

Land Use & Transportation Committee Meeting
Marin Conservation League
Wednesday, January 7, 2015 – 9:00 am
175 N. Redwood Dr., San Rafael

Agenda (Amended 01/05/2014)

1. Announcements:
2. **Draft minutes:** December 3, 2014
3. **Approval of Agenda**
4. **Action Items:**
 - a. Corte Madera Inn rebuild DEIR
 - b. Coastal Commission proposed changes to Marin County Local Coastal Land Use Plan (see attachment and www.marincounty.org/depts/cd/divisions/planning/local-coastal-program/plans-and-docs)
5. **County wide planning issues:**
 - a. Transportation updates - Bob Johnston
SMART impacts on wetlands after rains
N/S Greenways Gap Closure cooperative agreement with TAM
 - b. Stream Conservation Area status – Randy
 - c. Canalways – report back Nona
 - d. Neg. dec. on the Marin Civic Center Drive improvements
6. **Brief Updates:**
 - a. PRNS ranch planning
 - b. Community Marin - Priscilla
 - c. Novato General Plan Update
 - d. Easton Point - Randy
7. **Back Burner issues:**

Highway 101 projects
SMART or NCRA
Hetzfield project, Lucas Valley
Golden Gate Baptist Seminary
Hamilton Sports Facility
Marin General Hospital Retrofit
Greenbrae N/S greenway
8. Next meeting February 4, 2015

Agricultural Land Use Committee
Planning Subcommittee
January 7, 2015 - 11 a.m.

1. Work Session on CCC Staff Proposed Edits to Marin LCP – Development Code:
 - a. Finalize schedule options for follow-up Work Sessions
 - b. Suggestions for Work Session agenda
 - c. Review of Lafranchi tour
2. Point Reyes Ranch Management Plan and Planning Process:
 - a. Review Plan Update
 - b. Discuss questions on elk sent in advance to the Park that remain unanswered.
3. Proposed Study Group to Develop Updated MCL Agricultural Land Use policies
4. Posting information on agricultural issues on MCL website.
 - a. Identify examples of appropriate information to be posted.
 - b. Seek volunteer to assist with collecting appropriate information and keeping postings up-to-date.

MARIN CONSERVATION LEAGUE
Land Use and Transportation Committee Meeting Notes: December 3, 2014

Present: Susan Stompe, chair; also Alan Bortel, Joy Dahlgren, Liz Dale, Nona Dennis, Don Dickenson, Randy Greenberg, Jana Haehl, Doug Karpa, Cheryl Longinotti, Kate Powers, Roger Roberts, Judy Teichman, Ann Thomas, Doug Wilson. Guest: David Lewis. Met 9 to 11:15.

November 5, 2014 Meeting Notes. Approved as submitted.

Whale Tail Grant/Letter of Support. County Planner Jack Liebster has asked for letters of support for a grant for a project entitled Youth Exploring Sea Level Rise Science (YESS). If approved the 15-month project would partner the County with local high schools to educate science students about climate change and sea level rise through hands-on mapping and data collection.

Recommendation. M/S/C (Ann/Nona) to approve a letter of support for this project application.

Lucas Valley Road Scenic Designation. Joy and Liz Dale reviewed Lucas Valley residents' proposal that the County nominate the road from its Miller Creek intersection to Big Rock for the California Scenic Highway Program. This would be the first designation in Marin County of this status, the aim of which is to protect scenic values. Joy and Liz believe it would be helpful to add a layer of review requiring that development along the road be consistent with scenic values.

Recommendation. M/S/C (Nona/Judy) to write the Board of Supervisor stating MCL's continued support of this in concept, adding a request that it include the segment from Miller Creek to the corner of Nicasio Valley Road (9.5 miles). Don did not vote on the motion.

Marin Development Code/Changes requested by Coastal Commission. Marin's UC Farm Advisor David Lewis briefly reviewed his office functions, and described the need they see for regulatory relief for the agricultural community. In particular, he outlined difficulties he sees with the Coastal Commission's requested changes to Marin's Local Coastal Plan(LCP) development code, and their effect on agricultural feasibility. Major topics of concern: flexibility in crop diversification, intergenerational housing, and on-site processing and sales, and clarification of terms and definitions. Of special concern: that farmers/ranchers have sufficient latitude to change uses (e.g. from row crops to chickens) in response to economic, climate, or market conditions to assure continued viability.

The Commission has approved the land use segment of the County LCP and is set to consider the development code in April. The LCP development code will be reviewed by the County PC and we understand that county action will be deferred until staff has been able to review and make recommendations on both the land use and development code sections. Nona noted the need for the LCP development code to be consistent with related elements in the CWP.

Recommendation. M/S/C (Ann/Jana) to establish a Land Use/Ag Land Use study group to consider issues raised by the Commission and LCP and also look at MCL policies regarding agriculture, but beginning with immediate issues raised by the LCP development code. Don abstained from vote.

Letter to BOS/State Density Bonus on Housing/St. Vincent's/Silveira. The State's required density bonus for housing developments which provide a portion of development to affordable units is included in the County's 2013 housing element. Application of the bonus would raise the number of units at St V/S, set in the CWP at 221, to 298. Randy and others had drafted a letter to the BOS asking that the housing element number of St. V/S be reduced such that, when the bonus is added, the total would be the 221 agreed to in the CWP. It was M/S/C (Jana/Kate) to approve the letter with minor edits. Randy to speak at the hearing on December 9.

SCA Ordinance. Doug K reported the court's provisional order concluded that a supplemental EIR would be required for the ordinance approved by the BOS to evaluate cumulative impacts in the Lagunitas Creek watershed. There is a question, he said, if an injunction is needed until approval of the supplemental EIR is completed, and the BOS has not responded to settlement officers. The final hearing will be Judge Haakenson's chambers.

Texas Inclusive Communities Report. Roger reported that the Texas Department of Housing's inclusive communities project, which is aimed at trying to ensure low-income housing is placed throughout a community, could have ripple effects around the country if it is upheld by the Supreme Court. He noted that HUD places liability on practices that in effect create segregated housing patterns and oral arguments propose that the courts take a broad view of land use planning which creates a disparate impact. If this holds it could impact local planning.

Pt. Reyes Ranch Planning Workshops. These were held on the 20th and 21st and were well attended; several MCL board members went to one or both.

Agricultural Land Use Committee.

Present: Judy Teichman, Susan Stompe, Kate Powers, Jana Haehl, Doug Karpa, Nona Dennis, Ann Thomas.

Work Session/CC LCP Edits. Judy suggested picking a time to meet when Jack Liebster, Amy Trainer, Sam Dolcini, and David Lewis might also be able to attend. Others thought it was not necessary at the outset to include people beyond the LU/Ag LU committee people who wished to work on this. Non-members might be called on for advice as it would be helpful. Possible meeting times: 12 to 3 PM on a Saturday: January 10, 17, or 31. Judy suggested focusing at first on topics brought up by David Lewis. She and Sally will develop a draft list of agenda items and circulate for comments.

La Franchi Ranch Tour December 9. Judy will bring MCL signs and brochures.

Ranch Mgmt Plan Process. November 12 Land Use/Ag Land Use meeting notes are deferred.

Topics of Concern. 1) Protocols for identifying Johne's disease in the tule elk are needed in order to know which elk can be moved and which cannot be moved. Someone suggested consulting with a veterinarian with this expertise at the Department of Fish and Wildlife. 2) The difference between the 8,000 acre "pastoral zone" and the "pastoral area," which is the entire Olema Valley, should be clarified. The Olema Valley historic ranch district is an extended pastoral area.

Study Group (see Land Use Notes) Meeting. Members (everyone present volunteered to help) agreed the following should be done: 1) decide on the issue list, 2) prioritize issues, 3) research issues and share information, 4) meeting on January 7 and begin discussion on recommendations to the Land Use Committee, 5) by December 5 major issues will be identified and prioritized, focusing at first on those related to the LCP. 6) Good to have a spreadsheet matrix including ranches in West Marin, types of ranching, which agencies have jurisdiction where, etc. This needs to be set up.

Notes: AT

M E M O R A N D U M
January 5, 2015

TO: Joint Land Use/Ag Land Use Subcommittee
FROM: Judy Teichman
RE: Issues Raised by Coastal Commission Review of LCP Update

Summary:

The proposed 8/15/2013 Amendment to the Marin County Local Coastal Land Use Plan [“LUPA”] attempts to ensure the long-term survival and economic viability of Marin’s family farms and ranches [“farms”] by carrying over provisions in the County-wide Plan and allowing for:

- Intergenerational housing: Allowing for housing on Marin’s family farms to facilitate multi-generational operations and succession and for equitable ways to deal with estate issues.
- Diversity in agricultural development: The ability to quickly diversify better enables Marin’s farms to meet economic, climate and other challenges: e.g., Martinelli switching from produce to grazing because of a lack of water to irrigate crops.
- Value added opportunities: There are “value-added” opportunities associated with the agricultural use of land that can broaden agriculture’s economic base, e.g., farm stays, producing organic foods, agricultural processing and on farm retail sales and perhaps carbon farming.

The day before the May 2014 Coastal Commission [CC] action on the policy provisions in the LUPA, the CC staff recommended and the Commission approved an amendment that would condition a second intergenerational home on the *owner* accepting a covenant *not to sell any lots*, not just the lots that form the contiguous parcels that would be subject to the covenant the County would require. A covenant imposed on the owner rather than on the property itself is unprecedented and should be reversed. See the discussion below.

With regard to the implementation plan, while lauding the County’s efforts to support economically viable agriculture in Marin, the CC staff proposed edits would retain more Commission control over Marin agriculture, and:

- Limit agricultural uses the County would allow as part of making Marin agriculture more economically viable to uses “necessary to” a *particular* farming operation, and

- Require permits appealable to the CC for agricultural product sales and processing of products not grown-on-site; for-profit educational tours; and agricultural homestay facilities of three guest rooms or fewer.

These changes would complicate and make more costly the permitting process the County is attempting to simplify to make agriculture in Marin more viable.

I propose that the goal for MCL's recommendations on the issues raised by the CC proposed edits to Marin's LUPA should be finding a balance between the public interest in preserving the scenic, habitat and other qualities of the agricultural lands in Marin with the ranchers' economic and perhaps psychological need for flexibility in managing their land and the desirability of enabling successive generations to stay on the land.

Background:

In general, the LUPA proposes changes that would make regulation of agriculture in the coastal zone consistent with the regulation of agriculture in the County generally. Commission staff reports point out that roughly 2/3rds of Marin agriculture, other than that on federal land, is in the coastal zone, but the 1/3rd subject to the County-Wide Plan is still a significant sample for the purpose of assessing whether the proposed Coastal Zone regulations are likely to produce the desired outcome, i.e., economically viable agriculture, continued stewardship of the land by successive generations, and preservation of wildlife habitat and other environmental values.

I propose that we take into account whether there are problems with how agriculture and other important public values are being preserved on agricultural land regulated under Marin's County-wide Plan *before* supporting recommendations for more regulation of agricultural land in the Coastal Zone.

Coastal Commission Amendment to Marin LCPU Policies on Intergenerational Housing:

The County-Wide Plan and Marin LUPA would permit one "intergenerational home" in addition to a farmhouse for members of the farm operator's or owner's immediate family as a "principal permitted use" ["PPU"] so long as the parcel is at least 120 acres. As a PPU, the permit would be subject to County review, but not review by the Coastal Commission. A second intergenerational home *may* be permitted as a *conditional agricultural use* on contiguous parcels of at least 180 acres. As a conditional agricultural use the second home would be subject to appeal to the Coastal Commission.

Intergenerational homes would be conditioned on a permanent agricultural conservation easement and a "covenant not to divide" the parcel(s). There is a 7000 square foot cap on

the aggregate size of all homes allowed¹ and the agricultural dwellings would have to be clustered, along with other permissible development, on a total of no more than 5% of the gross acreage with the remaining 95% of land used for agricultural production or open space. There is a priority for locating structures on non-arable land away from water resources.

The County's purpose in allowing for intergenerational homes is "to relieve the pressure to divide agricultural property, and therefore help keep the maximum amount of land in parcels large enough to support agricultural production." The County determined that excluding lands subject to MALT easements or protected by Williamson Act contracts, "worst case" the new provision would allow up to 27 intergenerational housing developments.

Coastal Commission Proposed Amendment:

CC staff recommended and the Commission approved making the 7000 sq. ft. limitation *apply to every legal lot the farm owner or operator owns* rather than to the contiguous parcels on which the second intergenerational unit is to be built. [CC Staff Report Prepared May 14, 2014 for May 15, 2014 hearing, p.2.]

Practical Effect:

There is no precedent for a condition on the use of land that runs with ownership as opposed to the land itself. Furthermore, any owner or operator who wants to be able to build a second intergenerational home will simply sell any non-contiguous legal lots or parcels before applying for a permit to build. This limitation would likely undermine the purpose in allowing intergenerational housing.

Recommendation: Support reversal of CC amendment to the County LUPA.

Coastal Commission Staff Proposed Edits to Marin LUPA - Implementation Plan:

CC staff proposed edits to the implementation portion of the LUPA² would block the County's effort to give Marin's farms the ability to engage in value-added activities and to quickly adapt to changing circumstances and to do so without having to establish that the steps being taken are "necessary" for agricultural production on the particular farm.

¹ This cumulative total is less than the 8000 sq. ft. cap on single-family homes in Marin generally. This should reduce the likelihood that farms with intergenerational housing will be acquired as potential "estates."

² Link to Marin IP_LCP CCC edits sent to County_10-17-2014.pdf:

<https://app.box.com/s/ptkczxa2prfi4xnr9s4c>

(1) CC staff proposed definition of “Agricultural Activities, Ongoing (Coastal)”

The CC staff proposed definition of “agricultural activities” would treat converting grazing land “to crop production or any other new activity involving grading or a change in the intensity of use of land or water” as “new development” requiring a CC permit “unless such development is categorically excluded by a Coastal Commission approved Categorical Exclusion Order,” [See page 176.] This looks like an attempt to take jurisdiction over the County’s regulation of agriculture. Given the costs and time involved in a permit process, this provision could effectively nullify the County’s efforts to enable Marin’s farms to diversify.

Recommendation: Oppose County acceptance of the proposed definition.

(2) Addition of phrase “accessory and incidental to, in support of, compatible with, and necessary for agricultural production” throughout the document.

Sans “necessary for” the quoted phrase is excerpted from the County’s definition of “agriculture,”³ but is used by the CC staff throughout the document, often in a context where it makes no sense, for example, in Section 22.32.026 on page 7:

Agricultural processing shall be accessory and incidental to, in support of, compatible with, and *necessary for agricultural production*. [Emphasis added.]

The phrase is used in setting standards for “agricultural accessory activities,” “agricultural accessory structures” – see the definition of “agriculture” in footnote 3 -- and even in connection with intergenerational homes, Section 22.32.025, “Farmhouse (Coastal):

Farmhouses shall be accessory and incidental to, in support of, compatible with, and *necessary for agricultural production*.

Recommendation: Oppose addition of quoted phrase, in particular, of the “necessary for” element, which is not part of the County definition of “agriculture” and would require an unnecessary and inappropriate intrusion into the economics of Marin’s family farms.

³ “**Agriculture (coastal).** This land use consists of agricultural production, and the facilities that are accessory and incidental to, in support of, and compatible with the property’s agricultural production, including agricultural accessory structures and activities, one farmhouse per legal lot, intergenerational housing, agricultural worker housing, agricultural product sales and processing, non-profit and owner-operator conducted agricultural tours, and agricultural homestay facilities”.

(3) Substitution of “agricultural production” for “agricultural use” throughout the document.

Substituting “agricultural production” for “agricultural use” creates an ambiguity, is inconsistent with the Coastal Act, which uses “agricultural use,”⁴ and does not appear to serve any useful purpose.

Recommendation: Oppose substitution of “agricultural production” for “agricultural use.”

(4) Deletion of County’s exclusion of a *de minimus* level of earth movement from the definition of “grading.” The County definition of “grading” excludes specific activities associated with agriculture, including, plowing, tilling, harrowing, aerating, etc. It also excludes from the definition of “grading” activities that otherwise constitute “grading” so long as the work not exceed “150 cubic yards of materials.” CC staff would delete this exception although ranchers, in particular, need to stockpile and move soil for such things as ranch road maintenance and maintenance of areas around feed and water for livestock.

Recommendation: Oppose CC staff proposal to delete the County’s exclusion of a *de minimus* level of earth movement from the definition of “grading.”

⁴ E.g., Public Resource Code Section 303242: “All other lands suitable for *agricultural use* shall not be converted to *nonagricultural uses* unless (1) continued or renewed *agricultural use* is not feasible, or (2) such conversion would preserve prime agriculture land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued *agricultural use* on surrounding lands. [Emphasis added.]