



December 10, 2012

Marin County Board of Supervisors
Via email: bos@co.marin.ca.us

Dear Supervisors,

Attached please find comments from the Environmental Action Committee of West Marin (EAC). Our comments follow the format of the staff report. We look forward to talking with you at the hearing tomorrow.

Item I, Attachment 1 – Sea Level Rise

EAC supports the staff report's proposal to include policy language addressing climate change and sea level rise based on best available science.

Recommendation: EAC requests that the Board set in motion a timeline for staff to work with the public to develop the new policies and the vulnerability assessment.

Item II, Attachment 1 – WECS

EAC supports the comments of the West Marin – Sonoma Coastal Advocates regarding the numerous significant impacts that would result from industrial wind turbines in West Marin. EAC generally agree with Planning Commission-approved policies and recommendations for 40-100 foot WECS in the C-ARP and C-APZ zones but believes the Board should consider a cap on the number of Medium Freestanding WECS for a single C-ARP parcel. In addition, the Wind Energy Combining District (WE-) is described at page 6 as "east side of Highway One" but the area comprising the district is not defined in the LCPA (22.64.045, p. 56, or 22.62.090.B.4, p. 50).

Recommendation: Consider a limit on the number of Medium Freestanding WECS for a single C-ARP parcel based on the size of the parcel.

Item III, Attachment 1 – Public Facilities and Services

EAC continues to be concerned about the availability of water resources, particularly groundwater, for new development in the East Shore. In the existing LCP, pages 138 to 166 provide significant background information about the water availability and potential new sources, if any. The existing LCP states that "*most of the east side of Tomales Bay has little known potential for development of additional water supplies. The ability of surface sources to*

provide supply is limited by the fact that many east side streams are intermittent and thus cannot be used year-round.”

Not only has this information not been updated in the proposed LCPA, but it has been deleted entirely which removes important reference information that has already been certified by the Coastal Commission. It seems that there is a lack of understanding about groundwater availability in the East Shore, and the staff report lists the demand of the North Marin Water District considerably beyond the supply. Additionally, there is no monitoring of use levels, and the county has not enforced the Coastal Act requirement that a coastal development permit is required for all new wells.

The testing standard policy needs more information. The standard is now listed as a requirement to show 1.5 gallons per minute but that does not specify whether testing is during the wet season or dry season. The latter should be the required timeframe to test. In addition, no procedures are referenced in the LCPA for how to determine what constitutes “adequate” water supply when assessing the extent to which development would adversely impact neighboring property owners.

The provisions of policy C-PFS-13 and Development Code Section 22.64.140.A.13 should be changed to require hydrological studies for new water sources serving *two* or more parcels, not five or more parcels.

EAC strongly recommends that the County require provisions of PFS-13 to apply to all viticulture or row crops or any intensification of water use in the coastal zone.

Finally, EAC disagrees with staff conclusion that additional information on groundwater supplies and an evaluation of the cumulative impacts of wells on coastal resources would be prohibitively costly and not feasible. Could start by putting meters on selected well, and installing some monitoring wells, to begin data collection.

Recommendations: To ensure the adequate protection of the public groundwater supply include in the LCPA ,

- 1) EAC’s proposal to retain the existing background language for water resources on pages 138 to 166 of the Unit 2 LCP,
- 2) specify that any groundwater testing should occur in the dry season July through September,
- 3) the provisions of policy C-PFS-13 and Development Code Section 22.64.140.A.13 should be changed to require hydrological studies for new water sources serving two or more parcels,
- 4) include a provision that makes PFS-13, as proposed to be amended above, applicable to all new viticulture and row crops that would constitute “development,” and
- 5) direct staff to work with the Environmental Health department to create enhanced testing standards and procedures for groundwater in the coastal zone.

Item V, Attachment 1 – Overnight Accommodations

EAC agrees that a Santa Cruz-like vacation rental ordinance should be considered for the future. Testimony was given last winter by Stinson Beach residents about impacts to their neighborhoods from absentee vacation-rental housing owners. The Santa Cruz ordinance

provisions would mostly address their concerns.

Page 7, Attachment 3 - Appeal of categorical exclusion determinations

Section 22.70.030 Coastal Permit filing, Initial Processing, subsection B which is included below, if this section is adopted as written, any determination that a proposed development is categorically excluded from the requirement to obtain a coastal permit would be removed from public oversight.

B. Determination of permit category.

“... **With the exception of categorical exclusions**, determinations regarding permit category may be appealed in compliance with Section 22.70.040 – Appeal of permit Category Determination.”

Such a provision would violate due-process rights. Questionable or erroneous staff determinations could not be subject to public scrutiny and review by an appellate body.

Examples of possible developments that could be determined to be categorically excluded include: single-family residence on a parcel partially within an exclusion zone; well drilling on agricultural parcels.

Early this year the Board adopted amendments to the Development Code that restricted the right to appeal an agency determination to discretionary actions not involving code enforcement. EAC did not agree with that change, just as it does not agree with this further restriction on the public participation.

Page 6, Attachment 4 - Mariculture

Recommendation: All references to commercial uses within the waters of Drake’s Estero should be deleted. Language should be added to the effect that on December 4, 2012 a notice in the Federal Register was filed that the 1,363 acres of potential wilderness in Drakes Estero had become fully protected wilderness.

Page 10, Attachment 4 - Built Environment – Visual Resources

Key background information that provides the context for the importance of the policy language that protects visual resources has been deleted. The existing LCP, at page 194, states that:

Coastal Act policies on visual quality, found in Section 30251, require the protection of scenic and visual resources of coastal areas. Visual resources, including beaches, wetlands, and other natural as well as manmade features, are vulnerable to degradation through improper location of development, blockage of coastal views, alteration of natural land forms by poor cutting, grading, and filling practices, and by poor design or placement of roadside signs and utility lines. The primary concern of the Coastal Act is to protect views to scenic resources from public roads, beaches, trails, and vista points.

Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. The magnificent visual character of Unit II lands is a major attraction to the many tourists who visit the area, as well as to the people

who live there. *New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed.* (Emphasis added).

The County has a design review ordinance for the purposes of protecting visual quality and stimulating creative design. The ordinance establishes design standards for new developments in planned districts. In standard zoning districts, single family dwellings and some agricultural developments are exempt from review. Both the shoreline of Tomales Bay and agricultural lands in Unit II are rezoned in the LCP from standard to planned districts in order to bring them under master plan and design review standards and to allow design flexibility in these sensitive areas.

EAC believes that we should retain the above language because it provides a clear and eloquent context for the importance of protecting visual and scenic resources around Tomales Bay.

In addition, EAC agrees with Richard Kohn's written comments to the Board on 1/9/12:

C-DES-2. Protection of Visual Resources.

C-DES-2 deletes the phrase protect visual resources and" from the following sentence as it originally was drafted: "Ensure the appropriate siting and design of structures **to protect visual resources** and prevent the obstruction of significant views, including views both to and along the coast as seen from public viewing areas...." (Emphasis added)

Paradoxically, the heading of this subsection is "Protection of Visual Resources." The LUP contains a section on page 4 under the heading "Effects of headings and titles." It states: "Each LUP policy is accompanied by a heading or title. These are provided for convenience only. To the degree that these headings or titles conflict with the text they accompany, the text shall govern." (Emphasis added). The phrase "protect visual resources" should be restored to the text so that the text matches the heading. This simple addition of language will prevent any confusion in interpretation

Recommendation: Based on the information above, EAC recommends that the Board modify the Planning Commission approved draft LCPA language from 1-27-12 by 1) retaining the words "protect scenic resources" and 2) including EAC's proposed additions, both of which are underlined in the text below:

C-DES-2 Protection of Visual Resources. Ensure appropriate siting and design of structures to protect scenic resources and the magnificent visual character of Tomales Bay, and prevent obstruction of significant views, including views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and access ways, vista points, and coastal streams and waters used for recreational purposes. The intent of this policy is the protection of significant public views rather than coastal views from private residences where no public vistas are involved. Require development to be screened with appropriate landscaping provided that when mature, such landscaping shall not interfere with public views to and along the coast. The use of drought tolerant, native coastal plant species is encouraged. Continue to keep road and driveway

construction, grading, and utility extensions to a minimum, except that longer road and driveway extensions may be necessary in highly visible areas in order to avoid or minimize other impacts.

(PC app. 11/7/11, 1/24/11)

EAC believes that adding this language to C-DES-2 and retaining the three introductory paragraphs copied above would ensure that we maintain the existing LCP standard of protection for the scenic resources around Tomales Bay.

Page 19, Attachment 4 - Public Parks.

Recommendation: Any policies providing advisory direction for federal parks should acknowledge that the National Park Service has many of the nation's highest land use standards for resource protection per its management plans and applicable federal laws, including the 1964 Wilderness Act and the 1976 Point Reyes Wilderness Act, and the Park Service has a duty to carry out those laws and policies.

Pages 22-23, Attachment 4 – Streamlining Provisions

Recommendation: EAC proposes the following revisions:

H. De minimis coastal permit waiver. EAC objects to the inclusion of the 4-foot retaining wall as an example of a De minimis permit if there is no maximum length included, which would provide the total area of the wall that is de minimis.

J. Public hearing waiver. Retain current standard that a public hearing is always held, and appropriate prior notice of the hearing, and an administrative record is always made for why the county allowed even minor development in the coastal zone. The cumulative impact of such exemptions could reach a point that mitigation measures are required, but if there is no documentation and record of such development it would be very difficult, if not impossible, to keep track.

K. Coastal Emergency Permit. Please include a definition of “storm” that would trigger the ability to take emergency action.

M. Temporary Events. The exemption for “temporary events” should be defined to provide reasonable standards. For example, in the Jablons wind tower study application, the county determined that three years was “temporary” and a number of the appellants, including EAC, disagreed with that determination in our appeals.

Thank you for your consideration of our comments.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Amy Trainer", followed by a horizontal line.

Amy Trainer, Executive Director