



P.O. Box 706 • Stinson Beach • California • 94970  
www.stinsonbeachvillage.com

November 3, 2012

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

SUBJECT: Local Coastal Program Amendments (LCPA)  
Second Board Public Hearing - *Continued issues from the October 2, 2012 hearing on  
Biological Resources, Agriculture and Agriculture-related Public Access*

Dear Members of the Board,

The Stinson Beach Village Association (SBVA) thanks the Marin County Board of Supervisors (BOS) for this opportunity to comment on the Local Coastal Program Amendments (LCPA) prior to their adoption and submission to the California Coastal Commission for review.

The SBVA came into being after the original Stinson Beach Community Plan (SBCP) was adopted by the Board of Supervisors on May 4, 1976, fulfilling the Plan's first priority: "Formally establish a permanent monitor group to serve in a liaison and informational capacity between the community and outside agencies." (Policy 2.0B and 5.0A) Although the original SBCP served us well, a number of events prompted recognition that a re-evaluation of the 1976 plan would be appropriate, and the SBVA worked in cooperation with the County Planning Department to revise the SBCP, and this revised plan was adopted by the BOS on June 25, 1985. Subsequently, an amendment eliminating Circulating Objective 1, Policy A (a southern entrance to the GGNRA beach) was adopted by the BOS June 23, 2006.

The SBVA continues to pursue the goals and policies of the SBCP and to provide a forum to discuss matters that could materially affect the Village. The SBVA also keeps the residents informed of decisions made by county, state, and federal agencies.

The SBVA began monitoring the evolution of the LCPA in the fall of 2011, and in July of 2012, formed an ad hoc committee comprised of residents and representatives from local organizations to review the LCPA and related documents to insure that there were no policy conflicts between the proposed LCP and the SBCP.

Based on the committee's findings on the issues being discussed at this hearing, the SBVA offers the following comments:

On October 2, 2012, the Community Development Agency sent a letter to the Board of Supervisors, recommending that the BOS "[c]onsider the LCPA recommended by the Planning Commission and additional alternatives to Agriculture Biological Resources and policies governing interpretation of the LCP as set forth in Attachments 1 through 5." In attachment #5, in the section, "Interpretation of the Land Use Plan," on p. 14 was the following:

Relationship to community plans. Community plans are considered part of the Marin Countywide Plan (CWP) and supplement the CWP by providing local goals and objectives that pertain to an individual community. With the exception of Dillon Beach and the Bolinas Gridded Mesa area, existing community plans in Marin's coastal zone were not certified by the Coastal Commission and thus are not a formal part of the LCP. However, the provisions of these plans do govern any permits issued under the CWP, such as Design Review and Use Permits, which are applicable to a majority of development in the Coastal Zone. In addition, the LUP incorporates many community plan policies that were identified by members of the communities as being appropriate to be part of the LCP. Accordingly, although the community plans themselves are separate documents from the LCP, they remain as important and relevant policy guides for development in their respective communities.

This section was edited and moved to a new chapter related to Policy Interpretation, which was included in Attachment #6: LCPA, Alternative Text for Board Consideration, under the heading, "Policies for Interpretation of the Land Use Plan (INT), a proposed new chapter for the LCPA Land Use Plan." This same edited version now appears in the Staff Report for the November 13, 2012 Board of Supervisors hearing, p. 22, BOS Exhibit #2:

C-INT-3 Community Plans. Community plans are part of the Marin Countywide Plan (CWP), and are implemented through measures such as Design Review and Use Permits. The existing Dillon Beach and Bolinas Gridded Mesa community plans have been certified by the Coastal Commission and made part of the LCP; all other community plans have not. However, the public LCP process identified many community plan policies that have been directly incorporated into, and will be implemented through the LCP.

While we appreciate the logistical, budgetary, and staffing challenges of including the community plans of West Marin in their entirety in the LCP, and understand Staff's approach of choosing elements in each plan that could apply to all the communities in the Coastal Zone, the character, size, population, recreational opportunities, and relationship with visitors of each community is different. The individual community plans define and preserve those differences, and the policies of the LCP should endeavor to embrace and protect them whenever and wherever possible.

Therefore, as only select policies of the community plans (with the exceptions of Dillon Beach and the Bolinas Gridded Mesa) are included in the proposed LCP, and as the focus of the LCP is in a large sense to develop general policies for all of the West Marin communities within the Coastal Zone, we believe it imperative that the revised LCP state clearly that the integrity of all the community plans is to be preserved. The BOS should not inadvertently supersede any part of the existing community plans.

The SBVA believes the original language describing the relationship of community plans in Attachment #5 describes more clearly the importance, relevance, and continued viability of community plans to the LCP and asks that it be moved without revision to C-INT-3.

Sincerely,

The Stinson Beach Village Association Board:

Tara Evans, Coordinator; Mike Matthews, Coordinator; Tim Hamilton, Coordinator; Sam Matthews, Treasurer; Chris Ruppe, Secretary; Donna Andrews, SBCC Liaison; Belinda Zell, Publicist; Don Anderson, Compliance; Terry Bryant, Member-at-Large

cc: Jack Liebster





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November 6, 2012

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

SUBJECT: Local Coastal Program Amendments (LCPA)  
Second Board Public Hearing - *Continued issues from the October 2, 2012 hearing on  
Biological Resources, Agriculture and Agriculture-related Public Access:  
C-INT-3*

Dear Members of the Board,

We have received from the Community Development Agency a proposal to modify the the language of C-INT-3 included in the Staff Report for the November 13, 2012 Board of Supervisors hearing, p. 22, BOS Exhibit #2:

C-INT-3 Community Plans. Community plans are part of the Marin Countywide Plan (CWP), and are implemented through measures such as Design Review and Use Permits. The existing Dillon Beach and Bolinas Gridded Mesa community plans have been certified by the Coastal Commission and made part of the LCP; all other community plans have not. However, the public LCP process identified many community plan policies that have been directly incorporated into, and will be implemented through the LCP. [Proposed modification: Although separate from the LCP, community plans remain as important and relevant policy guides for development in their respective communities.]

This modification would satisfy our concerns expressed in our letter of November 3, 2012, regarding this section of the LCPA.

We look forward to participating in discussions of the remaining sections of the LCPA.

Sincerely,

The Stinson Beach Village Association Board  
Tara Evans, Coordinator; Mike Matthews, Coordinator; Tim Hamilton, Coordinator; Sam Matthews, Treasurer; Chris Ruppe, Secretary; Donna Andrews, SBCC Liaison; Belinda Zell, Publicist; Don Anderson, Compliance; Terry Bryant, Member-at-Large

cc: Jack Liebster



## MARIN COUNTY FARM BUREAU

P.O. Box 219, Pt. Reyes, CA 94956

November 8, 2012

The Marin County Board of Supervisors

Via e-mail c/o Kristin Drumm: [kdrumm@marincounty.org](mailto:kdrumm@marincounty.org)

Re: Local Coastal Program Amendments: November 13th hearing

Dear President Kinsey and members of the board,

The Marin County Farm Bureau respectfully submits two additional comments on the Local Coastal Program Amendments (LCPA). This letter is in addition to the comments we made for the October 2<sup>nd</sup> hearing.

At the October 2<sup>nd</sup> hearing your board removed viticulture from the Principally Permitted uses in **Policy C-AG-2**. In our comments for the original hearing we asked that viticulture remain principally permitted. We recognize that some environmental organizations are concerned with the water usage of grapes and that the Coastal Commission staff is concerned with the grading that may be necessary to plant grapes.

First of all, we need to understand how much water is actually used. According to Ronda Smith, viticulture specialist at the University of California Cooperative Extension Service in Sonoma County, grapes can be dry farmed if there is some moisture in the soil. This would require no water. On the other end of the spectrum would be planting in gravel or sandy soil where water could leach away, in these situations grapes could require as much as 3 acre inches of water per acre of grapes. To put this in perspective, our 250 cow dairy uses about 20 acre feet of water per year, if we planted grapes in the highest water usage areas (sand/ gravel) we would be able to plant 80 acres before we would need additional water. Most of the ranches in West Marin have stock ponds with water that could be used for some amount of grapes without touching any ground water or developing new water storage.

To find a compromise on the issue of grading, perhaps we could find a slope of the land that cannot be exceeded in order for the planting to be principally permitted.

What we would like is to see some middle ground met. We offer this suggestion as a compromise to protect the ranchers' ability to at least plant some grapes to see what varieties may grow well on their soil without being subject to appeal:

**"Viticulture shall be principally permitted up to 10 acres on ground with a slope of 10% or less".**

Next, we have made our concerns clear about wanting the historical use of agriculture to be recognized so it will not be lost if a field goes fallow for a short time for an unforeseen reason. There is currently language in:

**C-BIO-14 Wetlands**

3. Prohibit grazing or other agricultural uses in a wetland, except in those ~~reclaimed~~ areas presently (~~prior to the certification of this amended policy on [ DATE ]~~) used for such activities (i.e., grazing was established prior to April 1, 1981, the date on which Marin's first LCP was certified).

We appreciate the above language as it pertains to wetlands. We would like to see this language added to the LCP in regards to streams and riparian areas.

While these are our only two additions, we want to be certain to reiterate the importance of our original letter and hope you will work from it in your discussions on the 13<sup>th</sup>.

Sincerely,

Dominic Grossi

President

Marin County Farm Bureau

CC     Davis Lewis  
       Stacy Carlsen



# Marin Audubon Society

P.O. Box 599 | MILL VALLEY, CA 94942-0599 | MARINAUDUBON.ORG

November 12, 2012

President Steve Kinsey  
Marin County Board of Supervisors  
3501 Civic Center Drive  
San Rafael, CA 94903

RE: COMMENTS ON THE LOCAL COASTAL PLAN

Dear President Kinsey and Members of the Board:

Marin Audubon appreciates the opportunity to provide comments on the Biological Resources section of the November 9 staff report on the LCP. We are pleased with some of the changes that have been made, but we still have concerns about new language in certain sections:

**C-BIO-1 1. and 2. The definitions of ESHAs in this policy are inconsistent.** ESHAs are defined as areas that “are either rare or especially valuable because of their special nature their role in an ecosystem and which could be easily disturbed or degraded by human activities.” But definition in #2. considerably narrows the types of habitats that could identified as terrestrial ESHAs to those that “support rare and endangered species, coastal dunes, ...roosting and nesting habitats as referenced in BIO-10 and riparian vegetation that is not associated with a perennial or intermittent stream.” Because there may be other habitat areas that become known as “especially valuable” and warrant protection as ESHAs, the list should be included as examples only or not included at all. Also, there is no regulatory category of “rare” used by any agency. “Threatened” is the term used by the USFWS.

**C-BIO-2 The concept of “being resource dependent” is now used to support including trails in ESHAs.** Public access trails are specifically considered resource dependent in the new last sentence of CC-BIO-2 2. The policy also requires that ESHAs be protected “against disruption of habitat values.”

One does not protect against disruption of the habitat values of ESHA by building trails in ESHAs. Trails and habitats are antithetical. Trail construction directly destroys habitat by removing vegetation and usually adding fill. The ongoing use that is then encouraged by the presence of a trail constantly disrupts and significantly degrades the adjacent remaining habitats.

People do not have to be in habitats or buffers to enjoy nature. In fact, viewing wildlife from afar is more rewarding because you don't frighten the wildlife away. Some activities fishing, hunting, clamming, photography for example, do depend on being in the habitats, but these can be accomplished with people accessing by water or land without constructing trails. The only resource dependent use that may require construction is habitat restoration.

The statement that “public access is considered a resource dependent use” should be deleted from C-BIO-2 2. Such a policy would not only be environmentally damaging, but it is unnecessary and would be complicated and burdensome to administer given that there would be an added task of

having to evaluate whether or not the proposed access would actually protect the natural resources.

**C BIO 20 and BIO- 24 WETLAND AND STREAM BUFFER ADJUSTMENT** criteria for adjusting buffers in these proposed policies are essentially the same. Both policies have been changed and weakened by new wording placing a new limit of 50 feet on buffer width: "buffers may not be adjusted to a distance of less than 50 feet" from the wetland or stream bank.

While the intent of this change may be to provide greater certainty it is our experience that identifying a lesser width means that is what will be requested and approved most of the time. Adopting this standard also would mean that wetland and stream protection policies are weaker in the Coastal Zone than the CWP policies require in the rest of Marin County. This discrepancy is indefensible and unacceptable.

Furthermore, the lists of four criteria for buffer adjustments in C-BIO-20 and 25 could just as well be applicable within a 50 feet as 100 feet buffer on some lots. Is it not possible that there are lots so small that building on them would require invading even the 50 foot buffer? Wouldn't that result in a "taking?"

The last sentence in C-BIO-20 2 and C-BIO-24 2., "The buffer shall not be adjusted to a distance of less than 50 feet in width from the edge of the wetland." And "...from the edge of the stream/riparian ESHA." should be deleted for the wetland and stream policies.

**EPHEMERAL STREAMS** – The language including ephemeral streams that are not mapped by USGS but that support riparian vegetation for 100 feet or more should be restored to Code section 22.130.030. Even this language is a compromise but is better than no protection. Ephemeral streams are the headwaters of streams and rivers. Even though temporary, any degradation or loss that occurs in ephemeral streams can adversely affect the entire downstream length of streams. They are a vital part of stream resources even if they do not support vegetation and are arguably the most important part of streams to protect.

Finally, we are pleased with the more restrictive language regarding in-stream flood control and water supply impoundments in BIO. It is unimaginable, however, that such facilities would even be considered currently.

Thank you for considering our comments.

Sincerely



Barbara Salzman Co-chair  
Conservation Committee



Phil Peterson, Co-chair  
Conservation Committee

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
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NOV 13 2012 AM 8:54 Planning

November 9, 2012

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

Re: Marin County Local Coastal Program (LCP) Update - Board of Supervisors' Hearing on November 13, 2012 regarding Agriculture and Biological Resources

Honorable Supervisors:

Please accept the following comments on the agricultural and biological resource components of the Marin County Planning Commission-approved draft of the LCP Update that you will be discussing on November 13th. We have been working with County staff for a number of years as the Update has unfolded, providing feedback on proposed policy language and Coastal Act consistency issues, and lending expertise from our technical staff on a variety of issues and topics (e.g., land use, biology, water quality, and hazards). We have also provided testimony and input through participation in multiple Planning Commission hearings, as well as through written comment letters, which you will find in the record. Overall, we believe that the process has been productive, and over the last couple of years we have been able to work with your staff to narrow down the list of potential issues, which should go far in assisting with a timely certification process with the Coastal Commission. We sincerely appreciate your staff's time and effort in working with us on identified coastal resource issues and concerns, and believe that it has helped improve and enhance the Update.

We note that we are in the process of developing detailed comments, including suggested alternative policy language, on what we see to be remaining Update issues, and we hope to get those comments to you and your staff in the near future. These upcoming comments are intended to apply to the entire Update, and are further intended to supplement and refine our written and verbal comments provided to date over several years as they apply to the now modified and current version of the Update. Given your current focus on the Update's agricultural and biological resource elements, we felt it was important to highlight certain key issues in those issue areas in advance of our more detailed upcoming comments. We have discussed these same concerns with your staff, and look forward to working together on appropriate resolution.

With respect to agricultural protection, the County should be applauded for recognizing the value and importance of agricultural resources and family farming, and for developing a framework intended to respect and protect such values consistent with the Coastal Act. It is clear to us that agricultural protection is clearly one of the most important objectives in Marin, and equally clear that County staff has been working very hard to come up with solutions to what can be confounding questions when applied in context.



That said, however, we believe that certain currently proposed provisions underscore the difficulty of developing such policies in relation to what have historically been considered non-agricultural, ancillary, and/or supplemental uses and development. This issue is perhaps most clearly present at a foundational level in the proposed Update in terms of the expanded definition of agriculture that goes beyond crop production, cultivation, and grazing to include such things as intergenerational housing and overnight accommodations. It appears clear to us that a more limited and traditional manner of defining agriculture can best allow for its protection, including protecting it from incursion of non-agricultural uses and development. That is not to say that non-agricultural development shouldn't be allowed, rather that it can be more clearly addressed and circumscribed when kept within a framework that recognizes it as separate from the primary use of the land for traditional agricultural activities. In that way, clear parameters for allowing such other uses and development, including in terms of siting and design, can be formulated. When they are instead intermixed and called out themselves as agricultural, then LCP policies struggle to clearly adapt and address such "agricultural" uses and development, including because many of the Update's policies designed to ensure that development does not interfere with agricultural production do not apply (i.e., because the development itself is considered agricultural). We recommend that the LCP be restructured around this baseline understanding of agriculture, and its policies for other uses clearly be structured around such other uses as supplemental and subject to appropriate evaluation criteria. The San Luis Obispo County LCP provides a relevant example in this respect.

The Update's explicit concept of "intergenerational housing" is a relevant and fundamental example of this point. Again, while the goal appears sound, namely to allow for the preservation of family farms by facilitating multi-generational ownership and stewardship of the land, the manner in which the Update approaches this topic raises some question. It is not even clear at this point how the existing LCP's allowance for housing on agricultural land is insufficient to accomplish this goal. The existing LCP allows for one single-family dwelling as a principally permitted use, and farmworker housing as a conditional use. If family members are working on the land, their housing could be considered farmworker housing, and would therefore be allowed. To instead have the LCP call such housing out as agriculture sets in motion an evaluation framework that appears insufficient to address concerns related to residential development on agricultural lands, including in relation to siting and design concerns. Again, that is not to say the goal isn't appropriate, but rather to observe that the manner in which it is implemented should, in our view, be structured around such uses and development not being called out as agricultural, including to provide for consistency with Coastal Act requirements that strictly limit the conversion of agricultural land to non-agricultural uses, including residential uses.

In addition, Coastal Act Section 30603 requires coastal counties to designate a single principally permitted use per zoning district. We recommend that "Agricultural Production" be designated as the one allowed (per Coastal Act Section 30603) principally permitted use for C-APZ lands, and that uses appurtenant and functionally-related to agriculture be designated a permitted use. This will ensure that permitting for agricultural production will be streamlined, and will allow for functionally related uses to occur, subject to the LCP's resource protection standards and requirements.

Finally with respect to agriculture, the Update is unclear with regard to what agricultural activities require a coastal development permit (CDP). Pursuant to the Coastal Act and the Commission's Regulations, all development, including agricultural activities that require grading or changes in the intensity of use of land or water, requires a CDP. Section 30106 of the Coastal Act defines development to include all grading, any changes in the density or intensity of use of land or water, and the removal or harvesting of major vegetation other than for agricultural purposes, meaning the removal of major vegetation, except for harvesting crops. Unless agricultural activities, such as grazing, grading, and planting crops are part of an ongoing agricultural operation, they require a CDP.<sup>[1]</sup> Contrary to this requirement, the Update excludes agricultural crop management and grazing from the definition of development entirely. This broad exemption makes it unclear as to which types of agricultural activities are subject to the requirements of a CDP, and could be interpreted to exempt any activity that is otherwise classified as development as long as it is for agricultural purposes. The Update needs to make clear that, as defined by the Coastal Act, only ongoing agricultural activities (such as grazing or grading for the planting of row crops) are exempt from CDP requirements, and that any new or expanded agricultural operations, including converting open fields to row crops, require a CDP.

In terms of biological resources, we continue to have certain concerns with the way in which the Update proposes to address protection of ESHA, perhaps most significantly in terms of the method for appropriately setting back from ESHA. As proposed, wetlands, streams and riparian corridors would qualify as a type of ESHA to which a minimum 100-foot buffer would be applied, and the buffer could be reduced to 50 feet where evidence clearly demonstrated that a lesser buffer would adequately protect such resources. With some minor modifications, including related to assuring that exceptions to larger setbacks were exceptions and not the norm, and including limiting exceptions only to circumstances where there are no feasible alternatives and where significant habitat impacts would be avoided, such a system would appear appropriate for ESHA protection. We note that it is also possible that in certain cases, buffers of greater than 100 feet may be warranted based on the type of resource and its value, and the Update needs to make this clear. With respect to other types of ESHA, however, the Update does not provide a similar system, leaving minimum setbacks undefined. In its place, we recommend that a system similar to the wetlands, streams and riparian system be adopted.

Finally, the allowed activities within ESHA and ESHA buffers require refinement. For example, the Update categorically allows for major vegetation to be removed where necessary to minimize risks to life and property in these areas, but doesn't provide a framework for avoiding such circumstance (e.g., setbacks may need to be greater than 100-feet to ensure that development and ongoing activities associated with the development, like fire safety clearance, are all accounted for within the developable area and not the ESHA and/or ESHA buffer). It also doesn't provide a means of evaluating such circumstances and appropriately responding in a way that addresses ESHA protection. Similarly, using distance (i.e., buffer) as a tool for protecting ESHA is appropriate, but its value and utility can be decreased significantly if inappropriate activities are allowed within buffers, and the appropriate distance must be understood in terms of allowed

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<sup>[1]</sup> The Commission's most recent action that addresses this specific issue is San Luis Obispo County LCP Major Amendment SLO-1-10, Grading and Stormwater Management, approved in August 2012.

buffer activities, including maintenance of the buffer over time in a way that ensures its continued protective function as well as its relationship to adjacent ESHA. We will be following up with language refinements on these points, as discussed above.

In closing, thank you for consideration of these points. We understand that you and your staff have identified a schedule for considering these and other Update issue areas over the course of the next several months leading to Board adoption. We will do our best to provide feedback and comments during that time, and look forward to working together to shape an Update that preserves, protects, and enhances coastal resources consistent with our mutual objectives for Marin. If you have any questions, please don't hesitate to contact me at (415) 904-5260, or at the address above.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Kahn", with a stylized, cursive script.

Kevin Kahn  
Coastal Planner



November 13, 2012

Marin County Board of Supervisors  
Via email: BOS@marincounty.org

Re: LCP Proposed Amendments

Dear Supervisors,

The following comments are submitted on behalf of the Marin Chapter of the California Native Plant Society (Marin CNPS) regarding the proposed amendments to the Marin County Local Coastal Plan. The California Native Plant Society is an organization of nearly 10,000 members statewide dedicated to conserving native plants and their natural habitats and to increasing the understanding, appreciation, and horticultural use of native plants. Marin CNPS has 350 members.

Marin CNPS has reviewed the Environmentally Sensitive Habitat Area (ESHA) provisions and we have concerns about whether they adequately protect rare plants and unusual plant communities. Marin CNPS strongly urges the County to include specific buffer requirements for upland ESHAs-- that is, areas that qualify as ESHA not because of the presence of wetlands or streams, but because they support rare species or plant communities. Specifically, C-BIO 1 should provide for a standard buffer of 100 feet around all ESHA's, including those found in upland areas. In addition, C-BIO-2, pertaining to development in ESHAs should include the additional requirement that all buffers be maintained to the maximum extent rather than merely including a cross-reference to the buffer rules for wetlands and streams.

Finally, a new section is needed to address the question of when staff may vary the width of upland buffers, analogous to C-BIO-20 and 25. This new section should include clear and specific criteria in order to guide the discretion of County staff and avoid arbitrary decision-making.

Thank you for the opportunity to comment on the proposed amendments to the local coastal plan.

Sincerely,

Carolyn Longstreth  
Director

Amelia Ryan  
Director

cc: Jack Liebster, County Planner





November 13, 2012

Marin County Board of Supervisors  
Via email: [Bos@co.marin.ca.us](mailto:Bos@co.marin.ca.us)

Dear Supervisors,

The Environmental Action Committee of West Marin offers the following comments for today's continued hearing on the Biological and Agricultural Resources sections of the Local Coastal Program Amendment. EAC's comments are based on the staff report, the November 9<sup>th</sup> letter from the Coastal Commission staff, and the newly released "Incorporating Ecological Principles Into California Ocean and Coastal Management" by the Center for Ocean Solutions.

EAC supports the November 12<sup>th</sup> letter submitted by Nona Dennis on behalf of Community Marin. EAC would like to reiterate the technical comments it submitted for the October 2<sup>nd</sup> hearing, many of which are supported by the Coastal Commission staff's November 9<sup>th</sup> letter.

One initial point is that EAC would like to address is its disagreement with the staff report statement on page 2 of the cover letter. The statement is that the Planning Commission approved draft LCPA is the "baseline" for your review. As EAC and others have repeatedly expressed, the baseline against which the LCP Amendment should be considered and measured is the existing certified LCP. In doing so, the Board will ensure that it does not weaken any of the existing coastal resource protections, something it said it wanted to avoid on October 2<sup>nd</sup>.

#### AGRICULTURAL RESOURCES

1. Definition of Agriculture. EAC concurs with the Coastal Commission's November 9<sup>th</sup> letter that the definition of "agriculture" should not be expanded to include various kinds of development. EAC has repeatedly advocated throughout the public process in agreement with the Coastal Commission that "agricultural production" should be the Principally Permitted Use (PPU) within the C-APZ zoning district. The Coastal Commission staff position should not be a surprise to the county, and the Board should understand that the county staff recommendations are in direct conflict on these points. Keeping the definition of agriculture unchanged from the existing LCP would enable all agricultural development – including inter-generational (IG) housing, farm worker housing, and homestays – to have "clear parameters for allowing such other uses and development, including in terms of siting and design." EAC supports the Commission staff recommendation.
2. IG Housing. The Coastal Commission staff specifically call out IG housing as an example of how the proposed expanded definition of agriculture is inappropriate. The Commission staff point out that to "have the LCP call such housing out as agriculture sets in motion an

evaluation framework that appears insufficient to address concerns related to residential development on agricultural lands, including in relation to siting and design concerns.” This opinion reiterates prior comments made by the Commission staff throughout the Planning Commission process. Separating out IG and farm worker housing from the definition of “agriculture” in no way limits the potential for it. EAC continues to support farm worker and IG housing but agrees with the Coastal Commission staff that that county staff’s proposal is not appropriate. EAC strongly suggests that the Board heed these comments and direct the county staff to revise the LCPA accordingly.

EAC has one additional point of concern regarding proposed IG housing in the C-APZ zone. The county staff gave the public its build out analysis of potential IG housing at the October 2<sup>nd</sup> hearing and many questions remain including how the Williamson Act will affect IG housing. EAC would respectfully request that the county planners who created the analysis make a presentation to the public about the build out analysis and interpretation of Williamson Act applicability. This would provide the public with a much better understanding of the possible build out during the 30-40 year life of the LCPA.

3. Viticulture. EAC strongly disagrees with the Farm Bureau’s proposed allowance of up to ten acres of row crops without a coastal permit. The transition from grazing native grasses to preparing the soil for row crops should require a permit. Viticulture, even if performed by a dry-farming method, involves grading, potential soil erosion and runoff, the possible use of pesticides and herbicides, and the need for specific siting in relation to environmentally sensitive habitat areas. The Coastal Commission’s November 9<sup>th</sup> letter reiterates that “any new or expanded agricultural operations, including converting open fields to row crops, require a CDP.” EAC agrees and urges the Board to reject the Farm Bureau’s proposal.
4. Scenic Resources. The Coastal Act states that “the permanent protection of the state’s natural and scenic resources is a paramount concern to present and future residents of the state and nation.” EAC would like language added to ensure that any new development in the C-APZ zone be clustered and screened with existing vegetation to the maximum extent possible to ensure the continued protection of the magnificent views of the east shore of Tomales Bay. There are numerous public access and public viewing points on the west shore of Tomales Bay that look east at the iconic golden hills. These views are precisely the type of scenic resources that the Coastal Act intended to preserve.
5. Master Plan Components. We believe the EAC and the Farm Bureau are in broad agreement on the further changes that need to be made to the LCPA so that the coastal permit process can substitute for a master plan. On agricultural parcels the LCPA is intended to substitute coastal permit requirements for a master plan. Although labeled a “consent” issue for the Board, some further changes to the staff recommendation are necessary.

A *master plan* encompasses the entire property, including multiple parcels, and makes conceptual plans for all significant future development. It identifies ESHAs and necessary buffers, establishes building envelopes, and provides conceptual direction for roads, utilities, and other development that will be further refined in individual permit applications. In contrast, the *coastal permit* process is piecemeal. Under the LCPA, the first coastal permit on a C-APZ parcel might approve a farmhouse and ancillary structures; environmental and siting impacts are assessed for only those proposed developments. At a later date, the owner could apply for a second coastal permit for an intergenerational house.

In order to assess future, as well as currently proposed, developments on agricultural parcels EAC recommends the following additional changes to the master plan LCPA language:

- (1) Preparing a Ranch Plan For Development that identifies and includes the requirements of the Constraints Map and Building Envelopes for proposed and future structures.
- (2) Requiring a coastal permit finding that ensures that all C-APZ structures that could potentially be developed are included in the Constraints Map and are sited to protect coastal resources.
- (3) Finally, a technical revision is needed to the staff-proposed language requiring inclusion of contiguous properties (22.70.030.A.2), in order to ensure that “same ownership” includes corporate, as well as private, entities.

Please see Attachment 1 for EAC’s specific language proposal.

### BIOLOGICAL RESOURCES

1. ESHA Buffers. EAC concurs with the Commission staff’s letter that recommends including a straightforward, consistent system for establishing buffer widths. EAC enthusiastically supports the analysis performed by Nona Dennis’s comment letter. EAC supports the Commission staff’s recommendation that the buffer width be considered in light of any potential fire safety clearance or other circumstances that would infringe upon the 100-foot buffer, thus possibly making the buffer width greater than 100 feet to incorporate the vegetation removal.
2. ESHA Buffer Exceptions. EAC has continued discussions with the county staff in search of the right language that would give the county limited flexibility to reduce the standard 100-foot buffer width in very limited circumstances, and that would make clear that such an exception would only be granted in rare or unusual circumstances. EAC has included an attachment to this letter that builds from Jack Liebster’s revised language. Please see Attachment 2.
3. Maximum Development Limit and Net Environmental Benefit. EAC supports the staff’s proposal to further develop these concepts as a way to ensure that any exception to any ESHA buffer would not diminish the overall environmental protections for the ESHA. EAC would ask the Board to please direct the staff to develop these concepts and bring a proposal to the Board at the December 13<sup>th</sup> hearing.
4. BIO 1 and 2. – EAC recommends replacing the word “significantly” with “measurably” in the third paragraph of Bio-1 and the second sentence of Bio-2 in the same following sentence:

Disruption of habitat values occurs when the physical habitat is significantly measurably altered or when species diversity or the abundance or viability of species populations is reduced.

The reasoning for the proposed word change is that the disruption of habitat values for “environmentally sensitive habitat areas” should not allow for “*significant*” alteration of the physical habitat. Rather, if the disruption is “measurable” then the degree to which the

habitat is disturbed can be ascertained, thereby allowing the appropriate assessment as to whether the policy to “protect ESHAs against disruption of habitat values” has been achieved.

### BACKGROUND INFORMATION

EAC would like to again reiterate its repeated requests that a substantial amount of background information in the existing LCP be retained. The proposed introductory language in the Amendment is very high-level generalities, does not include any fact-based, specific information, and does not provide the context for many of the policies like the existing Certified LCP language.

We recognize that it would be a daunting task for staff to update all of this information. However, this information has already been certified by the Coastal Commission, who has made clear to the staff that they will have to submit it or justify why it is omitted and relegated to the non-certified, non-submitted appendix.

We have provided the staff with a list of the specific information and provisions that should be retained and reincorporated into the proposed Amendment. Some of this material includes:

- Mention of the dependence of the Black Brant and Pacific herring upon eelgrass for food in Tomales Bay,
- Discussion of the resources and threats to Estero Americano and Estero de San Antonio,
- Discussion of the ecological role of riparian habitats, and
- Discussion of the importance of freshwater flows into Tomales Bay.

We would ask you to please direct staff to include the full list of background information that we have provided for inclusion in the certified LCPA.

Thank you for your consideration of our comments.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Amy Trainer", with a long horizontal flourish extending to the right.

Amy Trainer, Executive Director

## Attachment 1

### Master Plan Proposed Language

#### **Staff-recommended changes**

The planning staff has recommended three important changes in the draft LCPA that ensure that:

- (a) the area covered by a coastal permit includes contiguous properties under the same ownership (22.70.030.A.2),
- (b) in instances when a master plan *is* issued it will be consistent with any coastal plan requirements (22.44.030.B), and
- (c) clusters housing as required by a master plan (22.65.040.C.1, #3, p.3). This change is needed to ensure that the clustering requirement is applied to *all* development, whether it is deemed “agricultural” or “non-agricultural”.

**EAC-RECOMMEND ALTERNATIVE LANGUAGE with additional recommended changes shown in underlined text:**

#### **22.70.030 – Coastal Permit Filing, Initial Processing**

##### **A. Application and filing.**

1. Project plans and supporting materials sufficient to determine whether the project complies with all relevant policies of the Local Coastal Program. A comprehensive Constraints Map shall be required for any proposed development in any ESHA or ESHA buffer, in any area subject to or contributing to environmental hazards, or any development that would obstruct significant views. The Constraints Map shall identify locations that would avoid coastal resources, and would be consistent with the policies and standards of the LCP and §22.70.070. For all development proposals in the C-APZ district a Ranch Plan for Development shall be required, which includes components of the Constraints Map as well as the requirements of §22.70.070.N.

2. Documentation of the applicant’s legal interest in all the property upon which work is proposed to be performed. The area of the subject Coastal Permit and Constraints Map shall include at least all contiguous properties held under common private and/or corporate ownership, and may at the Agency’s direction include properties held under multiple ownerships.

#### **22.70.070 – Required Findings**

...

N. In the C-APZ district all development proposals shall prepare a Ranch Plan For Development that identifies and includes the requirements of the Constraints Map of section 22.70.030 and identifies all significant structures that could eventually be permitted on the owner’s parcels in the C-APZ. No building shall be constructed, maintained or used other than for the purpose specified on the Constraints Map and plans as approved. The County will pay for the cost to prepare the Ranch Plan For



Development, which shall be kept on file to inform future development proposals for the property.

## **22.130.030 Definitions.**

**Constraints Map.** A map or equivalent exhibit depicting ESHAs, ESHA buffers, building envelopes for structures, natural resources and views, and conceptual directions for roads, utilities and other development.

**Ranch Plan For Development.** A Constraints Map that is based on a biological site screening and potentially a site assessment on C-APZ zoned lands that is prepared for and included with the Coastal Development Permit application and filing. The Ranch Plan will depict all potential and anticipated development, including a farmhouse, intergenerational housing, farmworker housing, all necessary utilities, roads and other infrastructure for such residential development, and agricultural accessory structures. The County pays the expense of preparing the Ranch Plan.

### **Excerpts from ZONING/DEVELOPMENT APPLICATION SUBMITTAL GUIDE**

Required for master plan and precise development plan ...

**2. Site map.** Coastal Permit applications shall contain a detailed site plan showing existing and proposed construction, with major vegetation, water courses, natural features, and other probable wildlife areas.

#### **18. Development Envelopes**

Proposed envelopes for existing **and future structures**, locations of road and utility alignments, and septic leachfield areas must be shown on the site plan.

... may be requested by staff ...

#### **38. Constraints Map**

A composite constraints map that shows the proposed site boundaries and improvements overlain by environmental constraints and adequate buffers surrounding significant environmental features shall be prepared by the project architect or civil engineer. These buffers shall be based on Countywide Plan polices, where appropriate, and on the environmental studies required for the application. Buffers shall be accurately mapped and may include, but are not limited to Tree Protection Zones, Wetland Conservation Areas, Streamside Conservation areas, Ridgeland and Upland Greenbelt Areas, flood zones, geologically unstable or otherwise hazardous areas, and adequate distances from special status species or hazardous areas. Slope percentages for different portions of the site shall be provided in the following increments: 0 to 15%, 16% to 24%, 25% to 34%, >34%.

## **Attachment 2**

### **Proposed ESHA Buffer Exception Language**

#### **C-BIO-20 Wetland Buffer Adjustments**

**1.** A request for a buffer adjustment to a coastal permit may only be considered in rare instances for unusual circumstances, and if the adjustment is for a principal permitted use and conforms with zoning, and:

- a.** The proposed adjustment is on a parcel, defined for the purposes of this policy as all contiguous legal lots of record that have been under common ownership or control within five years prior to the permit application, located entirely within the buffer; or
- b.** The proposed adjustment is demonstrated that its development outside the buffer would have a greater impact on the wetland and the continuance of its habitat than development within the buffer; or
- c.** The wetland was constructed out of dry land for the treatment, conveyance or storage of water and does not affect natural wetlands.

**2.** A buffer adjustment may be granted only if supported by the findings of a site assessment which demonstrate that the adjusted buffer, in combination with incorporated siting, design, or other mitigation measures, will prevent impacts that measurably degrade the wetland and will be compatible with the continuance of the wetland ESHA. The buffer shall be adjusted as little as possible, and shall not in any circumstance be adjusted to a distance of less than 75 feet in width from the edge of the wetland.

**3.** Any buffer adjustment must take into consideration the need for vegetation and tree clearing for fire safety or human safety and must create a net environmental benefit pursuant to Code section \*\*\*.

## COMMUNITY MARIN

November 12, 2012

Steve Kinsey, President  
Marin County Board of Supervisors  
3501 Civic Center Drive  
San Rafael, CA 94903

NOV 13 2012 AM 9:44 Planning

SUBJECT: **LOCAL COASTAL PROGRAM AMENDMENTS (LCPA) – Agriculture and Biological Resources, continued**

Dear President Kinsey and Supervisors:

The following comments on the Draft LCPA are a continuation of comments submitted on behalf of "Community Marin" on October 2, 2012. They are based on our review of the November 13 staff report and comments from the Coastal Commission staff dated November 9, 2012. They also reflect our review of 2007 Countywide Plan policies under BIO-3 (Wetland Conservation) and BIO-4 (Riparian Conservation), both of which provide important standards with regard to ESHA buffers and buffer adjustments in the LCPA.

### I. Agricultural Operations and Diversification

In our October 2 letter we commented on two issues that are cited in the Coastal Commission's November 9 letter. The first issue concerns the "... expanded definition of agriculture that goes beyond crop production, cultivation, and grazing to include such things as intergenerational housing and overnight accommodations" (CCC letter, November 9, 2012). Although Community Marin makes no recommendations specific to intergenerational housing or homestay facilities, it does recommend that *"... any residential development be secondary and subordinate to the primary agricultural use of sites."*

We continue to concur with CCC staff that intergenerational homes and overnight accommodations such as homestays should not be intermixed with traditional agricultural uses for purposes of definition and permitting. As the CCC letter points out, the objective is not to exclude such uses on agricultural lands, but rather to separate them from traditional agricultural uses and review them within a Coastal Development framework that addresses concerns such as siting and design, consistent with the Coastal Act and other LCPA policies. Therefore, we urge you to revise the text of C-AG-2 (6) by removing "one intergenerational home" and "agricultural homestay facilities with three or fewer guest rooms" as principal permitted uses.

The second issue raised by Community Marin in our October 2 letter and now echoed in the CCC's November 9 letter concerns the need for clarity as to which agricultural activities are subject to requirements of a Coastal Development Permit (CDP) and which are not. The CCC letter makes it clear that "... only ongoing agricultural activities (such as grazing or grading for the planting of row crops) are exempt from CDP requirements; any new or expanded agricultural operations, including converting open fields to row crops, require a CDP." The CCC letter goes on to state that "... the Coastal Act



defines development to include all grading, any changes in the density or intensity of use of land or water . . ."

Community Marin has long held that changes in intensity of agricultural use and new agricultural uses, such as change from livestock grazing to row crops, should be subject to review, in this case a CDP. Community Marin's argument is based in part on the County's definition of "Development" (Article VIII, Chapter 22.130 – Definitions), which includes ". . .grading. . .; and, change in the intensity of use of water or of access thereto. . ." This definition is similar to the definition in the Coastal Act. As it now stands, the LCPA (Update) excludes agricultural crop management and grazing from the definition entirely, leaving the question of which types of agricultural activities are subject to CDP requirement open to interpretation. We agree with CCC staff that "any new or expanded agricultural operations, including converting open fields to row crops, require a CDP." Such conversions should be identified as a *permitted use* in C-AG-2, as is Viticulture.

## II. Biological Resources

The CCC November 9 letter raises concerns with the way in which the LCPA proposes to protect ESHAs. We generally concur with the CCC recommendations; however, we also believe that the LCPA should be no less protective of resources than policies in 2007 Countywide Plan which set standards for wetland and stream and riparian resources for the four corridors in the unincorporated county.

ESHA policies in the LCP Amendments fall into three general categories: Terrestrial, Wetlands, and Streams and Riparian. The policies in C-BIO-1,-2, and -3, as revised, offer basic protections to these resources and their buffers. We have the following comments on specific deficiencies or needed revisions:

Terrestrial ESHA. In C-BIO-1, terrestrial ESHA refers to "non-aquatic habitats that support rare and endangered species; coastal dunes, roosting and nesting habitat. . ." Note that the term "rare" is not a legal term, and perhaps should be replaced with "threatened." We continue to believe that natural communities designated as "sensitive" in the California Natural Diversity Data Base should also be included. In C-BIO-2 (2), we continue to disagree with the assertion that public access trails are "resource dependent uses." Protection against significant disruption of habitat values is best accomplished by locating any pathways away from ESHA and ESHA buffers. C-BIO-3 should be revised to state that ". . . buffers for terrestrial ESHA shall be a minimum of 50 feet, a width that may be adjusted upward to 100 feet or more by the County as appropriate to protect the habitat value of the resource." Since there is no buffer standard for terrestrial ESHA in either the Countywide Plan or Community Marin that is analogous to buffer standards for wetlands and stream and riparian resources, we will accept 50 feet as an acceptable minimum buffer width (Compare wetlands and streams/riparian below)

Wetland ESHA. LCPA policies in C-BIO-20 (1) and (2) list the limited conditions under which a buffer adjustment may be granted, but then in (2) states that "The buffer shall not be adjusted to a distance of less than 50 feet in width from the edge of the wetland." Allowing this minimum width represents a serious weakening of long-standing policy in the Countywide Plan in Policy BIO-3, which establishes a clear standard of minimum 100-foot setback for the Coastal, Inland Rural, and Baylands Corridors. That policy offers some exceptions to full compliance, but otherwise would allow only minimal incursion. Allowing a setback (buffer) to be reduced to half of that standard does not represent a minimal incursion, and therefore the reference to 50 feet should be removed from C-BIO-20.

Stream and Riparian ESHA The LCPA establishes a two-part buffer calculation of 50 feet landward from the outer edge of riparian vegetation, and a setback of no less than 100 feet from the top of stream bank, including riparian vegetation, whichever is greater. This is consistent with the Countywide Plan standard in BIO-4.1 for the Coastal, Inland Rural, and Baylands Corridors. As in the case of wetlands, the LCPA policy C-BIO-25 lists the limited circumstances under which a buffer adjustment may be granted, and then states that "the buffer shall not be adjusted to a distance of less than 50 feet in width from the edge of the stream/riparian ESHA." As with wetlands, this represents a serious weakening of standards in the Countywide Plan. It also is an ambiguous statement, in that the distances from the stream and from the edge of riparian vegetation are different measures. For both reasons, the reference to a 50-foot fallback minimum should be removed.

Ephemeral streams. Finally, we continue to question that ephemeral streams have been eliminated from any protection in the LCPA, even though they are explicitly protected in the 2007 Countywide Plan (if they are vegetated for a length of 100 feet or support listed special status species). This level of protection in the CWP acknowledges the importance of watershed-based planning. The LCPA should not offer a lower standard than the CWP. Ephemeral streams, even where not vegetated, play an important role in filtering water and controlling the rate, volume, and quality of runoff into perennial streams and downstream waters such as Tomales Bay. We are therefore concerned that recommended new language entirely eliminates ephemeral streams from the definition of streams.

The definition of Stream (coastal) in Code Section 22.130.030 should reinstate the deleted language: "In addition, those ephemeral streams that are not mapped by the U.S.G.S. if the stream (a.) supports riparian vegetation for a length of 100 feet or more, etc. . .

In conclusion, standards in the Coastal Zone, whether explicitly called out in the Coastal Act or not, at a minimum should be equivalent to standards in the CWP. A 100-foot buffer to protect wetlands and streams in the Coastal, Inland Rural, and Baylands Corridors has been standard in Marin County through the last two countywide plans and should not be weakened in the Coastal Zone.

Community Marin appreciates the opportunity to comment on the LCPA in these final months of a long process, and again acknowledges the painstaking work down by Staff. Our ongoing interest is that protections afforded to biological resources as well as agricultural productivity in the Coastal Zone over the past 30 years be continued in the LCP Amendment.

Sincerely,



Nona Dennis,  
for Community Marin

cc. Marin Audubon Society  
eac of West Marin  
Marin Bayland Advocates  
Sierra Club Marin Group  
Marin Conservation League  
SPAWN



November 12, 2012

Dear Members of the Board of Supervisors,

I would like to thank the planning staff for the clarification (on page 3 ) of the November 13, 2012 BOS Exhibit #1 Staff Recommendation of the term "utility facilities" in the description of principal permitted uses in the C-APZ. The further clarification throughout the LCPA to indicate that the principle permitted **accessory structures** or uses appurtenant and necessary to the operation of agricultural uses include barns, fences, corrals, coops, pens and utility facilities (**NOT including wind conversion systems and wind testing facilities**). West Marin Sonoma Coastal Advocates is pleased with this in the context of the definition of agriculture.

Throughout California's agricultural counties the Farm Bureau must respond to the assault on agricultural lands for the industrialization of wind and solar under the ruse of farming. Marin's LCPA helps to preserve the Williamson Act and Marin Agricultural Land Trust's ranches. Protecting Marin's agricultural legacy is what makes Marin the unique and beautiful place that it is today. Thank you.

Susie Schlesinger

West Marin Sonoma Coastal Advocates

November 13, 2012

Mr. Chairman, members of the Board,

Relative to the LCPA Part1, Biological Resources, and Part 2, Agricultural Resources, we request that the Terrestrial ESHA description include Coastal Prairie/Grassland in the Proposed Edit, C-BIO-1, Environmentally Sensitive Habitat Areas.

This request is supported in the current issue of **Fremontia**, the Journal of the California Native Plant Society, Vol. 39, May/September 2011. Coastal Prairies are described as occurring in northern Marin and southern Sonoma counties "almost entirely on the 5 million year old Wilson Grove Formation", a fossil bearing marine sediment. The entire northern part of Marin's Coastal zone from Walker Creek to the Sonoma County line and from Dillon beach to Highway 1 in Tomales is underlain with the Wilson Grove Formation. Coastal Prairie is associated with this geological structure.

Biologically this Terrestrial ESHA plant community is very important for the survival of the American badger, White tailed Kite and the Northern Harrier. All three are California Species of Special Concern and have been observed on agricultural land surrounding the Estero de San Antonio in the Tomales area.

Agriculturally, this plant community is vitally important for the maintenance of healthy grazing lands. Studies begun in 2008 ( **Fremontia**, pg. 43 ) have shown that grassland restoration efforts have been more successful in resisting advances of non-native, invasive plants over chemical applications. When native forb seeds were included in the grassland seed mix, the native plants were shown to resist the establishment of Yellow S Star Thistle, for example.

I also want to extend appreciation and thanks to staff for the Proposed Edit on pg.3, BOS Exhibit #1, Staff recommendations, clarifying the term "Utility facilities, by separating Wind Energy Conversion Systems and wind testing facilities through out the LCPA document.

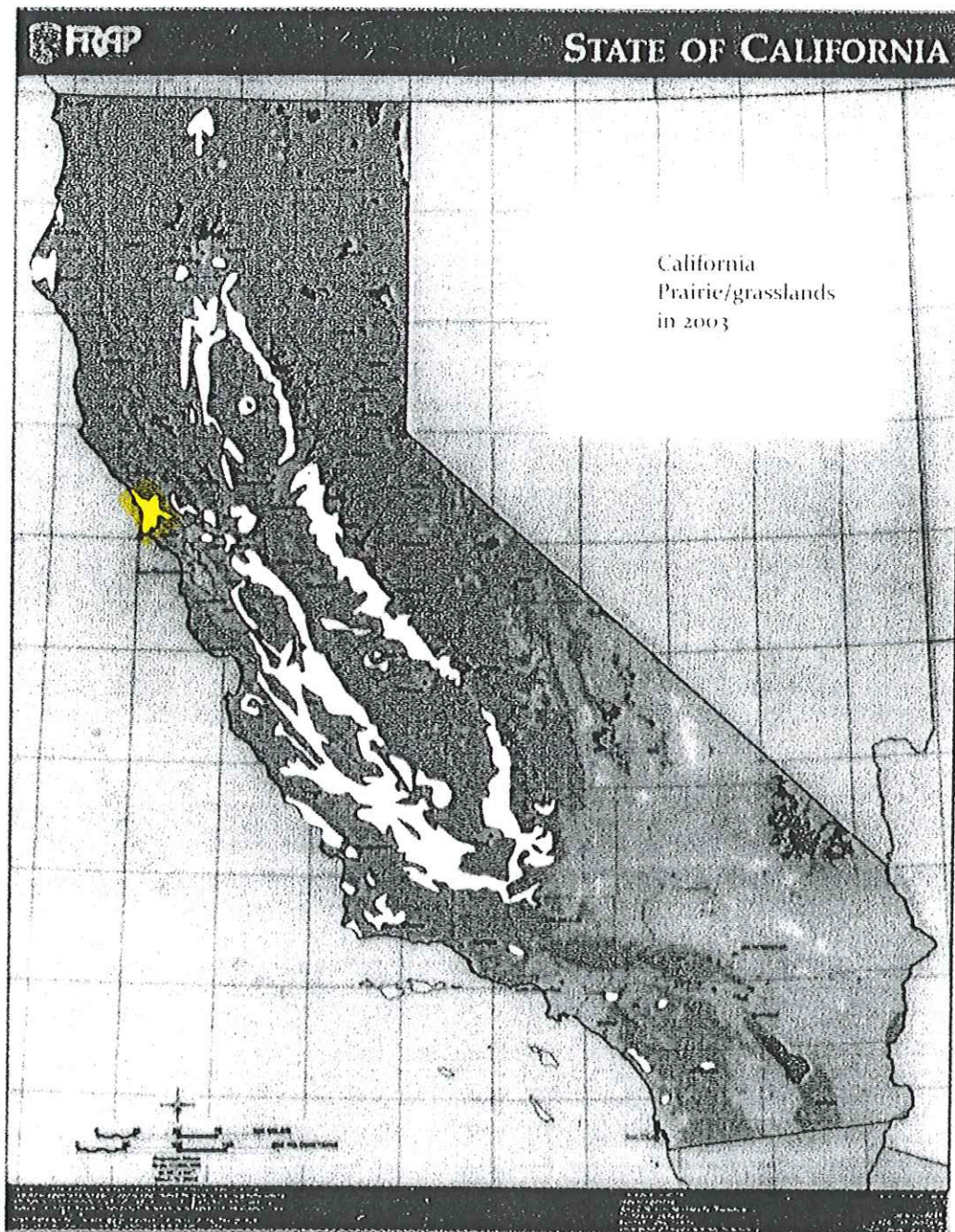
Respectfully submitted, -

A handwritten signature in cursive script, reading "Beverly Childs McIntosh".

Beverly Childs McIntosh, retired Environmental Planner



FIGURE 2. CALIFORNIA FIRE AND RESOURCE ASSESSMENT PROGRAM (FRAP) MAP OF STATE LAND COVER IN 2003.



Note: Herbaceous land cover is indicated in bright yellow. It is approximately equivalent to Burcham's California prairie. Graphics by Joan Kodani.



Plate 128. Wilson Grove Formation sandstones near Valley Ford,  
Sonoma County



President Kinsey, Members of the Board:

I'm Nichola Spaletta and I represent the Spaletta families, who operate a dairy in the national seashore and own and operate hundreds of acres of private grazing land in Marin County.

Thank you for recognizing the importance of agriculture in the LCP Amendments.

There are a number of policies and regulations that could have a very bad impact on farmers and ranchers because of the fact that their language is unclear and inconsistent.

A simple solution would be to incorporate the "Constitutionality Clause" that you already received in Farm Bureau's October 2<sup>nd</sup> letter, and make reference to it in all the policies related to land uses that Farm Bureau listed in their letter. These include requirements for trail and conservation easements.

Thank you for doing all you can to make the LCP a fair and transparent document.





# MARIN COUNTY FARM BUREAU

P.O. Box 219, Pt. Reyes, CA 94956

October 2, 2012

Attachment # 3

## **Re: Recommended new "Constitutionality of Conditions" Clauses in LUP and Development Code**

### **Recommended Revisions to Applicable Development Code Sections and Analysis**

**Issue:** There are a number of proposed policies and Development Code sections in the Local Coastal Program Proposed Amendments dealing with permits conditioned upon the exaction of easements and other impacts on private property rights. The Planning Commission Recommended Drafts contain language that is often internally inconsistent, and which does not adequately lay out the requirement for consistency with state and federal law.

**Intent:** To incorporate language that is internally consistent by creating a new clause that would be incorporated as both a LUP Policy and a Development Code Section entitled the "Constitutionality of Conditions" and then reference that clause in all policies and codes related to it (i.e. "...consistent with Policy/Section XX..."). This approach would also simplify and clarify much of the LCP language by preventing redundancy. Specificity of the new clause will bring transparency necessary for applicants, the public, and government agencies, thereby reducing ill-advised and expensive appeals and lawsuits.

#### **Analysis and Discussion:**

The Fifth Amendment of the Federal Constitution limits the extent to which the County may demand that property owners comply with certain requirements in exchange for a County-issued permit. These requirements include but are not limited to: public access easements; non-agricultural development in C-APZ and C-ARP zones; open space easements; agricultural conservation easements and subdivision. For the County to legally condition the grant of a permit upon a property owner's acceptance of an easement condition or other limitation on land use, it must comply with the U.S. Supreme Court's holdings in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. *Nollan*, 438 U.S. 825 (1987); *Dolan*, 512 U.S. 374 (1994). Under these cases, the burden falls on the County to make an individualized determination that a proposed land use will adversely impact public access, public infrastructure or other public good. The County must then also demonstrate (1) a nexus between the impact of the proposed land use and the condition; and (2) proportionality between the impact of the proposed land use and the condition, such that the condition directly mitigates for the adverse impacts of the proposed land use.

**Recommendation:** In order to ensure such consistency, clarity and transparency, we propose an additional clause in both the Development Code and the Land Use Plan that sets forth the circumstances under which the County may impose requirements on property owners as a condition of obtaining a permit. We urge that this statement of the law be incorporated by reference into all the applicable sections of the Development Code and also into the corresponding policies in the Land Use Plan. Our recommended additions are in **bold and underlined** and recommended deletions in ~~strikethrough~~.

#### **Policy XX & Development Code Section XX - Constitutionality of Conditions**

**Where the County seeks to impose conditions on a property owner's proposed land use, the County bears the burden of demonstrating—on an individualized, case-by-case basis—that the proposed use will create an adverse impact on public access, public infrastructure or other public good. The County must then also demonstrate: (1) a nexus between the impact of the proposed land use and the condition; and (2) proportionality between the impact of the proposed land use and the condition, such that the condition directly mitigates for the adverse impacts of the proposed land use.**

#### **Recommended Revisions to Applicable Development Code Sections and Analysis**

The following proposed amendments to the Development Code, with reference to corresponding LUPA Policies, directly impact private property rights and therefore require consistency with state and federal law.

##### **Conservation Easement and other land exactions and takings**

##### **22.65.030 - Planned District General Development Standards (Policy C-AG-7)**

##### **D. Building location:**

1. Clustering requirement. Structures shall be clustered in a geologically stable, accessible location on the site where their visual prominence is minimized, consistent with needs for privacy. Clustering is especially important on open grassy hillsides; however, a greater scattering of buildings may be preferable on wooded hillsides to save trees. The prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography.

In the C-APZ and C-ARP agricultural zones, non-agricultural development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use. **Consistent with Policy/Section XX**, non-agricultural development, including division of agricultural



lands, shall only be allowed upon demonstration that long-term productivity of agricultural lands would be maintained and enhanced as a result of such development. **Consistent with Policy/Section XX**, non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, and shall not require new road construction or improvements resulting in significant impacts on agriculture, significant vegetation, significant scenic resources, or natural topography of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. Any new parcels created shall have building envelopes outside any designated scenic protection area.

#### **Analysis and Discussion**

The imposition of an affirmative agricultural easement is subject to the requirements of *Nollan* and *Dolan* as outlined in Policy/Section XX. Recently, a trial court struck down a similar requirement because there was no nexus or proportionality between the easement requirement and the impact of the proposed development. *See Sterling v. California Coastal Commission*, No. CIV 482448 (Cal. Sup. Ct., Jul. 22, 2011).

2. Development near ridgelines. **Consistent with Policy/Section XX**, no construction shall occur on top of, or within 300 feet horizontally, or within 100 feet vertically, of visually prominent ridgelines, whichever is more restrictive, unless no other suitable locations are available on the site or the lot is located substantially within the ridgeline area as defined herein. If structures must be placed within this restricted area because of site constraints or because siting the development outside of the ridgeline area will result in greater visual or environmental impacts, they shall be in locations that are the least visible from public viewing areas.

E. Land Division of Agricultural Lands. Land divisions affecting agricultural lands shall be designed consistent with the requirements of this Article. In considering divisions of agricultural lands in the Coastal Zone **and consistent with Policy/Section XX**, the County may approve fewer parcels than the maximum number of parcels allowed by the Development Code based on site characteristics such as topography, soil, water availability, environmental constraints and the capacity to sustain viable agricultural operations.

#### G. Open space areas:

1. Dedication required. Land to be preserved as open space, **consistent with Policy/Section XX** may be dedicated by fee title to the County or an agency or organization designated by the County before issuance of any construction permit or may remain in private ownership with appropriate scenic and/or open space easements or other encumbrances acceptable to the County. The County may require **consistent with Policy/Section XX** the reasonable public access across lands remaining in private ownership, consistent with federal and state law.

3. Open space uses. Uses in open space areas shall be in compliance with policies of the Marin County Open Space District. Generally, uses shall have no or minimal impact on

the natural environment. **Consistent with Policy/Section XX**, Pedestrian and equestrian access shall be provided where possible, and reasonable. The intent is to serve the people in adjacent communities, but not attract large numbers of visitors from other areas.

#### 22.65.040 - C-APZ Zoning District Standards (Policy C-AG-2)

A. Purpose. This Section provides additional development standards for the C-APZ zoning district that are to preserve productive lands for agricultural use, and ensure that development is accessory and incidental to, in support of, and compatible with agricultural uses.

B. Applicability. The requirements of this Section apply to proposed development in addition to the standards established by Section 22.65.030 (Planned District General Development Standards) and Chapter 22.64 (Coastal Zone Development and Resource Management Standards), and all other applicable provisions of this Development Code.

C. Development standards. Development permits in the C-APZ district shall also be subject to the following standards and requirements in addition to section 22.65.030:

##### 1. Standards for agricultural uses:

a. **Consistent with Policy/Section XX**, permitted development shall protect and maintain continued agricultural use, and contribute to agricultural viability.

b. Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other public services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies including Tomales Bay, either individually or cumulatively.

c. Permitted development shall have no significant adverse impacts on **environmentally sensitive habitat areas as delineated in the LCP maps**, ~~environmental quality or natural habitats~~, and shall meet all other applicable policies, consistent with the LCP **and with Policy/Section XX**.

##### 2. Standards for Non-Agricultural Uses

**Consistent with Policy/Section XX**, non-agricultural uses, including division of agricultural lands or construction of ~~two or more dwelling units~~ (excluding agricultural worker ~~or~~ **and** intergenerational housing) shall meet the requirements of Section 22.65.040C above and the following additional requirements:

a. Conservation easements. Consistent with state and federal laws **and Policy/Section XX**, the approval of nonagricultural uses, a subdivision, or construction of two or more dwelling units, excluding agricultural worker and intergenerational housing, shall include

measures for the long-term preservation of lands proposed or required to remain undeveloped. Preservation shall be accomplished by permanent conservation easements or other encumbrances acceptable to the County. Only agricultural uses shall be allowed under these encumbrances. In addition, the County shall require the execution of a covenant prohibiting further subdivision of parcels created in compliance with this Section and Article VI (Subdivisions), so that each is retained as a single unit.

See analysis following D1.

#### Public Access

##### 22.64.180 - Public Coastal Access (Policy C-PA-2)

###### A. Application requirements.

1. Site Plan. Coastal permit applications for development on property located between the shoreline and the first public road shall include a site plan showing the location of the property and proposed development in relation to the shoreline, tidelands, submerged lands or public trust lands. ~~Any evidence of historic public use should also be indicated.~~ **It is the County's burden to demonstrate evidence of prescriptive rights in favor of the public. Only a court may declare the existence of prescriptive rights.**

#### Analysis and Discussion

While the County may consider evidence of historic public use, it is improper to ask a permit applicant to produce that evidence. The burden falls on the County to establish a prescriptive right; it may not coerce a permit applicant into assisting in that process. Moreover, only a court may declare prescriptive rights in favor of the public. *See LT-WR, LLC v. Cal. Coastal Comm'n*, 152 Cal. App. 4th 770 (2007).

###### B. Public Coastal Access standards.

1. Public coastal access in new developments. New development located between the shoreline and the first public road shall be evaluated for impacts on public access to the coast per Land Use Plan Policy C-PA-2. Where a nexus exists **and consistent with Policy/Section XX**, the dedication of a lateral, vertical and/or bluff top accessway ~~shall~~ **may** be required per Land Use Plan Policy C-PA-9, unless Land Use Plan Policy C-PA-3 provides an exemption.

2. Direct dedication of public coastal access. **Consistent with Policy/Section XX and** if feasible, direct dedication of an easement or fee title interest for a required coastal accessway is preferred per Land Use Plan Policy C-PA-4.

3. Acquisition of new public coastal accessways. The acquisition of additional public coastal accessways shall be pursued through available means per Land Use Plan Policy CPA-6 **and consistent with Policy/Section XX**.



4. Protection of prescriptive rights. New development shall be evaluated to ensure that it does not interfere with **the public's prescriptive rights that have been adjudicated and confirmed by a court of law.** ~~the public's right of access to the sea where acquired through historic use per Land Use Plan Policy C-PA-7.~~

#### **Analysis and Discussion**

It is unacceptable to base permitting decisions on potential public prescriptive rights that have not been adjudicated and confirmed by a court of law. *See LT-WR, LLC v. Cal. Coastal Comm'n*, 152 Cal. App. 4th 770 (2007). To burden a landowner with a public access easement condition because of "any evidence of historic public use" impermissibly usurps the role of the judiciary in adjudicating interests in real property. Only courts are competent to declare prescriptive rights. They are bound by procedural safeguards that are designed to assess the credibility of evidence and to ensure fairness. Those same safeguards are absent from County proceedings which therefore do not adequately protect property owners.