

June 28, 2010

Marin County Planning Commission  
3501 Civic Center Drive  
San Rafael, California 94903



Attention: Chairperson, Katie Crecelius

Re: LCP Update – Biological Resources

Dear Planning Commissioners:

Marin Conservation League appreciates the opportunity to comment on the proposed revisions to the Biological Resources section of the LCP. We have reviewed the Staff Report, Attachment #2: Policy History, and Attachment #1: Remaining Issues – Biological Resources. Staff has done a complicated job of selecting existing LCP policies and amending them where they deemed it appropriate. The result is a major rewrite from the earlier version.

As documented in Attachment #2, LCP Unit I and Unit II both contain policies to protect stream and riparian areas and wetlands. These have been effective for many years. In the process of bringing these policies forward into the rewrite, however, they have been weakened rather than strengthened by selective omissions and exceptions. We are concerned about the following:

1. The wetlands policy from Unit II, as adapted in new policy C-BIO-3.2, states: “Wetlands (in the Unit II) coastal zone shall be preserved and maintained, consistent with the policies in this section, as productive wildlife habitats, recreational open space, and water filtering and storage areas. Land uses in (and adjacent to) wetlands shall be evaluated.” The phrase “and adjacent to” is omitted.

The discussion states: “The reference to adjacency has been eliminated . . . and replaced with the buffer policy from LCP I – policy 28.D, which is incorporated as policy C-BIO-3.7.” Policy C-BIO-3.7, however, makes no reference to adjacent lands. The effect is to drop from consideration lands and land uses surrounding wetlands that may have a profound, if indirect, impact on them – on their hydrologic functions, on water quality, and/or on wildlife movement between wetland and adjacent upland habitats. The relationship between the surrounding (“adjacent”) environment and the wetland should be evaluated, as acknowledged in the existing Unit II policy.

This deletion is puzzling in light of policy C-BIO-1.1, which covers all Environmentally Sensitive Habitat Areas (ESHAs) and states in (B.) that “Development in areas adjacent to ESHAs and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas . . .” The importance of adjacency is again brought up in LUP Implementing Program C-BIO-1.a, which calls for establishing a “process for determining whether projects are within or adjacent to ESHAs. . .” Please restore the phrase “and adjacent to” in policy C-BIO-3.2, where it will reinforce the particular importance of land uses adjacent to wetlands.

2. As stated above, LUP policy C-BIO-3.7 has been adapted from Unit I: “To the maximum extent feasible, a buffer strip, a minimum of 100 feet in width shall be maintained in a natural condi-

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tion along the periphery of all wetlands. No uses other than those dependent upon the resources shall be allowed within the buffer strip unless the project is otherwise designed to be consistent with policy C-BIO-3.8 Wetland Buffer Adjustments and Exceptions. The addition of the adjustments and exceptions in C-BIO-3.8 seriously undermines the strength and clarity of setting a minimum buffer width of 100 feet. We agree that certain artificial constructed "wetlands" (e.g., agricultural ponds, flood control areas) may qualify as exceptions, but Sub-head A is entirely too open-ended as an exception, inviting ready abuse of mitigation: "The applicant demonstrates that a 100-foot buffer is unnecessary to protect the resource, consistent with the criteria established in policy C-BIO-1.3." The wetland buffer adjustments and exceptions granted under 3-BIO-3.8 rely too heavily on the general principles for ESHA protections contained in policies C-BIO-1.1, 1.2, and 1.3. to avoid degradation.

3. The buffer policy C-BIO-3.2, drawn from Unit I, includes maintaining the buffer in a natural condition but omits a phrase found in the Unit II policy: "Where appropriate, the required buffer may be wider based upon findings of the supplemental report required in (e), etc. . . ." The Unit II policy acknowledges that a buffer wider than the 100-foot minimum may be appropriate. This should be included in policy C-BIO-3.2.

4. In general, the existing LCP policies concerning Coastal Streams and Riparian Resources have been adapted in a useful way, such as redefining riparian vegetation as an ESHA, and clarifying how the 50-foot buffer (with 100-foot as a minimum) is measured. Unfortunately, as with policies under Issue #3 – Marin and Wetland Resources, the protective policies under Issue #4 – Coastal Streams and Riparian Areas, have been weakened by exceptions. Policies C-BIO-4.1 and 4.2 are similar to policies C-BIO-3.7 and 3.8 (Wetland Resources) in allowing adjustments and exceptions: The criteria for evaluating possible exceptions under C-BIO-4.2 -- (A) in particular, are tied back to the principles for ESHAs (policies C-BIO-1.1, 1.2, and 1.3). These are entirely too general, leaving the door open to myriad opportunities to claim exceptions and mitigate.

In conclusion, we want to remind the Commission that the 2007 Marin Countywide Plan supports the protection afforded by specific buffer criteria for setbacks from wetlands and streams. These are spelled out and illustrated for the Coastal, Inland Rural, and Baylands Corridors of Marin County. In addition, the existing LCP Unit I and Unit II policies for these resources have afforded buffer protection for coastal streams and wetlands for almost 30 years. These precedents strongly support uniform standards and should guide the updated Local Coastal Program.

Sincerely,



Nona Dennis  
President