



LandWatch
monterey county

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December 19, 2000

Mayor Jim Perrine and Council Members
Marina City Council, City Hall
211 Hillcrest Avenue
Marina, CA 93933

RE: Council Meeting of December 19, 2000 - Agenda Item J Implementation of Measure E

Dear Mayor Perrine and Council Members:

On December 5, 2000, the City Council officially certified the results of the November 7, 2000 election in the City of Marina. Measure E was adopted by a majority of the voters in that election, and it is now in effect. I understand that your Council will be discussing implementation of Measure E on its December 19, 2000 Agenda.

LandWatch supported Measure E, and we are, naturally, delighted that the people of the City of Marina have decided to establish an Urban Growth Boundary along the northerly portion of the City, and to take the associated actions specified in Measure E. LandWatch would like to be of as much assistance as we can as the City implements the provisions of Measure E.

I have reviewed the staff report that you will consider at your meeting this evening, and have three comments that directly respond to issues raised in that staff report:

1. The staff suggests that the Council might "reschedule consideration" of how to implement Measure E "until after the statute of limitations for Measure E has run out." This would delay implementation for ninety days. LandWatch strongly urges you to follow the requirements of Measure E, which do not allow for such a delay. The voters of the City of Marina have adopted measure E, and it is now the law of the City. Measure E specifically provides that its provisions shall be incorporated into the General Plan "as soon as possible" [Section 5(b)]. Please follow the requirements of Measure E, and implement its provisions as soon as possible.
2. The staff suggests that one option for implementation would be to hire a new consultant, to integrate the provisions of Measure E into the "new" General Plan recently adopted by the City. Staff indicates that this would probably take longer than using the consultants who helped prepare the new General Plan, and that this option could well be more costly. It seems likely that it would both take longer and be more costly to hire new consultants, who would presumably not be familiar with the work so recently done. LandWatch assumes that the City Council will want to retain much of the recently adopted General Plan, as it incorporates the provisions of Measure E into it, and we think that this will

most quickly and efficiently be accomplished by using the consultants already familiar with the issues, and the General Plan document recently adopted by the City.

3. The staff suggests that Measure E might be integrated into the "new" City General Plan by treating it as an "overlay" on the recently adopted document. LandWatch wants to caution the City that while the Urban Growth Boundary imposes a "line" on the northerly side of the City, the effect of that decision by the voters has very significant implications of a number of provisions in the recently adopted General Plan document. In our opinion, the City cannot achieve a legally sufficient, internally consistent General Plan by simply imposing the Urban Growth Boundary as an "overlay" on the current land use map.

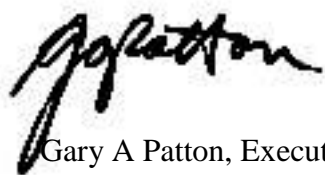
Besides responding directly to the staff report that will be before you this evening, we have the following comments:

- The implementation of Measure E is complicated by the fact that the City Council adopted a new General Plan just prior to the November 7, 2000 election. Had the Council not done so, Sections 2 and 4 of the initiative would have been "self-executing," and would have been inserted directly into the General Plan existing as of the date the Notice of Intention to circulate the initiative was submitted to the City. Measure E, however, did contemplate the possible amendment of the formerly existing General Plan, prior to the effective date of the initiative. Section 5 of Measure E, entitled "Implementation," directs the City Council to take action, "as soon as possible," to amend the Marina General Plan to conform it to the provisions of Measure E, if that General Plan has been "amended" since the date that the Notice of Intention was filed with the City.
- In view of the provisions contained in Section 5 of the initiative, I believe that there are two possible ways for the Council to proceed. One way would be for the Council to integrate Measure E into the "new" General Plan recently adopted by the City. The staff report before you assumes is that this is how the Council will proceed—and in one sense, unless the Council wants to "start over," which doesn't make much sense—the Council will ultimately want to integrate Measure E into the "new" General Plan. There may be another way of approaching the task in the short term, however, which I think you should consider.
- Another way of proceeding is for the Council to determine that the General Plan recently adopted by the Council has not yet been finally "adopted," and that the General Plan in effect when the Notice of Intention was filed has not, in fact, yet been "amended," within the meaning of Measure E, because State law provides that no General Plan amendment for the City of Marina can be effective until it is certified as consistent with the FORA Reuse Plan. As you know, the "new" General Plan has not yet been certified by FORA. Thus, I believe the Council could properly determine that the "old" General Plan is in fact still legally in place, and was legally in place on November 7, 2000, and on December 5, 2000, and that Section 5(a) of Measure E has resulted in the insertion of the voter-adopted provisions into the "old" General Plan. This manner of proceeding would give the City a General Plan that immediately integrates Measure E into the General Plan in an internally consistent way, which is advantageous to the City. The City, having such an internally consistent General Plan in place, could then proceed to work on an amendment that would properly integrate the provisions of Measure E with those provisions of the "new" General Plan. I believe that the Council should ask its legal counsel to review this possibility, to see whether it would have advantages for the City.

- While I am still studying this matter, I believe that FORA should not, and legally cannot, certify the "new" General Plan as consistent with the FORA Plan, both because of some inconsistencies between the new land use plan and the habitat protection provisions of the FORA Plan, and because the "new" General Plan is, itself, not now a complete statement of the land use policies that are actually in force in the City of Marina—i.e., the "new" General Plan does not incorporate the provisions of Measure E. If I am correct that FORA will not be able to certify the "new" Marina General Plan at an early date, the benefits of taking the alternative approach I discuss above become greater.

Thank you for taking our comments into account, as you consider how to implement the provisions of Measure E.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. Patton". The signature is fluid and cursive, with a large initial "G" and a long, sweeping tail.

Gary A Patton, Executive Director
LandWatch Monterey County