



November 13, 2012

Marin County Board of Supervisors
Via email: 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 9th 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 12th letter submitted by Nona Dennis on behalf of Community Marin. EAC would like to reiterate the technical comments it submitted for the October 2nd hearing, many of which are supported by the Coastal Commission staff's November 9th 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 2nd.

AGRICULTURAL RESOURCES

1. Definition of Agriculture. EAC concurs with the Coastal Commission's November 9th 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 2nd 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 9th 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 13th 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,



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 ***.