west marin environmental action committee

January 14, 2013

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

Dear Supervisors,

The Environmental Action Committee of West Marin (EAC) would like to reiterate a number of concerns about the proposed LCP Amendment that it has repeatedly raised the past two years. These concerns include issues not raised in the staff report as well as issues that raised in the staff report that do not provide acceptable alternatives to policy language in our existing certified LCP.

Issues not addressed in staff report:

- Residential buildout analysis in C-APZ. The staff has not provided an update to Alisa Stevenson's initial tables (Oct. 2011). EAC raised a number of questions about the initial build-out analysis conclusions and assumptions that have not been addressed. [Note: "attachment 5" (on website) to 12/11/12 staff report covered availability of support services to support potential development – not C-APZ potential development.]

- Master plan – replacement by Coastal Permit. The County needs to require a comprehensive assessment of environmental constraints map (ranch plan for development) on all contiguous properties when considering first CP.

- Responses to numerous issues raised in CCC letters. The staff has not provided the public access to the Coastal Commission staff's correspondence from December, and still has not addressed numerous issues raised by the Commission staff that EAC has repeatedly requested a response.

- Background language in existing LCP On numerous occasions EAC has advocated that significant background information that provides substantive background and context for LCP policies should be retained. EAC disagrees that this information can or should be relegated to an appendix that is not part of the new LCPA. EAC has assembled and will submit a short set of quoted excepts from existing LCP that are "timeless" descriptions of views/topography/habitats that should be preserved.

Issues identified in the 1-15-13 staff report:

p. 3. **Grading**.
EAC supports the staff recommend definition of "grading", using 50 cubic yards for C-APZ zoning district. EAC supports a smaller threshold – 20-30 cubic yards – for all other coastal zoning districts, which would enable the county to require that Best Management Practices be followed.
Add language: The definition proposed in 22.130.030 is only acceptable if it is qualified that the exemption applies to "*ongoing*" plowing, tilling, etc. – meaning no new plowing or tilling is occurring.

p. 4: 22.68.030 **Coastal Permit Required**.
Typo, line 2: "of a state or local agency" should be "**or** a state or local agency"
The added language by staff appears ok.

This definition as written does not conform with the Coastal Act because it does not account for the expanded use of an existing well - such as running viticulture, row crops, or an orchard off an existing well, which clearly would be a "change in the intensity of use of water" per the Coastal Act.
Add language: The last sentence of the definition should be modified to include the underlined language below: For agricultural uses, a "change in the intensity of use of water, or access thereto" means the development of new water sources such as construction of a new well, the significant expansion of an existing well, or the creation or expansion of a surface impoundment.

pp. 4-5 **Viticulture**
With the 50 cu. yd. limit on grading definition EAC can support the proposal to leave Viticulture regulations as proposed (a Principal Use), with no explicit carve-out for "hobby" vineyards. However, we recommend a maximum "hobby" acreage of one (1) acre beyond which a coastal permit is always required, regardless of well and grading involved.

There are numerous problems with relying on the County's viticulture ordinance (VESCO), which inappropriately delegates important land use decisions and review to the Ag Commissioner. The ordinance has no public review process and is a non-disretionary permit – if you can get a civil engineer to agree with what you're proposing [terracing up to 49% slopes] then you're allowed to do it. EAC strongly objected to the ordinance as written and does not agree that it provides the necessary protections, or an adequate process.

p. 6. **Intergenerational Housing.**
The staff report is silent about Coastal Commission staff's repeated criticism of treating additional ag residential housing as a PPU. EAC strongly agrees with the Commission staff that IG housing is Principal Use, and should be subject to all residential development standards and review. To call IG housing for people not working on the farm or ranch "agriculture" within the "agricultural production zone" turns the definition of that zoning district on its head. EAC offered an exceedingly fair compromise to ensure that family farms in the coastal zone are able to secure the housing they need for family members that need to live on the farm because they

work on the farm in a way that protects their development rights and greatly lessens the administrative review.
The County unfortunately continues to overreach and its proposal would effect a substantial change in Coastal Act policy. No other coastal counties or cities allow the type of residential housing proposed by Marin County to be considered "agriculture," and for good reason. Exhibit 1, attached to this letter, highlights examples of the Coastal Commission's long-standing interpretation on this matter which EAC strongly urges the County to accept and follow.

Add Language: p.6 22.32.024. B. Limitations on use. Where IG house not used by family member, can be used as agricultural homestay. This exception needs to be qualified: but not an additional homestay, and subject to the homestay regs in 22.32.023.

pp.10-14**. Buffer Adjustments.**
EAC strongly objects to the proposed removal of the requirement that only a PPU can facilitate an adjustment in stream buffer. The staff report's claimed "consistency" reasoning is not sufficient justification to open the door to numerous additional uses be allowed consideration for a buffer adjustment. EAC will not support this proposed weakening of ESHA protections.

EAC believes that the staff proposal has not effectively dealt with the prior "feasible" criticism. EAC belives that the staff is still taking the approach that if the proposed development does not fit outside the buffer, then the buffer should be adjusted. This ignores the fact that the proposed development could be made smaller to fit outside the buffer and there should be a stated requirement to look at modifying the development proposal as submitted to make it fit within the buffer. Otherwise, this provision will be read that any proposal must be accommodated with a buffer adjustment, and that puts us right back where we started – an open door for buffer adjustments - and that is unacceptable. Specific language is proposed below.

p. 13 **C-BIO-20 Wetland Buffer Adjustments**
The language as proposed in C-BIO-20 sections 1 and 3 is still not acceptable. A CP is required if "proposed on **a legal lot of record** located entirely within the buffer" … In the case of C-APZ parcels, this should be "**all contiguous parcels under common ownership** are located entirely within the buffer". Otherwise, the master plan requirement for any development in C-APZ is not fully replaced by the coastal permit, and a small streamside parcel under common ownership could be developed even though adjacent land is available to owner.

Subsection 1.b is written too loosely and is entirely too open-ended compared to the existing buffer adjustment language. It should absolutely not be a stand-alone factor enabling a buffer adjustment.

Section 3 needs an explicit requirement that all of the "appropriate measures" required for the net environmental benefit must be initiated and completed prior to or simultaneous to the encroachment into the wetland buffer.

EAC proposes the following track changes to the staff's proposal. **Proposed** ~~deletions are stuck-through~~, and additions are underlined:

1. A Coastal Permit that requires a buffer adjustment may only be considered if it conforms with zoning and:

a. ~~It is proposed on a legal lot of record~~ All contiguous parcels under common ownership are located entirely within the buffer; or

~~b. It is demonstrated that permitted development cannot be accommodated entirely outside the required buffer; aor~~

b. that permitted development outside the buffer would have greater impact on the wetland and the continuance of its habitat than development within the buffer; or

~~d~~c. The wetland was constructed out of dry land for the treatment, conveyance or storage of water and does not affect natural wetlands.

3. A coastal permit authorizing a buffer adjustment shall require measures that create a net environmental improvement over existing conditions, in addition to what is otherwise required by minimum applicable site development standards. Such net environmental improvement measures shall be implemented prior to, or at least simultaneous to, the development encroachment into the wetland buffer.

p. 14 **C-BIO-25 Stream and Riparian Buffer Adjustments**

Similar to comments for BIO-20, the proposed language for BIO-25 is still not acceptable. EAC proposes the following additions and deletions:

1. A Coastal Permit that requires a buffer adjustment may only be considered if it is for a principal permitted use that conforms with zoning and:

a. ~~It is proposed on a legal lot of record~~ All contiguous parcels under common ownership are located entirely within the buffer; or

b. ~~It is demonstrated that permitted development cannot be accommodated entirely outside the required buffer; or~~ and that permitted development outside the buffer would have greater impact on the stream or riparian ESHA and the continuance of its habitat than development within the buffer.

3. A coastal permit authorizing a buffer adjustment shall require measures that create a net environmental improvement over existing conditions, in addition to what is otherwise required by minimum applicable site development standards. Such net environmental improvement measures shall be implemented prior to, or at least simultaneous to, the development encroachment into the wetland buffer.

Thank you for your consideration of our concerns and comments.

Sincerely yours,

Amy Trainer, Executive Director

Exhibit 1
Principal Permitted Use (PPU) Examples from Other Coastal Jurisdictions

On at least four occasions the Coastal Commission staff has advised Marin county planners in written comments that they do not regard additional residential development on a C-APZ parcel as a principal permitted use.[1] "We recommend that "Agricultural Production" be designated as the one allowed principal permitted use for C-APZ lands, and that uses appurtenant and functionally-related to agricultural be designated a permitted use. This … will allow for functionally related uses to occur, subject to the LCP's resource protection standards and requirements."

The Coastal Commission and its staff have consistently taken the position that *residential* development in *agricultural* or *timberland* zoning districts is not a principal permitted use.

Mendocino County LCP
Functionally-related development can be viewed as multiple examples of effectively one use type or group, e.g. single family residence, garage, fences, storage sheds. The county-submitted amendment lists numerous types of development for TP (timberland production) zoning district that, although designated PPU, are not functionally related to one another:

(A) Coastal Residential Use Types.
Family Residential: Single-family;
Vacation Home Rental.
(B) Coastal Agricultural Use Types.
Forest Production and Processing: Limited;
Tree Crops
(C) Coastal Open Space Use Types.
Passive Recreation.

The CCC certified LCP Amendment (MEM-MAJ-1-08) on 4/28/11 only after explicitly revising the county's submission so that:

- PPU is "Forest Production and Processing: Limited"
- All development other than this single PPU is appealable, including "Family residential: single family"; and "vacation home rental"

Humboldt County LCP[2]
January 9, 2013 CCC meeting; W7a-1-2013.

The recently adopted amendment in Humboldt County rezoned 2 parcels from RR (rural residential) to TC (timberland commercial).

RR (rural residential): PPU is residential

[1] CCC letters dated 11/9/12, 1/7/12, 9/15/10, 8/10/11.
[2] HUM-MAJ-1-12, Williams-Guterro LUP and IP amendments.

The purpose of the TC land use designation in the Trinidad Area Plan is "to protect productive timberlands for long-term production of merchantable timber." Principal uses (PU) under the TC designation include "timber production including all necessary site preparation, road construction and harvesting, and residential use incidental to this use … *except second dwelling***."** [Emphasis added].

The adopted LUP amendment resulted in a reduced maximum potentially allowable density for the area: the TC designation, unlike the RR designation, prohibits second dwelling units.

Marin County

1. Coastal Commission staff report[3] on **Hansen-Brubaker appeal** (2/14/03):

> Only one use can be the designated PPU for purposes of appeal. … residential development cannot be considered as <u>the</u> PPU of the agriculturally zoned site.
> Status: appeal withdrawn, property sold.

2. Coastal Commission staff report[4] on **Brader-Magee appeal** (9/2/10):

> The project is appealable because the project involves development, the proposed single family residence is not designated as the PPU in the C-APZ-60, and the county inappropriately waived the master plan requirement.
> Status: the appeal is pending.

San Luis Obispo County LCP

Periodic Review, July 2001[5]

Coastal Act Section 30603a(4) specifies that "any development approved by coastal county that is not designated as <u>the</u> principally permitted use" shall be appealable to the Coastal Commission (emphasis added). This means that only one type of use should be considered as principally permitted within each land use category, and that all others should be considered as conditional. Within this context, the kinds of development that necessitate the application of special standards, and are not directly associated with the identified principally permitted use[6], should be processed as conditional uses.

[3] Hansen-Brubaker, Th-9a, Appeal No. A-2-MAR-02-024, page 6.
[4] Brader-Magee, W10a, 9/2/10, Appeal No. A-2-MAR-10-022, page 2.
[5] Adopted Report, San Luis Obispo County LCP Periodic Review, July 12, 2001, As revised August 24, 2001.
[6] The designation of a single principally permitted use does not exclude subsets of that use from also being considered principally permitted. For example, in residential districts where single family residences are designated as the principally permitted use, it may be appropriate to consider certain residential accessory uses as part of the principally permitted residential use.