

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