

MEMORANDUM

TO: Marin County Board of Supervisors
FROM: Nona Dennis, for **Community Marin**
SUBJECT: Local Coastal Program Amendments: Natural Systems Workshop
DATE: March 27, 2012

Via email

These comments are submitted on behalf of Community Marin, a collaboration of organizations including Marin Conservation League, Marin Audubon Society, Sierra Club Marin Group, EAC of West Marin, and others. The “Community Marin” document, first written in 1991 as an environmentally sound planning guide for the county, is now in its third major revision.

Because Community Marin does not necessarily focus on the Coastal Zone and because the document is still in draft form, these comments are limited to policy recommendations that are generally applicable to the Coastal Zone and/or represent consensus on the Community Marin draft to date. Individual organizations may comment individually. We anticipate a more detailed response at the time of final hearings on the LCP Amendments.

General Principles: Relationship between Natural Resources and Agriculture.

Today’s workshop concerns policy sections that are presented separately in the Land Use Plan but, in reality, are integral to each other – natural resources and agriculture. This relationship is explicit in the Coastal Act itself. Both Article 4 (Marine Resources) and Article 5 (Land Resources) begin with general directives to protect areas and species of biological and economic significance. Article 5 begins with two sections that speak to the dual need to protect both coastal ecosystems and agricultural productivity. Presumably, neither protection should be at the expense of the other, but this goes beyond “balancing.”

30240: (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas; and

30241: The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas’ agricultural economy, and conflicts shall be minimized between agricultural and urban land uses . . .;

It appears that the potential threat to agricultural productivity does not appear to come from the protection of too much sensitive habitat but rather from encroachment of urban land uses into agricultural lands.

Specific Policies on Natural Resources, including Water Resources

Our concern is with policies in the proposed LCP Amendments that are intended to protect the long term health of coastal ecosystems, both in water and on land. Do they adequately continue

the protections that have served the Marin Coastal Zone for more than 30 years in the existing LCP Units I and II? We feel that they do not.

C-BIO-1 and 2. Environmentally Sensitive Habitat Areas (ESHAs). C- BIO-1 is generally consistent with protections of “other environmentally sensitive habitats” found in Unit II (Natural Resources Policy 5. (b)), but C-BIO-2 which follows, addresses development proposal requirements only for “wet” ESHAs (i.e., wetlands, estuaries, streams, etc.), and not for upland ESHAs, such as California native grassland, which is relatively rare on grazed lands . (Note that the former C-BIO-3, deleted from the current proposed amendments, did address upland ESHAs.)

Further, C- BIO-2 would permit development in an ESHA if it met certain requirements, based on a site assessment. According to Development Code 22.64.050 (A)(1), a site assessment *may* be required – not *shall* be required. This important Code section goes on to lay out the components of the site assessment, such as the requirements for a buffer, and even a possible restoration and monitoring plan based on the CCC Guide for Protecting Sensitive Habitats and other Natural Resources. But the circumstances or type of Coastal Permit under which such a site assessment would be required are not given.

This is only one of several instances in which a policy in the LCP may appear to be satisfactory initially, but supporting details in the Code do not ensure a clear process of carry-through or review by the County.

C-BIO-5 Ecological Restoration. We support this policy, which encourages the restoration and enhancement of degraded ESHAs and the creation of new ESHAs, adding the qualification: where such creation would be appropriate and amenable to management and long term survival.

C-BIO-14 Wetlands. C- BIO-14(3) is based on Unit II Natural Resources Policy 4. (c), which states: “No grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently (i.e., pre-1981) used for such activities.” The policy has gone through several recent iterations, becoming more burdensome and unenforceable with each revision. It was carried over from Unit II policy into the first Amended LCP Public Review Draft, but was challenged in the December 1, 2011, hearing on the grounds that grazing can be beneficial to wetlands in some conditions and therefore shouldn’t be prohibited across the board. It can also be damaging, however, again depending on conditions and management regime.

Although regulatory programs now address the quality of runoff from grazing and dairy farms, and voluntary partnerships have accomplished many beneficial restorations of stream banks, riparian vegetation, and related conditions, these programs do not specifically address the effects of “grazing or other agricultural activities” on wetlands. Nor has anyone on staff been able to identify where grazing in wetlands preexisted the 1981 LCP. Furthermore, the existing policy has not received complaints or posed an enforcement issue for the county for the past 30 years.

Our recommendation is to restore the certified LCP (existing) policy, which, in effect, would continue to restrict grazing from salt marshes and transitional areas on Bolinas Lagoon and salt

marshes and a few freshwater wetlands along the east shore of Tomales Bay, and would protect some 600 acres of salt marshes associated with the Esteros de San Antonio and Americano.

C-BIO-19 and 20 Wetland Buffers, and Wetland Buffer Adjustments and Exceptions C-BIO-19 defines a buffer width of 100 feet from the edge of a wetland, or more if determined to be necessary, but is weakened by C-BIO-20, which would allow an applicant to demonstrate that a 100-foot buffer is unnecessary to protect the resource. Even with findings that must be made, C-BIO-20 sets a low bar for acceptance of a reduced buffer. This contrasts with Unit II Natural Resources policy 4.(d), which allows uses within the 100-foot buffer only as specified under diking and filling, or certain resource-dependent activities, which are also specified.

C-BIO-20 should be revised to close the wide loop-hole that could easily be exploited to reduce the buffer to less than 100 feet. The only exception that might warrant a buffer of less than 100 feet should be the absence of any feasible less environmentally damaging alternative, as in C-BIO-2- 1.(a).

C-BIO-24 and 25 Coastal Streams and Riparian Vegetation, Stream Buffer Adjustments and Exceptions. This pair of policies is similar to C-BIO-19 and 20: The first policy promises a buffer and protections, and the second allows convenient exceptions.

C-BIO-24 limits alterations to coastal streams and riparian areas except for defined purposes and establishes a minimum buffer of 100 feet from top of bank. We agree with the measurement of stream buffer, but take issue with the “adjustments and exceptions” that would allow development in stream buffers in C- BIO-25. Under the latter policy, the applicant could demonstrated that a 100/50-foot buffer is unnecessary to protect the resource a minimum 100-foot buffer from top of bank. . . Who would make the necessary findings? And what level of land alteration or vegetation removal would require such an assessment?

As with C-BIO 20, the policy C-BIO-25 1. should be revised to limit exceptions to the stream buffer to the absence of a feasible, less environmentally damaging alternative, as in 1 (a).

C-WR-1 Water Quality Protection and Biological Productivity This comprehensive policy on water quality and quantity should be carefully read, since it is the only policy in this section that deals with a broad range of water issues. It comes almost verbatim from the Coastal Act (Section 30231) and “speaks to the essence of the need for water quality protection.”

In other respects the Water Resources section is focused solely on construction as the source of pollutants and generally ignores other land use activities. With the one exception of C-WR-1, all policies address the impacts of grading, construction, and post-construction on water quality and runoff, and the best management practices that should be adopted to protect water quality from development. No policies address other non-point sources of pollution to Tomales Bay, such as malfunctioning septic systems, or agricultural runoff. Although water quality in Tomales Bay and Walker Creek has improved greatly since the 1980-81 LCP was certified, it continues to be impaired in the Coastal Zone. The reality remains that agriculture is the prevailing land use in the Coastal Zone and agricultural practices, even though regulated, can be a source of pollution.

This should be recognized in LCP policies, not as an attack on agriculture, but to acknowledge conditions that should be the subject of ongoing policy.

Thank you for this opportunity to comment.