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# W14a

**Prepared August 18, 2023 for September 6, 2023 Hearing**

**To:** Commissioners and Interested Persons

**From:** Stephanie Rexing, North Central Coast District Manager  
Honora Montano, Coastal Planner

**Subject: De Minimis Amendment Determination for Proposed Marin County Local Coastal Program Amendment Number LCP-2-MAR-23-0028-1 (Technical Edits)**

## **Proposed LCP Amendment**

Marin County is proposing a series of technical edits to the Local Coastal Program (LCP) Land Use Plan (LUP) and Implementation Plan (IP) to improve readability and organization of the documents and to correct minor errors. By actions taken in 2018 and 2019, the Commission certified the majority of the County's LCP Update other than the coastal hazards provisions. However, due to the way the Update was processed locally, and ultimately submitted by the County to the Commission, those certified provisions could not take effect until the coastal hazards provisions were also certified. The County subsequently eliminated that requirement in 2021, and the updated and certified provisions became operative in the Coastal Zone at that time (again, with the exception of the coastal hazards provisions, on which the County continues to work). Since that time, the County has applied that hybrid LCP (i.e., the still certified 1982 LCP provisions related to coastal hazards, and the updated LCP provisions for everything else), and will continue to do so with this proposed amendment. The changes proposed now are essentially in two categories: changes to reflect the hybrid document (e.g., eliminate references to updated hazard provisions that don't exist, etc.); corrections and cross-reference changes for better clarity and ease in implementation; and minor changes otherwise (e.g., minor changes to definitions). The entire LCP document would also be properly combined and formatted so that all of the provisions are in one place, but this aspect focuses not so much on substantive changes as it does on reformatting.

Specifically, the LUP would be modified to: correct internally inconsistent nomenclature (e.g., "coastal permits" would consistently be called "coastal development permits", "second units" would consistently be called "accessory dwelling units", the "Development Code" would consistently be called the "Coastal Zoning Code", etc.); change applicable cross references to reflect the fact that IP Title 22 would change to IP Title 20; and incorporate the text of the currently applicable coastal hazards provisions (from the original 1982 LUP) so that reviewers only need to refer to one policy document. This last edit will improve LCP usability, as the 1982 Certified Environmental Hazards policies are currently accessible only in a low-resolution, typewritten document

## **LCP-2-MAR-23-0028-1 (Technical Edits)**

which must be viewed separately from other LCP documents. Finally, references to the titles of environmental hazards-related development standards and policies not yet adopted by the County are proposed for removal, given the 1982 Certified Environmental Hazards polices are still in effect, but it is noted that all of these areas will be revisited as a part of the eventual Environmental Hazards Update.

The IP would be modified in all those same ways, and also to: update land use table footnotes (in Chapter 20.62 for internal consistency, and to reflect correct LCP certification dates; non-substantively update provisions to correct stylistic inconsistencies so that it speaks with a 'single voice'; remove references to provisions that are applicable outside the Coastal Zone or are no longer applicable (e.g., references to "Tidelands Permits" would be removed because the County no longer processes such permits); and add additional cross-references to ease readability and use for the online version of the code (e.g., adding in names of sections to section references, etc.). In summary, the proposed LCP changes are mostly technical and non-substantive in nature and would not substantively alter LCP coastal resource protection provisions. See **Exhibit 1** for the County's amendment resolution and see **Exhibit 2** for the proposed amendment text.

### **De Minimis LCP Amendment Determination**

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is "de minimis" if the amendment meets the following three criteria:

1. The Executive Director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and that it is consistent with the policies of Chapter 3;
2. The local government provides public notice of the proposed amendment at least 21 days prior to submitting the amendment to the Commission, by one of the following methods: posting on-site and off-site in the affected area, newspaper publication, or direct mailing to owners and occupants of contiguous property; and
3. The amendment does not propose any change in use of land or water or allowable use of property.

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more commissioners object to the de minimis LCP amendment determination at that time, then the amendment would be set for a future public hearing as a regular LCP amendment; if three or more commissioners do not object to the de minimis determination at that time, then the amendment would be deemed approved, and would become a certified part of the LCP ten days after the date it is reported to the Commission (in this case, it would be certified on September 16, 2023).

**The purpose of this notice is to advise interested parties of the Executive Director's determination that the proposed LCP amendment is de minimis.**

### **De Minimis LCP Amendment Analysis**

## **LCP-2-MAR-23-0028-1 (Technical Edits)**

Each of the de minimis criteria is discussed briefly below:

- 1. Coastal resource impacts/Chapter 3 consistency:** As detailed above, the changes are almost entirely of a non-substantive nature, and the changes that are substantive do not significantly change any coastal resource protections. As a result, they should not have an adverse coastal resource impact, and can be found consistent with Coastal Act Chapter 3.
- 2. Public notice:** Prior to public hearings at the County Planning Commission (held on April 24, 2023) and County Board of Supervisors (held on May 23, 2023), the County developed a webpage for the proposed LCP amendment, which included the proposed LCP changes and information about the effort, that went live on February 3, 2023. On February 6, 2023, the County also emailed notice of a comment period, stretching from February 6, 2023, to May 6, 2023, on the proposed changes to 2,948 email addresses, including those that subscribe to the County's LCP page. The County subsequently received one public comment (from the Environmental Action Committee of West Marin, on March 6, 2023) raising several minor concerns which were largely incorporated into the proposed edits. No members of the public testified at either County hearing. The Commission's North Central Coast District office received the amendment submittal on July 31, 2023 (and filed it as complete on August 9, 2023). Because the County initially noticed the item on February 6, and it was received by the Commission on July 31, 2023, the minimum 21-day noticing requirement has been satisfied.
- 3. No change in use of land or allowable use of property:** No change in use is proposed by this amendment.

### **California Environmental Quality Act (CEQA)**

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are not required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, Marin County, acting as lead CEQA agency, determined that the proposed LCP amendment was exempt from the requirements of CEQA per CEQA Guidelines Sections 15061(b)(3) (common sense exemption) and 15268(a) (ministerial projects).

The Coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (14 CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that approval of the proposed amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA.

## **LCP-2-MAR-23-0028-1 (Technical Edits)**

Thus, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects due to approval of the proposed amendment that would necessitate such changes. Thus, the proposed amendment will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

### **Coastal Commission Concurrence**

The Executive Director will report this de minimis LCP amendment determination, and any comments received about it, to the Coastal Commission at its September 6, 2023 meeting in Crescent City. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Honora Montano at the Coastal Commission's North Central Coast District Office in San Francisco. If you wish to comment on and/or object to the proposed de minimis LCP amendment determination, please do so via regular mail (directed to the North Central coast District Office) or email (by emailing [northcentralcoast@coastal.ca.gov](mailto:northcentralcoast@coastal.ca.gov)) by 5:00 pm on September 1, 2023.

### **Procedural Note - LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on August 9, 2023. The proposed amendment affects the LCP's LUP and IP, and therefore the 90-working-day deadline for the Commission to take action on it is December 13, 2023. Thus, unless the Commission extends the action deadline (it may be extended by up to one year by the Commission per the Coastal Act), the Commission has until December 13, 2023 to take a final action on this LCP amendment.

Therefore, if three or more Commissioners object to the Executive Director's determination that this amendment is de minimis, then staff recommends that the Commission vote to extend the deadline for final Commission action on the proposed amendment by one year. To do so, staff recommends a YES vote on the motion below. Passage of the motion will result in a new deadline for final Commission action on the proposed LCP amendment. The motion passes only by an affirmative vote of a majority of the Commissioners present.

*Motion: I move that the Commission extend the time limit to act on Marin County Local Coastal Program Amendment Number LCP-2-MAR-23-0028-1 to December 13, 2024, and I recommend a yes vote.*

### **Exhibits**

Exhibit 1 - Marin County Board of Supervisors Resolution

Exhibit 2 - Proposed LCP Edits