other coastal resources can co-exist and prosper, maintained as special places for the public to visit and inhabit for as long as reasonably possible given the potential *implications* of climate change if the planet’s societies cannot agree to comprehensively address and reverse the *causes* of climate change.

Finally, we encourage you to consider the specific comments that will be submitted on the revised draft EH policies (when the public draft is released later this month) by the individual villages that make up our membership. The individual villages are stakeholders uniquely qualified to speak to the local impacts of the revised draft EH policies and their voices deserve to be heard – this is supposed to be a *Local* Coastal Plan after all. This letter addresses issues agreed to by ACMV representatives as universal to all our villages; but we also support the concerns of our individual members.

Thank you for taking the time to consider our comments, and thank you once again for your hard work on behalf of Marin County.

Very truly yours,



Jennifer Blackman
Chair, Alliance of Coastal Marin Villages

cc: Jack Liebster, Planning Manager, JLiebster@marincounty.org
Thomas Lai, Director, Community Development Agency, TLai@marincounty.org
Leslie Lacko, Senior Planner, LLacko@marincounty.org
Kathleen Kilgariff, Planner, KKilgariff@marincounty.org

Supervisor Dennis Rodoni: DRodoni@marincounty.org
Supervisor Katie Rice: KRice@marincounty.org