NEWS FROM MARIN CONSERVATION LEAGUE

January—February 2013

Environmental Law

CEQA under siege

By Nona Dennis

Two years ago MCL celebrated the 40th anniversary of the California Environmental Quality Act (CEQA) with much fanfare (MCL Annual Dinner, April 2010; Newsletter March-April 2010). Now MCL is working with others to defend CEQA as some legislators seem intent on revising ("modernizing") CEQA in response to claims that CEQA is an impediment to jobs and California's economic recovery.

This is not the first time in its 42 years that CEQA has been challenged, generally during shifting economic times. Over its lifetime, the landmark law has proved to be flexible and resilient, its interpretation shaped by practice, the courts, and the legislature. Now it is under concerted attack, a spill-over from a last minute attempt at the end of the 2012 legislative session to gut CEQA under the guise of "reform." The focus in 2012 was SB 317, which was hastily withdrawn after protests by a group of legislators led by former Assembly Member Jared Huffman and

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Greenbrae / Twin Cities

Complex Highway 101 project planned

Dru Parker

Illegal and dangerous merge techniques, as demonstrated here by the gray SUV at center, would no longer be possible with the new Highway 101 design.

by David Schnapf

After several years of planning, CalTrans and the Transportation Authority of Marin (TAM) have developed designs for a major project along Highway 101 in the corridor from Sir Francis Drake Blvd. in Greenbrae to Tamalpais Drive in Corte Madera. The project, which is projected to cost in excess of $150 million, will focus on reconfiguring freeway access in this corridor by eliminating the existing Lucky Drive interchanges and replacing them with interchanges at Wornum Drive. In addition, traffic headed south from Sir Francis Drake Blvd. will be substantially rerouted. TAM released a "draft environmental document" (DED) covering the Preferred Alternative on December 17, 2012, and has scheduled the only public meeting on that Alternative for January 29, 2013, from 6:00 to 8:00 pm at the Redwood High School Cafeteria, 395 Doherty Drive, Larkspur. Public comments on the DED will be accepted until February 14, 2013.

A public hearing will be held on January 29th at Redwood High School

CalTrans, which is the "lead agency" for the federally funded project under both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), has aggressively taken the position that this massive project will not have any substantial environmental impacts.

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A Message from the President—New challenges for the New Year

Here we are in 2013: a new year and new challenges (some old ones, too)! Several major projects that MCL is closely following are undergoing environmental review now prior to action by governing jurisdictions. These include the **Greenbrae and Twin Cities/101 Interchange** reconfiguration (see page 1), **Marin General Hospital,** and **Marin Municipal Water District's** proposed wildfire protection and habitat improvement plan. The County is about to complete its review of the **Local Coastal Plan**, with policies to guide land use in our coastal zone, and will then begin work on a **Stream Conservation Ordinance**. Cities and towns need to seriously address the rising ocean waters and its impacts on land uses along the ocean and the bay.

The Coastal Commission is encouraging people to photograph tidal areas during the **King Tides** on January 9th, 10th and 11th, and February 7th, 8th and 9th. You may then upload your photos to the California King Tides Initiative Flickr page. Visit californiakingtides.org for details. This will give you an idea of the water level as sea levels rise. The county and communities in Marin are aware of the sea level rise potential impacts, but they all continue to plan for new development in vulnerable areas, like the San Rafael Airport Recreational Facility.

Thank you to everyone who voted, and helped with the campaign, for **Measure A** (see page 5)**,** to help fund our local parks and open space preserves. It passed with flying colors!! MCL worked hard to get the word out and I would like to acknowledge the members who helped: **Ann Thomas, Nona Dennis, Roger Roberts, Joyce Applen, Judy Teichman, Priscilla Bull, Rick Fraites, Jon Elam, Bob Spofford, Vicki Nichols**, and **Bill Long**. We staffed tables at the Farmers' Markets, as well as other places, sent out emails and postcards, made phone calls and put up a lot of signs. We are committed to tracking the expenditure of the funds according to the expenditure plan adopted as part of the ballot measure.

Community Marin 2013 is about to be published after four years of writing, editing and updating by MCL and partner organizations. Community Marin was originally drafted for the 1992 Countywide General Plan and was updated in 1998 and 2003. It is a collaboration of county environmental groups providing recommendations for environmentally responsible land use planning. These recommendations are applicable to the general plans for the County and its cities and towns, but also useful for a range of developments. The MCL website will have the new version online as soon as it is ready. We are proud to have been a major player in this effort. It is very useful to have some standards with which we can comment on projects and legislation throughout the county. It was a stalwart group that persevered to put this new document together.

Happy New Year!

Hilary Papendick

Images from last winter's California King Tides Initiative Flickr page. Left- San Rafael Canal as seen from the Kinko's parking lot, Dec. 23, 2011; Below - San Francisco waterfront, January 22, 2012

Dru Parker

Left: The County will soon begin work on a long-overdue Stream Conservation Ordinance.

Sergio Ruiz

Status Updates

Final stretch for Local Coastal Plan amendments

The New Year promises to close the current chapter in the four-year process of amending Marin County's Local Coastal Program, which was certified in 1980 and 1981 (See MCL November-December 2012 *Newsletter*). The Board of Supervisors' public hearing on December 11 completed review of the Built Environment (Community Design and Development, Energy, Housing, Public Facilities, and Transportation) and Socioeconomic sections (Historical and Archaeological Resources, Parks, Recreation, and Visitor Serving, and Coastal Access).

Supervisors left one question not fully resolved, i.e., what restrictions should be placed on wind energy systems in the Coastal Zone. Countywide Plan policies encourage the development of renewable energy, including wind and solar, but the distinctive biological and aesthetic qualities of the Coastal Zone suggest that this is not the place to install commercial-scale wind turbines.

Conor Dupre-Neary, Flickr Creative Commons

Commercial-scale wind turbines such as the Montezuma Hills Wind Farm in Solano County are not a good fit for the Coastal Zone.

After hearing a presentation on the inefficiencies of small-scale turbines, the Board nevertheless agreed, with one exception, to accept the Planning Commission's recommendation that a limited number of small systems such as roof-top (west of Highway 1) and free-standing turbines up to 100 feet (east of Highway 1) would be acceptable in the Coastal Zone, subject to environmental review.

A few other final decisions remained for consideration in the New Year. The BOS will cover remaining issues in Agriculture and Biological Resources on January 15. MCL has continuing concerns about policies that might allow wetland and stream buffer standards too much flexibility in adjusting to below the prescribed 100-foot minimum. An optimistic schedule calls for the BOS to approve the amendments on February 26 and send them on to the Coastal Commission for its review and certification, which is likely to be a lengthy process.

San Rafael Airport Recreational Facility

After a seven-hour public hearing on December 3 and a follow-up meeting on December 17, the San Rafael City Council approved the Recreational Facility project by a three to one vote. The minority vote was cast by Council Member Damon Connolly, who argued unsuccessfully for placing the 24 remaining acres at the airport under a conservation easement to preserve a long-term public benefit. It was a disappointing but not unexpected outcome of a six-year process of reviewing the project. (See also MCL November-December 2011, and November-December 2012 *Newsletters*.)

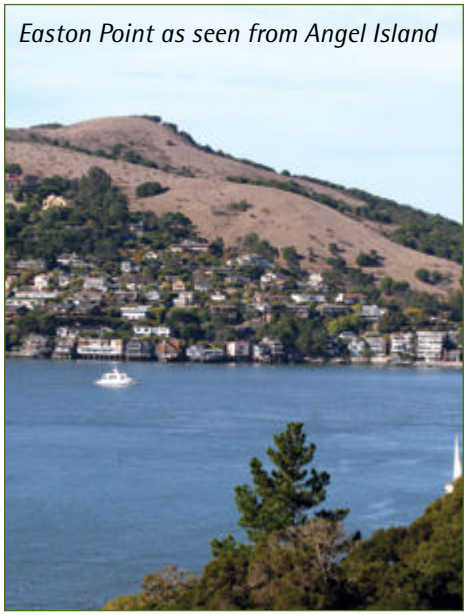
During four hours of public testimony at the December 3 hearing, speakers for both sides pled their cases, proponents claiming that the project will fill a void of limited soccer facilities in Marin County, and opponents arguing that the intensity and size of the facility far exceed the restrictions placed on development of the site in 1983. They (including MCL) cited impacts to sensitive habitat of endangered species in Gallinas Creek, flood hazards from sea-level rise, and risks associated with placing a large recreational facility used by both children and adults within safety zones of the airport runway.

MCL will monitor critical conditions of approval ("mitigation measures") placed on the project to ensure that natural resources in the project area are protected.

Easton Point—Tiburon Peninsula (Martha Company)

MCL and many others have been waiting since at least 2009 for "the other shoe to drop" on the fate of the 110-acre, visually prominent Easton Pt. at the tip of Tiburon Peninsula (See November-December 2009, May-June 2011 *Newsletters*). Actually, we have been waiting since 1976, when a stipulated judgment awarded to the Martha Company (heirs to the remaining lands of the John and Hilarita Reed Land Grant) the right to future construction of 43 dwelling units. The "other shoe" in this case is a Final Environmental Impact Report on the proposed development.

Easton Point as seen from Angel Island



Tim Rosenfeld

A Draft EIR covering the impacts of constructing homes ranging from 5,500 to 8,750 square feet was the subject of public comment in April of 2011. Many concerns were raised at that time: building a steep (25

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Status Updates *from Page 3*

percent grade) "temporary" construction road, numerous landslides on the site, visibility from viewpoints on the Bay and Angel Island, traffic on narrow streets through existing Tiburon neighborhoods as well as on the narrow winding Paradise Drive, removal of 700 trees, impacts on a dedicated spring, and others.

Discussions with Tiburon resulted in consideration of an alternative with only 32 residences but increased in size—up to 10,000 square feet. Latest progress on the Final EIR was the approval of additional funds (approximately $90,000) by the BOS for the EIR consultant to analyze impacts of the reduced-home Alternative. We expect a Final EIR to be released later this year.

Golden Gate Baptist Theological Seminary

One year after the County Planning Commission held a workshop to study a proposal by the Seminary to amend its Master Plan, the Seminary has gone back to the drawing boards and hired a new planning consultant (See also January-February 2012 *Newsletter*).

The former proposal sought to subdivide the 126-acre campus to permit development of 38 private residences, as well as additional townhomes, on visually prominent land in exchange for reducing the amount of student and faculty housing allowed on the campus by the 1984 Amended Master Plan. Last year's plan would have required amending the Strawberry Community Plan, and that prospect did not sit well with the neighbors, who cited traffic and aesthetic issues, among others.

The site also has been identified in the Marin County Draft Housing Element as an opportunity site for affordable housing. At this juncture, it is likely that a new plan for redevelopment of the campus, which was first established at this site in 1944, will be presented to the county sometime later this year.

Citizens' Advisory Committee moves ahead

By Nona Dennis

The so-called "Red-Tape Committee" (Regulatory Improvement Advisory Committee, or RIAC) appointed by the Marin Board of Supervisors last year is moving ahead with its charge to reduce county bureaucracy and improve customer service by recommending measures aimed at improving efficiencies in permit-related services. Other charges include reviewing the County's CEQA procedures, the permit process as it pertains to projects consistent with the Countywide Plan, and the permit fee schedule for possible reductions or refinements. The committee has met twice and has meetings scheduled for January 10 and 30, 1:30 – 3:30 p.m. in Room 410B, Civic Center Administrative Building, and tentatively February 21.

For those wishing to follow the progress of deliberations, all agendas, materials, and comments of the Committee are being posted at the Community Development website.

MCL will monitor the committee's deliberations with considerable interest. We have a particular concern that any recommendations to "streamline" permit review procedures should not erode active public involvement in County decisions, and that CEQA will continue to play an effective and transparent role in protecting the County's environment.

Nona Dennis is a member of the Committee representing general environmental and public interests.

COUNTY OF MARIN

Tomales Bay State Park turns 60!

Tomales Bay State Park turns 60 this winter. The Park kicked off its 60th birthday party celebrations on Sunday, November 18 with an interpretive walk from Heart's Desire Beach—and a birthday cake! But if you missed it, additional activities are planned:

Winter Sky Watch Saturday, January 12, 2013, 5 — 8 PM at Hearts Desire Beach

Contemplate the Constellations over Tomales Bay State Park with amateur astronomer Philip Cannon. Philip and his assistants will set up telescopes, have hot cocoa at the ready and share some interesting facts about the stars above. Bring binoculars and dress warmly!

Kayak Tour Saturday, March 23, 2013, 9 AM at Hearts Desire Beach

Paddle the Park at a leisurely pace with Naturalist Cathleen. View Tomales Bay State Park from the aquatic perspective, through the eyes of a Harbor Seal. Bring your own brown bag lunch, kayak, PFD, safety gear and binoculars!! Following the paddle the group will lunch at the picnic tables at Hearts Desire and share stories of discovery.

Visit parks.ca.gov/tomalesbay or Facebook (Tomales Bay State Park) for more details.

Cathleen Cannon

The success of Measure A—next steps

The cheering on the night of November 3 as ballot results were tallied has died down, but the satisfying glow of success lingers on. There was reason to celebrate! Almost 74 percent of Marin voters had approved a ¼ cent sales tax measure requiring a two-thirds vote, demonstrating their strong support for protecting and preserving local parks, open space, and agricultural lands! Measure A had a bare three months to mount a campaign, from the date the Board of Supervisors approved the measure for the ballot, to Election Day. A broad coalition of organizations and individuals came together and did the rest. With voter approval secure, much work now must be done to launch the programs that Measure A will fund.

In general terms, Measure A will yield an estimated $10 million annually for nine years, to be apportioned among three entities: agricultural conservation easement programs ($2 million), City, Town, and District park projects ($1.5 million dollars), and Marin County Parks and Open Space District ($6.5 million). It was estimated that the average Marin resident will pay less than $37 per year in additional tax and that a significant portion of revenues will come from local spending by non-residents who use Marin County as their playground.

The first step is for the Board of Supervisors to establish a Community Oversight Committee

A key provision that voters requested was accountability—who would hold the purse strings (the Board of Supervisors), and, more important, who would evaluate proposals and recommend how annual revenues should be spent and monitor progress. The first step, then, is for the Board of Supervisors to establish a **Community Oversight Committee**. The Board is tentatively scheduled to establish that committee on January 15. The committee, in a sense, will be self-selected, consisting of two persons each representing community interests such as general community, environmental, mountain biking, equestrian, Parks Commission, and others, for a total of 12. The responsibilities of this committee will be to review Measure A expenditures at the end of each fiscal year to ensure they conform with the Expenditure Plan and oversee an annual audit, and prepare an annual report describing how funds were spent.

The next step is to finalize main elements of the **Farmland Preservation Program.** This program will protect and permanently preserve Marin County farms and ranches for productive agricultural use by supporting and facilitating the acquisition of perpetual agricultural conservation easements in voluntary transactions with landowners by qualified nonprofit organizations such as Marin Agricultural Land Trust (MALT), which will match Measure A funds one-to-one.

Another important step involves coordinating with the cities, towns and special districts to implement the **Local Parks Program**. Marin County Parks will assist these jurisdictions as they convene to determine how to allocate 15 percent of Measure A revenues among them in the form of grants.

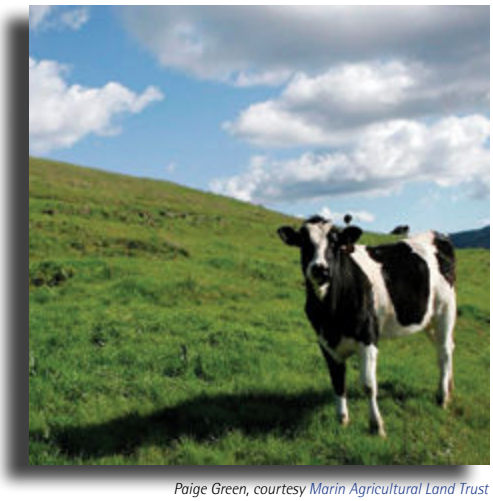
Marin County Parks is prioritizing its own deferred maintenance list, which is extensive, and establishing project priorities for its **County Parks and Open Space Preserve Program**, based on the Marin County Parks 2008 Strategic Plan.

County Parks is also responsible for handling myriad **Administrative Details**: establishing accounts and Memoranda of Agreement; entering into a contract with the State Board of Equalization; and other matters. Measure A tax will most likely be levied in Marin starting April 1, 2013, and that revenue will be disbursed monthly beginning June 26, 2013.

Dru Parker

Dru Parker

Dru Parker



Paige Green, courtesy Marin Agricultural Land Trust

Beneficiaries of Measure A include local parks and special districts such as (clockwise from top): Marin County Open Space Preserves; the Marinwood Community Services District; Marin County Parks like McNears Beach Park; and Marin's farmlands.

Events

Business-Environment Breakfast, Friday, February 8, 7:30—9:00 AM

Assembly Member Marc Levine

MCL is please to announce that newly elected **Assembly Member Marc Levine** will speak at MCL's Business-Environment Breakfast at the Embassy Suites, 101 McInnis Parkway, San Rafael.

A former San Rafael City Councilmember, Marc was elected to the Assembly in November 2012. His priorities include investing in K-12 and higher education, creating and retaining jobs, protecting the environment, promoting clean energy and creating a sustainable budget. He has also worked as an advisor and consultant to social enterprise and high tech startups.

Marc earned a Bachelor's degree in Political Science from Cal State Northridge and his Master's Degree in National Security Affairs from the Naval Postgraduate School in Monterey.

Tickets are $25 for MCL members and $30 for non-members. A full breakfast buffet is included. Please register by Feb. 1.

MCL Holiday Party

More than a hundred MCL members and guests attended the annual holiday party at the new office on December 14th and contributed a barrel of food (and cash) to the Marin Food Bank. Many thanks to Nicasio Valley Cheese Co. for their donation and all the MCL staff and board members for making this such a fun evening.

Clockwise from top: Catherine Lee, Pamela Reaves, Kraemer Winslow; Gordon and Mary Feller; Supervisor Katie Rice, Ernest Chung; Jill Templeton, Linda Novy; Kenji Yamamoto, Nancy Kelly, Chris Yalonis. For more photos, visit our Facebook page.

Photos by Bob Spofford and Jana Haehl

REGISTRATION FORM Business—Environment Breakfast: Assembly Member Marc Levine, Feb. 8, 2013

Name(s) _____

Title/Org. _____

Street _____

City _____ State _____ Zip _____

Phone _____ Email _____

❒ MCL member $25 ❒ Non-member $30 Total Due $ _____

❒ Check enclosed, payable to MCL ❒ Charge my Credit Card the amt. shown

card # _____

exp. date _____ name on card _____

card sec. code _____ signature _____

Ticket price includes full breakfast buffet.

Pre-registration required by February 1.

Make checks payable to **MCL** *or pay total due by credit card. Mail form to:*

MCL, 175 N. Redwood Dr., Ste. 135, San Rafael, CA 94903, or call 415-485-6257 or register online at marinconservationleague.org

Refunds given only if the event is canceled.

Aging Infrastructure

New MMWD water tanks on the horizon

More than 185,000 customers, mostly in the eastern Marin urban corridor, depend for 75 percent of their water on Marin Municipal Water District's five reservoirs. How this water, which is collected and treated in one watershed, is transmitted to and distributed in another involves a complicated system of 941 miles of water mains, 90 pump stations, and 124 treated water storage tanks. Two storage facilities that are critical links in this inter-watershed transfer have outlived their usefulness, are lacking sufficient operational capacity, and are no longer structurally sound. At the November 29, 2012, meeting of MCL's Water and Watershed Committee, MMWD engineers outlined the challenges they face in replacing these facilities over the next three or more years.

Age takes its toll

The 8,800-foot-long Pine Mt. Tunnel, the older of the two, was constructed about 100 years ago to transmit water from Alpine Lake to the Ross Valley and San Rafael. When it was no longer needed for that purpose, having been replaced by a pipeline, the tunnel was converted in the 1970s to store three million gallons of treated water, a purpose it has served for many years. In 2009, the mile-and-a-half-long tunnel was drained, cleaned and inspected and found to have cracks that allow groundwater to infiltrate into the tunnel, posing potential water quality issues. In addition, its long linear configuration did not allow adequate circulation of stored water, further compromising water quality. The California Department of Public Health made it clear that the water quality issues would have to be resolved within five years (from 2009). The tunnel was refilled with the understanding that it would be replaced or in some manner rehabilitated in the near future.

The second storage facility known as the "Ross Reservoir" is also suffering from age and limited capacity. It was constructed in 1927 and is situated above Phoenix Lake above the Worn Spring Road. In addition to storing water, its purpose, in part, had been to blend water from Alpine and Lagunitas Reservoirs. The one-million-gallon reservoir is trapezoidal in shape, with a now-failing wooden roof, and a slide threatens to undermine the northeast section. It must be replaced with a new structure built to contemporary engineering standards and with increased capacity.

Alternative Solutions

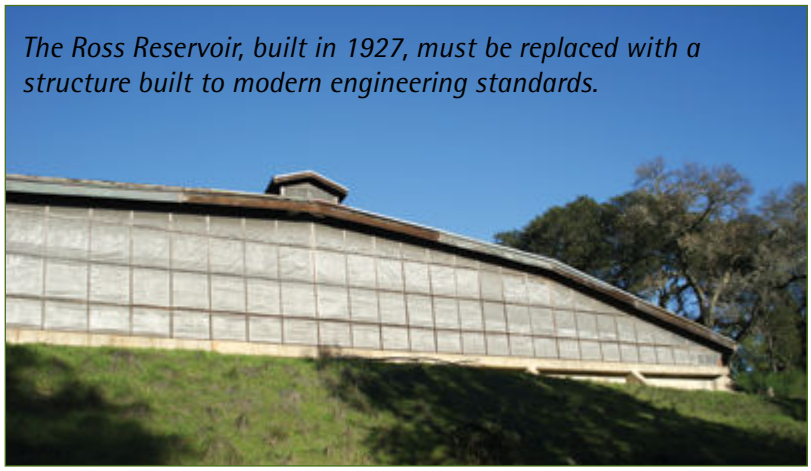
District engineers have been studying various alternatives to correct these deficiencies in the transmission system for several years, aided by an Advisory Committee and engineering consultant: How much storage is needed? Can the tunnel be retrofitted? And, where could new storage tanks be located within the approximate 500- to 600-foot elevation range required to retain gravity operation if the Pine Mountain Tunnel were to be replaced? It was clear early on that retrofitting the tunnel to eliminate groundwater infiltration would require lining it—at great cost and with a reduction in storage capacity. That option was rejected. They determined that replacing the aging facilities with concrete tanks approximately 150 feet in diameter and 30 feet normal operating water height could store eight million gallons required to meet peak summer demand, fire-flow and other emergencies. According to District engineers, operation of the new tanks could have the added advantage of capturing about 800,000 to 850,000 kw hrs/year from gravity flow for use in the District, which is the largest energy user in Marin County.

Potential sites for new tanks

Fourteen possible sites for new storage tanks were identified, scored and ranked in regard to such criteria as ownership and zoning, geology and soils, visual and aesthetic issues, sensitive species, cost, and other factors. The screening yielded two candidate sites at the higher elevation: one near "Five Corners" near the Bald Hill Trail and another above Worn Spring Road (the "Worn Spring" site). In addition Ross Reservoir will be replaced. The elevation of 340 feet of Ross Reservoir will be too low for operation of the system after replacing the Pine Mountain Tunnel.

Installing new tanks of this magnitude is not an easy task! The candidate sites are situated in rugged, heavily wooded lands that are frequented by recreationists and may be within the views of residential areas. The sites also differ in their geologic conditions and biological sensitivity. The proposed project is being refined by engineers and in the coming months will be subject to comprehensive environmental and technical studies as well as an extensive public process. The District plans to begin outreach to local communities and neighborhoods early in 2013 and will initiate an Environmental Impact Report later this year. The schedule calls for completing the EIR process in late 2014 and constructing the necessary access road(s) and the two tanks over the following one to two years.

MMWD has offered to conduct tours of the candidate sites early this year. MCL will be following the environmental process closely and will announce any plans to coordinate tours with the District.



The Ross Reservoir, built in 1927, must be replaced with a structure built to modern engineering standards.

Dru Parker

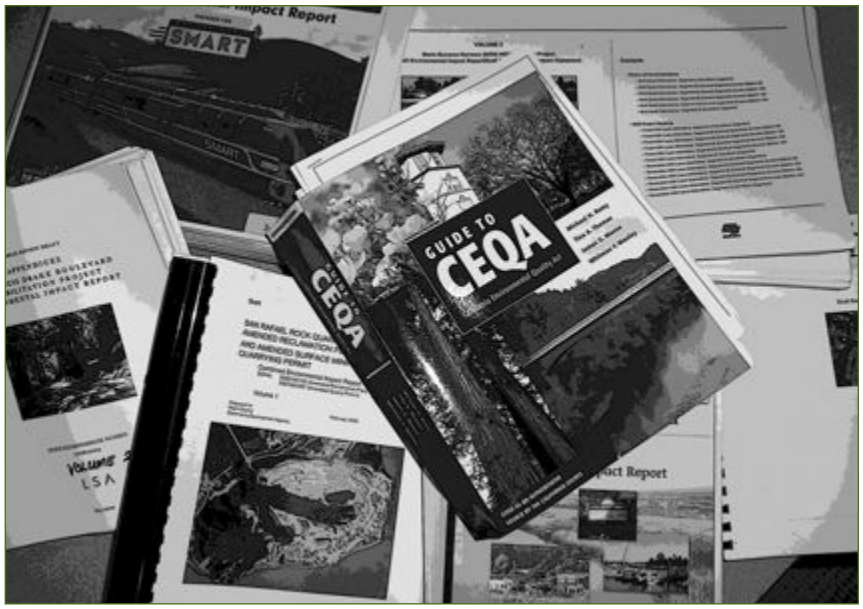
CEQA *from Page 1*

bolstered by widespread public opposition. SB 317 is guaranteed to surface again this year after several years of growing business discontent in a depressed economy.

Signed by then-Governor Ronald Reagan in 1970, CEQA changed the way we anticipate and respond to the environmental consequences of development in California. More important, it allowed ordinary citizens to participate in land-use decisions by requiring full disclosure of environmental impacts of proposed projects and creating procedural opportunities for the public to comment on and even challenge governmental actions. For non-profit organizations like MCL, it became one of the principal tools of environmental advocacy—a source of information and analysis of proposed projects enabling informed response. CEQA continues to serve this essential public and environmental purpose, even when MCL may not agree with EIR conclusions.

Attacks and defense

This generally positive view of CEQA's value to governmental and public process is not shared across the State, especially by business and economic interests. With nearly two million Californians unemployed, economic growth is seen by some as a top priority in the coming year, and one of the best ways to accomplish this, they say, is to reform CEQA by removing uncertainty. The critics—and there are many—claim that CEQA is too often abused, such as by NIMBYs and labor unions filing challenges based on economic and other motives rather than environmental issues. Environmentalists counter with evidence that CEQA continues to work in behalf of protecting long-term air and water quality, conserving and preserving natural resources including forests and agriculture, and maintaining Californians' quality of life.



Supporters of CEQA also note that previous amendments to the law and guidelines already have streamlined the review process by introducing master and focused EIRs, short-cuts in the form of mitigated negative declarations, fast-tracking of certain types of projects, statutory and categorical exemptions, special procedures for certain types of housing projects, and "functional equivalent" programs that comply with CEQA. In 2011, SB 226 was signed by the Governor, leading to proposed new CEQA guidelines, which will facilitate infill projects that are consistent with a city's or county's general plan. SB 375, the "anti-sprawl" bill, also provides for reducing, in some cases even eliminating, CEQA requirements as an incentive for qualifying "transit priority projects."

Problems with a "standards-based" approach

Although MCL is not enthusiastic about the streamlining provisions of SB 226 and SB 375, the current attack would go far beyond these steps by gutting key provisions of the law. According to land use and environmental attorney Robert "Perl" Perlmutter of the firm Shute Mihaly & Weinberger, the core of SB 317 is what its proponents call a "standards-based" approach. The bill would codify 17 "topical areas" identified in the CEQA Guidelines (e.g., air quality, biological resources, cultural resources) and provide that compliance with a general plan or any federal or state law or regulation relating to a topical area would establish the "standard" for satisfying CEQA with respect to that topic.

This approach presents several major problems. First, general plans around the state may be outdated or lack policies that address today's environmental challenges. Furthermore, even if they are current, general plans are, by their nature, *general* and do not pretend to address the impacts of individual projects. CEQA works hand-in-hand with a general plan, giving citizens and government decision makers the opportunity to understand the environmental impacts of *individual projects* when they are proposed and being evaluated for their conformance with general plan and other laws and policies.

A second problem is that many of the federal and state laws and regulations with which a project might have to comply under this approach were not intended to serve as standards at all, but instead were designed to operate in conjunction with other environmental laws and regulations, including CEQA. Whereas a CEQA document integrates into one process the relevant laws and regulations that might apply to a project, the SB 317 approach could entail myriad separate administrative proceedings with a variety of agencies. This could increase rather decrease project uncertainty that critics now attribute solely to CEQA.

Finally, Perl points out that the SB 317, as

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Want less paper?

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CEQA *from Page 8*

drafted late last summer, provided that no CEQA legal challenge could be filed to *any* "environmental document" that "discloses compliance with any applicable environmental law pertaining to a topical area." This would render meaningless the public input that has made CEQA such an effective mechanism for addressing the environmental impacts of proposed projects before they are approved. Agencies would be free to ignore that public input even if it showed that a project would have significant environmental impacts that were never previously disclosed and could be feasibly mitigated. This risks eliminating key procedural opportunities for the public to participate in governmental decisions.

CEQA is powerful if not perfect

MCL agrees that the CEQA process is not perfect. We recognize that its procedures can be time consuming and susceptible to costly litigation. At the same time, we reject the generalization that NIMBYs are always frivolous and self-serving when they challenge a project. More often than not a community or neighborhood has local knowledge and coalesces around justifiable environmental concerns. A recent article in CEQA's defense (Rachel Hooper and Louise Renne, *The Recorder,* November 30, 2012) observed: "CEQA lawsuits can serve an important function, forcing a public balancing of economic concerns with environmental protection. Without the strength of CEQA behind these lawsuits, economic interests would almost always win out over environmental protection in the project approval process."

Three years after CEQA's passage, in 1970, the late Supreme Court Justice Stanley Mosk, who authored the *Friends of Mammoth* case that brought virtually all private as well as public projects under the purview of CEQA, stated: " In an era of commercial and industrial expansion in which the environment has been repeatedly violated by those who are oblivious to the ecological well-being of society, the significance of this legislative act [CEQA] cannot be underestimated." Forty years later that statement still holds true.

Novato

Solar farm proposed at Olive and Atherton

The proposed solar farm site lies on the margin of historic San Pablo Baylands that support seasonal wetland habitat.

Even as the county is engaged in preliminary review of a proposed "solar farm" in Novato, MCL is conducting its own internal discussions concerning the proposal. The owner of Green Point Nursery plans to install a solar array adjacent to his nursery at the corner of Olive and Atherton Avenues. The 1.7-acre project site adjoins two sides of the nursery and would be covered by 3,000 solar panels supported six feet above ground elevation by steel posts. The panels would generate up to one megawatt of energy—enough to power 400 Marin homes—which would be sold to Marin Energy Authority as part of its clean energy program. The current proposal is a reduced version of a similar project that the nursery owner considered two years ago.

The 1.7-acre site would be covered by 3,000 solar panels

The project brings into potential conflict two sets of environmental values, both of them important to MCL. On one hand, MCL supports alternative forms of energy to reduce greenhouse gas emissions and has supported the Marin Energy Authority since its inception. On the other, MCL has a long history of advocating for protection of existing and former wetlands of San Pablo Bay. Like real estate, the question of appropriate siting of an alternative energy facility depends on "location, location, location."

The Green Point Nursery sits atop a piece of filled land surrounded on two sides by low-lying lands that, although once within the historic tidal reach of the bay, were diked off and partially drained or cultivated around the turn of the last century. The project site is on the periphery of the nursery, between filled land and the adjacent low land that ponds during the rainy season and exhibits the characteristics of "seasonal wetlands," such as the presence of water-adapted vegetation. Just a few hundred yards away, similar lands purchased recently by the Marin Audubon Society are in the process of being restored to more natural pond habitat for waterfowl and other birds that frequented the area before the encroachment of urban development.

As the project moves forward through the County's environmental and plan review process, MCL would like further information on both impacts and benefits: Would the installed panels, which would cover a significant portion of underlying land, interfere with wildlife movement through the area or with habitat use in the adjacent restored seasonal wetlands? Would the installation have a visual impact, including reflective qualities of the panels, on residential properties that extend along the low hills above Olive and Atherton Avenues, or on views of the many people who travel on these roads every day? MCL has recommended that the county conduct a thorough environmental study to address these potential impacts as well as the benefits of greenhouse gas reduction.

With this project as the catalyst, MCL is working to develop its own policy and set of criteria so that the environmental benefits of promoting alternative energy (in reducing greenhouse gas emissions) can be weighed against the possible environmental impacts of this and future projects.

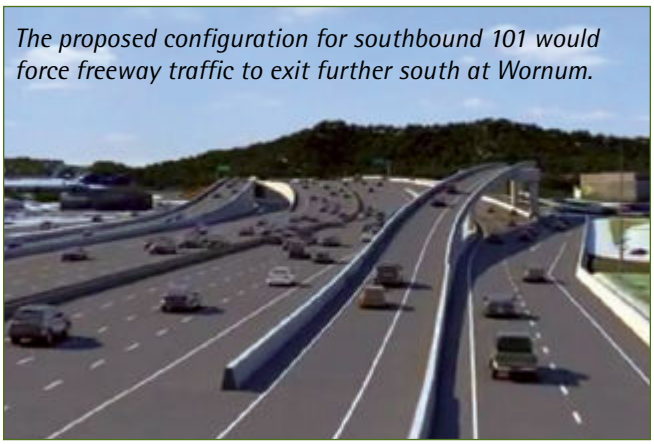
Highway 101 *from Page 1*

Accordingly, CalTrans asserts that it is not required to do either an Environmental Impact Report (EIR) under CEQA or a Environmental Impact Statement (EIS) under NEPA. Instead, based on a finding that the project will not have any substantial environmental impact, CalTrans plans to issue a "Mitigated Negative Declaration." TAM claims that the studies and assessments that it has done over the past several years are the equivalent of an EIR/EIS.

Materials about the project and its complex approach to routing traffic in this congested area can be reviewed at the TAM website, including detailed maps and links to traffic flow simulations.

The principal changes include:

1) Southbound 101—The Lucky Drive off ramp will be eliminated and will be replaced with a new interchange at Wornum Dr. (see screenshot from video simulation, below.) The existing interchanges at Sir Francis Drake, Madera Blvd. and Tamalpais Dr. will be retained. Travelers going from SB 101 to the businesses on the west side of Lucky Drive, to Redwood High School, or to downtown Larkspur will exit at Wornum and then double back on Tamal Vista to Lucky Drive. Because of the rerouting of traffic from Sir Francis Drake, the new Wornum Drive off ramp will include a massive elevated "flyover" structure. A new "auxiliary" lane will be added to the freeway from Wornum to Tamalpais to ease congestion. CalTrans has abandoned its earlier proposal to eliminate the Madera Blvd. exit.



The proposed configuration for southbound 101 would force freeway traffic to exit further south at Wornum.

Transportation Authority of Marin

2) Northbound 101—The Lucky Drive interchange will also be eliminated in the Northbound direction. Northbound traffic will be able to exit the freeway at the new Wornum Drive exit, which will provide access to businesses and residential areas on both sides of the freeway. A new off ramp, just before Wornum, will take traffic heading to Sir Francis Drake and the Richmond Bridge. An auxiliary lane will be added from Tamalpais Drive to the new Sir Francis Drake off ramp. Traffic from the Village and the Cost Plus shopping centers headed to northbound 101 will enter the freeway at Wornum, rather than at the current location at Industrial Blvd. A ramp at Industrial Blvd. will continue to take traffic headed to Sir Francis Drake but will no longer provide freeway access.

Dru Parker

The bike-ped bridge at Lucky Drive would be removed and users re-directed south to Wornum

3) Sir Francis Drake—Traffic from both east and west Sir Francis Drake headed to 101 South and/or across Corte Madera Creek will enter an on-ramp at the current location, widened to two lanes and extended so that traffic enters the freeway south of Wornum. The extended freeway approach will have an exit at Fifer and at Wornum before reaching Highway 101. The route for traffic headed to101 North will be substantially unchanged.

4) East/West access across Highway 101—Each of the three roads that currently cross over or under the freeway in this corridor will remain: (a) Sir Francis Drake (north of Corte Madera Creek), (b) Wornum Drive, and (c) Tamalpais Drive (both South of Corte Madera Creek). The new Wornum Drive interchanges will make this crossing significantly more important, however.

5) Bicycle/Pedestrian Routes—The project envisions upgrades to the bicycle and pedestrian paths across the freeway, across Corte Madera Creek and on adjacent surface roads. Both of the existing paths for crossing Corte Madera Creek will be widened to current Class I standards, and new bicycle paths will be added to Tamal Vista Drive, requiring the elimination of the existing central turn lane. The existing pedestrian bridge across the freeway, (located near the current Lucky Drive freeway exit), will be eliminated. Pedestrians and cyclists who relied on this bridge will have to cross underneath the freeway at Wornum. The existing multiuse path north of the Corte Madera Creek will remain.

It appears that this will be the most complex freeway project ever proposed in Marin. It is hard to envision that a project of this magnitude would not have any substantial environmental impacts. For example, at Wornum Drive, the freeway and the new ramps/auxiliary lanes will be a total of eighteen lanes wide. The project is located in an area of extensive tidal wetlands and typically low elevations frequently subject to flooding from the combination of tides and upland runoff, but it appears that the plans do nothing to accommodate the impacts of sea level rise.

MCL is concerned that the project could impact the population of endangered California clapper rail and other wildlife in the adjacent Corte Madera Ecological Reserve, which is already subject to considerable human activity. Also of concern are the impacts of what will undoubtedly be a lengthy construction project in an area where both the freeway and adjacent surface roads are already heavily congested. Finally MCL is particularly concerned that the use of a "Mitigated Negative Declaration" in lieu of an EIR/EIS for a project of this magnitude will fail to address the numerous alternatives that have been considered for the project and will too readily dismiss or "mitigate" significant impacts. MCL will review and comment on the just-released Draft Environmental Document.

On the climate front

Update on Energy Efficiency

By Bob Spofford

Marin Conservation League has supported **Marin Clean Energy** and the formation of the **Marin Energy Authority** since the passage of the Community Choice Aggregation bill in 2002. Energy Efficiency (EE) represents a significant step in the evolution of MEA's services and is poised to become a much bigger part of local energy planning in 2013. Two factors are driving this change: a) The emergence of Marin Energy Authority as a significant player in efficiency programs, and b) A breakthrough in financing EE upgrades on commercial buildings.

MEA is in the game

From the outset a key goal for Marin Clean Energy has been to gain local control over the pool of EE money we all pay as part of our energy bills. This wasn't a practical reality until September of this year, however, when MCE completed its two-year roll-out and truly replaced PG&E as the primary energy supplier for the whole county.

Early in 2012, when this goal was in sight, MEA applied to the Public Utilities Commission with a request for these funds. That request was granted in full; MEA will be getting approximately $350,000 in EE funds for 2012 and $4.5 million for 2013.

Addressing new targets

From the beginning, MEA's proposed efficiency programs have been designed to complement existing EE programs, not replace them. PG&E still receives about half of our electricity dollars and still supplies all our natural gas, so they will be continuing their EE efforts in Marin. Their main effort is a program to pay for efficiency retrofits and solar on public buildings and schools, working through the county. PG&E will also continue to administer the "Energy Upgrade California" program of rebates for residential efficiency upgrades (see MCL September-October 2012 *Newsletter*).

MEA's new programs target multi-family housing and small commercial properties

MEA's new programs start by targeting two sectors that have been almost completely missed by EE efforts to date: multi-family rental housing and small commercial properties. Many of the latter, like convenience stores and restaurants are big energy wasters, with inefficient coolers and kitchen gear.

The small business and multi-family programs will target specific high energy-using accounts by proposing a customized upgrade package designed to minimize business disruption. Most important, MEA is lining up partner banks to provide on-bill repayment, so that improvements can be paid for over time on the customer's electric bill.

MEA also plans to offer on-bill repayment to single family homes in 2013 as an enhancement of the existing Energy Upgrade California program.

The financing challenge

From the beginning, efforts to promote EE upgrades focused on incentive rebates. While these were popular, there was an obvious problem: rebates had most of their success with relatively affluent homeowners who could afford the out-of-pocket cost and just needed the incentive to turn their good intentions into action. A 10-to-20 percent rebate won't make an expensive upgrade affordable for someone on a tight budget.

A few years ago a seemingly perfect solution was proposed. It was called PACE (Property Assessed Clean Energy.) The idea was that homeowners could borrow the money for EE upgrades at low rates and pay it back over time on their property tax bill. Further, if the house was sold, the loan would stay attached to the property to be paid off by future owners.

Unfortunately, the federal agencies that buy and insure residential mortgages wanted no part of PACE. In the aftermath of the housing meltdown they opposed any new program that might affect their rights of recovery. (Real estate taxes are generally the only obligation that comes ahead of the mortgage in settling a foreclosure.)

The on-bill repayment that MEA will be offering is a sort of "PACE Lite," and it is probably the best deal single family homes will be able to get in 2013. It provides convenient money to help with cash flow, but it is a conventional loan that will have to be paid off if the property is sold.

A breakthrough for commercial property

While residential PACE was being shot down, people discovered that PACE could work on commercial properties. Banks have a much closer, more personal relationship with their small business customers, and the federal mortgage agencies aren't involved. The banks know their clients' financials, and they would be directly involved in any decision to invest in EE upgrades. When MEA and others talked to small business banks about the PACE idea, they loved it.

Out of this has come California First, a statewide joint powers authority formed to implement a PACE program for commercial properties. Over 500 cities, counties and special districts have joined so far, including San Rafael, Novato and Marin County. Funding is available for EE projects of $50,000 or more, and the process is very streamlined, allowing flexibility for the property owner, the bank and the energy contractor to craft a plan that works for them. The role of California First is to provide the legal structure that allows the loan to be paid on the tax bill and to stay with the property if it is sold. (MEA has no direct role in California First, but it supports the program, and it may eventually have a role in local administration.)

Between Marin Energy Authority's finally having serious money for EE and the emergence of California First, 2013 is shaping up as the biggest year to date for progress in energy efficiency in Marin.

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Committee Meeting Schedule

Land Use and Transportation: 1st Wed. of the month, 9:00 AM—Noon

Parks and Open Space: 2nd Thurs. of the month, 3:00—5:00 PM

Water and Watersheds: 4th Thurs. of the month, 4:00 - 6:00 PM

Climate Action: 3rd Thurs., odd-numbered months, 6:30—8:30 PM

North Marin Unit (NMU): Call 415.485.6257 or see our website for meeting details.

Meetings (except for NMU) are at the MCL office, conference rooms vary.

Marin Conservation League was founded in 1934 to preserve, protect and enhance Marin County's natural assets.

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