

The Proposed Addition of a Baylands Protection Corridor To the Marin Countywide Plan

a proposal by:

- *Marin Conservation League*
- *Marin Audubon Society*
- *Sierra Club Marin Group*
- *Environmental Forum of Marin*

CONTENTS

Introduction	1
<i>Public Health and Safety Issues</i>	2
<i>Environmental Issues</i>	2
<i>Economic Issues</i>	3
<i>Local and Regional Organizations Interested in the Baylands</i>	3
<i>History of Planning for the Baylands</i>	4
Why the Baylands Protection Corridor Is Needed	5
The Proposed Baylands Protection Corridor	6
<i>Land Uses and Densities</i>	6
<i>Options for Other Land Uses and Densities</i>	7
<i>Diked Historic Baylands</i>	8
<i>Assessment of Agricultural Impacts</i>	8
<i>Conversion of Lands to Agriculture</i>	8
<i>Wetlands Definition</i>	8
<i>Wetlands Protection</i>	8
<i>Development in Hazardous Areas</i>	9
Steps Recommended to Establish the Baylands Protection Corridor .	10

Introduction

Lands along the shore of San Pablo Bay are a rich ecosystem of regional and global importance whose value has not been recognized until recent years. Clearly it was not well understood when the first *Marin Countywide Plan* was adopted almost a quarter century ago, in 1973.

In addition to the environmental benefits of these tidal areas, seasonal wetlands, and adjacent uplands, we have recently become aware of critical public health and safety issues which must shape policies for use and development of these lands. These issues also have a significant impact on the economic feasibility of development in these areas.

Under the present general plans of the County and the cities of San Rafael and Novato, development of the lands along the Bay would produce more than 4,000 additional housing units and nearly 2.4 million more square feet of commercial and industrial space. Such a level of development would lead to tens of thousands more automobile trips per day on already overcrowded roadways in the area; approximately 32,000 trips would result from the new residential development alone.

The current regulatory structures are inadequate to address the significant public health and safety, environmental and economic issues associated with land use in the baylands.

Marin environmental organizations propose that these regulatory inadequacies be remedied by establishing the Baylands Protection Corridor in local general plans. The Baylands Protection Corridor would recognize the importance of these lands for the protection of environmental resources and public health and safety, based on recent scientific findings. It would provide a firm legal basis for appropriate regulations and would present a clear concept to advance public awareness of the importance and functions of bayfront lands, and of the types of development and resource protection which are suitable there.

Public Health and Safety Issues

Recent natural disasters have illustrated the dangers of building in areas like those along San Pablo Bay. The Loma Prieta, Northridge and Kobe earthquakes have caused a rethinking about development on unconsolidated soft clay soils, bay mud and bay fill - lands which are subject to severe ground shaking during a major earthquake. There is growing agreement that there is no sure way to design structures for areas such as these, which would withstand the impact of a major earthquake along any one of the major geological faults underlying the Bay Area.

The 1993 floods along the Mississippi River and its tributaries demonstrated that the traditional methods of constructing levees for flood control cannot protect structures built in floodplains. Floodplain lands occur along the Petaluma River, and Novato, Las Gallinas, and Miller Creeks. As a result of the Mississippi floods and the financial and social costs they created for residents of the river basin, and for taxpayers throughout the country, federal flood control policies have evolved which discourage building in floodplains.

In addition, within the proposed Baylands Protection Corridor there are public facilities such as sewage treatment plants, airports and landfills which raise public health and safety issues with respect to odor, noise and toxic emissions.

Environmental Issues

Seasonal wetlands that form annually on the bay plain provide refuge habitat for many species of shorebirds during high tides when they must leave mudflats, their preferred feeding habitat.

The seasonal wetlands form an ecological unit with the adjacent tidal wetlands, mudflats, San Pablo Bay waters, and adjacent uplands. The area includes fresh and brackish water creeks, vernal pools, oak woodlands, savannahs and grasslands. It provides a diverse and contiguous habitat that is vital for the survival of many endangered, migratory and resident wildlife species, and contributes to the ecological values of the estuary as a whole. Bayfront lands and the natural functions they sustain are also vital to maintaining the quality of Bay waters, reducing pollution and flooding, and defining and separating communities.

Extensive areas of tidal marshes were diked around the turn of the century to use for farming. Many of these sites continue in agricultural uses and also continue to serve as important habitat for Pacific flyway migratory species and resident wildlife. Mammals and waterfowl species also inhabit diked baylands.

Economic Issues

Because of public safety hazards, environmental constraints, and development, maintenance, financing and insurance costs, it is very expensive to build on the baylands. It is unrealistic to think that the County's need for affordable housing or commercial and business expansion, can be met through development of this area. Experience shows that the public bears the costs of development on high-risk lands.

The cost of injudicious development in flood-prone areas is clearly evident in Marin County. Within the past year San Rafael has considered a \$24 million seawall to address flooding from the San Rafael Canal; Kentfield and Ross are evaluating a \$5 million retrofit of the concrete channel to protect some 225 homes and businesses built in the 100-year floodplain; and Corte Madera is looking at a \$7-10 million tidal/flood protection barrier along San Clemente Creek to allay flooding in Mariner Cove - where homes are constructed on land which has subsided up to three feet since they were built. In addition, pumps and levees are now protecting large stretches of Marin baylands from inundation - at a high cost to American taxpayers.

There is now widespread recognition of the negative economic impacts and long-term "hidden" costs of development on environmentally sensitive lands - an issue examined in the 1995 report Beyond Sprawl: New Patterns of Growth to Fit the New California, prepared by the Bank of America, California Resources Agency, Greenbelt Alliance, and Low Income Housing Fund.

Local and Regional Organizations Interested in the Baylands

Various public agencies and private groups are now focusing attention on the baylands. Novato is revising its general plan. The 1994 Countywide Plan calls for a review of its interim policies for St. Vincent's/Silveira in early 1995. The Bay Conservation and Development Commission is preparing recommendations for the North Bay diked baylands. Other federal and state agencies are involved in the North Bay Initiative, the Estuary Project Implementation Committee, the San Francisco Bay Long-Term Management Strategy (searching for disposal sites for dredge spoils), the Petaluma River Enhancement Project, and a new mapping of the historic Bay shoreline. The Board of Supervisors and the Novato City Council have both voted to support the restoration of the Hamilton runway to tidal marsh.

Private organizations concerned about all or part of the area include:

- Sierra Club Marin Group
- Marin Audubon Society
- Marin Conservation League
- Environmental Forum of Marin
- Save San Pablo Baylands
- Marin Baylands Advocates
- Partnership for the San Pablo Baylands
- Citizen Advocates for the Preservation of St. Vincent's/Silveira (CAPS).

History of Planning for the Baylands

In 1973 the *Marin Countywide Plan* established three environmental corridors: Coastal Recreation, Inland Rural, and City-Centered. This forward thinking plan represented a commitment by the County to adopt regulations that were specifically tailored to protect and enhance the unique characteristics of each corridor. The 1973 Plan included the baylands within the City-Centered Corridor. In 1982 the plan was revised to recognize the baylands by the addition of the Bayfront Conservation Zone (BCZ) as an overlay in the City-Centered Corridor. One of the principal elements of the BCZ is that an Environmental Assessment must be prepared in advance of a development proposal.

The inadequacy of the Environmental Assessment approach as a method to protect the baylands is illustrated by the Bel Marin Keys development proposal prepared by the Venture Corporation. The developers prepared an assessment as required by the Bayfront Conservation Zone, but ignored its findings - that the entire site, except for 20 acres, is unsuitable for development and should remain in bayfront preservation and agricultural use. Instead, they presented a proposal for 1,190 homes, 150,000 square feet of neighborhood serving retail, 50,000 square feet of additional retail uses, a golf course, tennis facilities, and a marina.

In 1991, when the Countywide Plan amendment process began, all the major environmental groups and many other organizations concerned with the County's direction urged that a fourth corridor be established: the Bayfront Corridor. In letters written to the Countywide Planning Agency, six towns and cities (Novato, San Anselmo, Tiburon, Sausalito, Fairfax and Ross) endorsed the concept of a Bayfront Corridor.

When the amended plan was adopted in 1994, the County did not establish a Bayfront Corridor. While some BCZ policies were strengthened, no substantive new requirements or regulations, such as more restrictive zoning or more stringent mitigations, were included. Large portions of these precious baylands continue to have zoning permitting urban densities, identical to other areas within the City-Centered Corridor.

Since 1994, public safety issues - underscored by a series of natural disasters - have forced reconsideration of appropriate uses of baylands. Now, this proposal is put forth that the Marin Countywide Plan be updated to ensure necessary protections for the public health and safety, as well as for natural resources, in a new Baylands Protection Corridor.

Why the Baylands Protection Corridor is Needed

The proposed Baylands Protection Corridor would differ from the Bayfront Conservation Zone, which is already in the Countywide Plan, in several important respects.

1. The Baylands Protection Corridor recognizes the unique character of these lands and establishes a strong basis for appropriate special land use controls.

The three corridors established in the 1973 Countywide Plan - Coastal Recreation, Inland Rural, and City-Centered - represented a commitment by the County to adopt regulations that were specifically tailored to protect the unique characteristics and achieve particular objectives in each corridor. The standard zoning for the Coastal and Inland corridors, for example, is A-60, Agricultural, one unit per 60 acres. By contrast, extensive areas in the Bayfront Conservation Zone are designated for the same urban uses and densities that apply elsewhere in the City-Centered Corridor. The Plan should state explicitly that bayfront lands are different from other lands in the City-Centered Corridor because of resource protection and public health and safety issues, and that regulations should be established accordingly. Corridor designation would provide a strong legal basis for reducing densities and strengthening regulations.

2. The Baylands Protection Corridor would establish policies guiding the cities as well as the County.

The existing Bayfront Conservation Zone is essentially an overlay district in the County's zoning. The Baylands Protection Corridor would establish the principle that the Baylands constitute a single interrelated ecosystem associated with San Francisco Bay, and that all jurisdictions should amend their general plans and land use regulations accordingly. This idea of consistent interjurisdictional land use policies was a basic concept of the 1973 Countywide Plan.

3. The Baylands Protection Corridor would recognize scientific findings about environmental resources and public health and safety hazards.

At the time the 1973 Countywide Plan was adopted establishing the three corridors, little was known about the environmental importance of wetlands habitat. Now there is much more scientific information about the value of these lands and the multiple public health and safety hazards posed if they are developed.

4. The Baylands Protection Corridor would help to establish a clear public understanding about which kinds of uses are acceptable and which are not.

In the Bayfront Conservation Zone as now defined, urban development is acceptable as long as impacts are mitigated. This is very different from the concept that land uses in the proposed corridor shall be primarily for protection of natural resources and protection of public health and safety. In the Coastal and Inland corridors, there is a clear understanding that agriculture and resource protection are the primary purposes. For example, since 1973 there have been no proposals for urban development, similar to the recent plan for St. Vincent's/Silveira, in Nicasio or along Tomales Bay or elsewhere in the two western corridors, nor are there likely to be any. The County must be equally clear about its intentions for bayfront lands.

The Proposed Baylands Protection Corridor

To address environmental, economic and public safety consequences of developing in these lands, we recommend a revision of the *Marin Countywide Plan* to establish a fourth environmental corridor, the Baylands Protection Corridor, consisting of all existing and historic diked baylands, wetlands, vernal pools, plus adjacent upland habitat areas, which are now undeveloped or in agricultural use, and which form a contiguous band of thousands of acres along the Marin County shore of San Pablo Bay. The boundary includes all areas bayward of the Nichols and Wright line (as currently being revised), creeks and seasonal wetlands along the historic Bayfront and associated adjacent uplands necessary to maintain habitat. (See accompanying map.)

This proposed Baylands Protection Corridor broadens the previously proposed Bayfront Resource Corridor because it emphasizes the protection of public health and safety, as well as environmental resources.

We recommend the addition of the following language to the *Marin Countywide Plan* (Environmental Quality Element, Environmental Corridors, page EQ-25):

"Land Use in the Baylands Protection Corridor. Protection of wildlife habitat, other natural resources, agricultural lands, and the public health and safety shall be emphasized in the Baylands Protection Corridor."

Countywide Plan maps should be revised accordingly. Other policies of the Plan should be revised to indicate that these lands should be used primarily for resource conservation and protection from environmental hazards, rather than for urban development. Policies, which differ from those for the present Bayfront Conservation Zone (BCZ), should include the following:

Land Uses and Densities. In order to protect the environment and public health and safety, lower densities and more restrictive land use designations should be applied to lands in the Baylands Protection Corridor. Either AGC-1 (Agriculture and Conservation, one unit per 30 to 60 acres) or AGC-2 (Agriculture and Conservation, one unit per 10 to 30 acres) appear to be the appropriate designation for these properties, with AGC-2 being appropriate only for those properties which include relatively developable upland areas. These land use designations and densities are already utilized in the Coastal Recreation and Inland Rural Corridors in the Countywide Plan.

As an example of what this would mean on a particular property, the current AGC-3 General Plan land use designation for Bel Marin Keys allows between 160 and 800 residential units. An AGC-1 designation would allow between 26 and 53 units. The land use designations appropriate for the larger, privately-owned properties recommended for inclusion in the new corridor are as follows:

- Silveira Ranch - AGC-2
- St. Vincent's - AGC-2
- Bel Marin Keys - AGC-1

- Leveroni (between Bel Marin Keys Blvd and Hwy 37) - AGC-1
- Renaissance - AGC-2 (City of Novato)
- South of Atherton, east and west of Olive - AGC-1
- Bahia - AGC-2 (City of Novato)
- West of Gness - AGC-1
- Pinheiro - AGC-2

In addition, the Corridor would also include a number of smaller, privately-owned parcels and extensive holdings of land under public ownership. Under the recommended land use designations, an estimated range of between 60 and 400 housing units and limited institutional, commercial and recreational uses would be permitted in the area. Floor area ratios specified in the existing Countywide Plan for non-residential uses shall be applied only to the portion of the property used for that non-residential use.

Present BCZ and general plan policies allow approximately 4,000 housing units and 2.4 million square feet of commercial and industrial space.

Options for Other Land Uses and Densities. Where a property owner believes that his or her property is appropriate for other land uses or higher densities, he or she has the option of justifying an amendment to the local general plan based upon a site-specific constraints analysis. The consultant who conducts this analysis should be selected by the local government and paid for by the property owner. This analysis would indicate the locations of all seasonal and other wetlands, vernal pools, floodplains, unstable soils, lands with high seismic risks, sources of toxic emissions, diked historic baylands, archeological sites, agricultural lands, migratory and resident wildlife and special status species habitat, water courses, and other resources; it should also examine impacts on water quality. Development should be permitted only on areas that do not contain these constraints. In addition to allowing consideration of other land uses, this process would provide the property owner an opportunity to request a higher density than allowed under the AGC-1 or AGC-2 designation applicable to the property, if it could be demonstrated that the proposal could be accommodated without damaging resources.

Nothing in the policies of the Baylands Protection Corridor shall be interpreted to allow a taking of private property. Any property owner who believes that his or her property would be taken through the application of the policies in the Baylands Protection Corridor may utilize the option of seeking other land uses or increased densities as set forth above. The City or County may require the landowner to submit relevant economic information, in a format specified by the City or County, documenting the owner's claim that application of the Baylands Protection Corridor policies would constitute a taking of the affected property. The City or County shall take this information into account together with other information contained in the record in determining whether other land uses or increased densities are necessary to avoid the taking of private property. In this regard, other land uses or additional densities should be permitted only in areas which are not identified as containing the constraints outlined in this section unless there is no other alternative which would avoid a taking of private property.

Present BCZ policies do not allow the possibility of flexibility in density.

Diked Historic Baylands. These should be clearly identified and development should be strictly regulated according to the recommendations in this proposal.

Present Countywide Plan policies allow dense urban development, provided impacts are mitigated.

Assessment of Agricultural Impacts. To minimize conflicts between agriculture and natural resources, the City or County shall require prospective developers to prepare an environmental assessment and a master plan of all contiguously owned land within the BPC which would indicate the locations of all uses, including different types of agriculture. No new agricultural uses may adversely impact natural resources.

Present BCZ policies require an environmental assessment before development, but do not specifically refer to agricultural uses and their potential conflicts and impacts.

Conversion of Lands to Agriculture. While continuation of existing agricultural uses should be permitted, conversion of non-agricultural lands to agriculture should be allowed only with the protection of natural resource values.

Present BCZ policies refer to continuing agricultural uses but do not discuss policies for conversion of non-agricultural land to agriculture.

Wetlands Definition. The definition of wetlands developed by Lewis M. Cowardin and contained in the U.S. Fish and Wildlife 1979 publication "Classification of Wetlands and Deepwater Habitats," should be used: "Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following attributes: (1) at least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; (3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year."

Present BCZ policies do not refer to this definition, but include a less strict definition for the Diked Bay Marshlands and Agricultural Subzone.

Wetlands Protection. Wetlands should be preserved. Where possible, they should be enhanced and restored, in some cases in conjunction with agricultural preservation. Agricultural lands no longer useful for agriculture should be restored as wetlands.

Present BCZ policies refer to wetlands restoration as mitigation for project impacts, but do not include policies for restorations as projects in themselves.

Development in Hazardous Areas. Development should be prohibited on lands where there is substantial risk to property or the public health or safety.

Present BCZ policies include special design requirements but do not prohibit construction in the most hazardous areas.

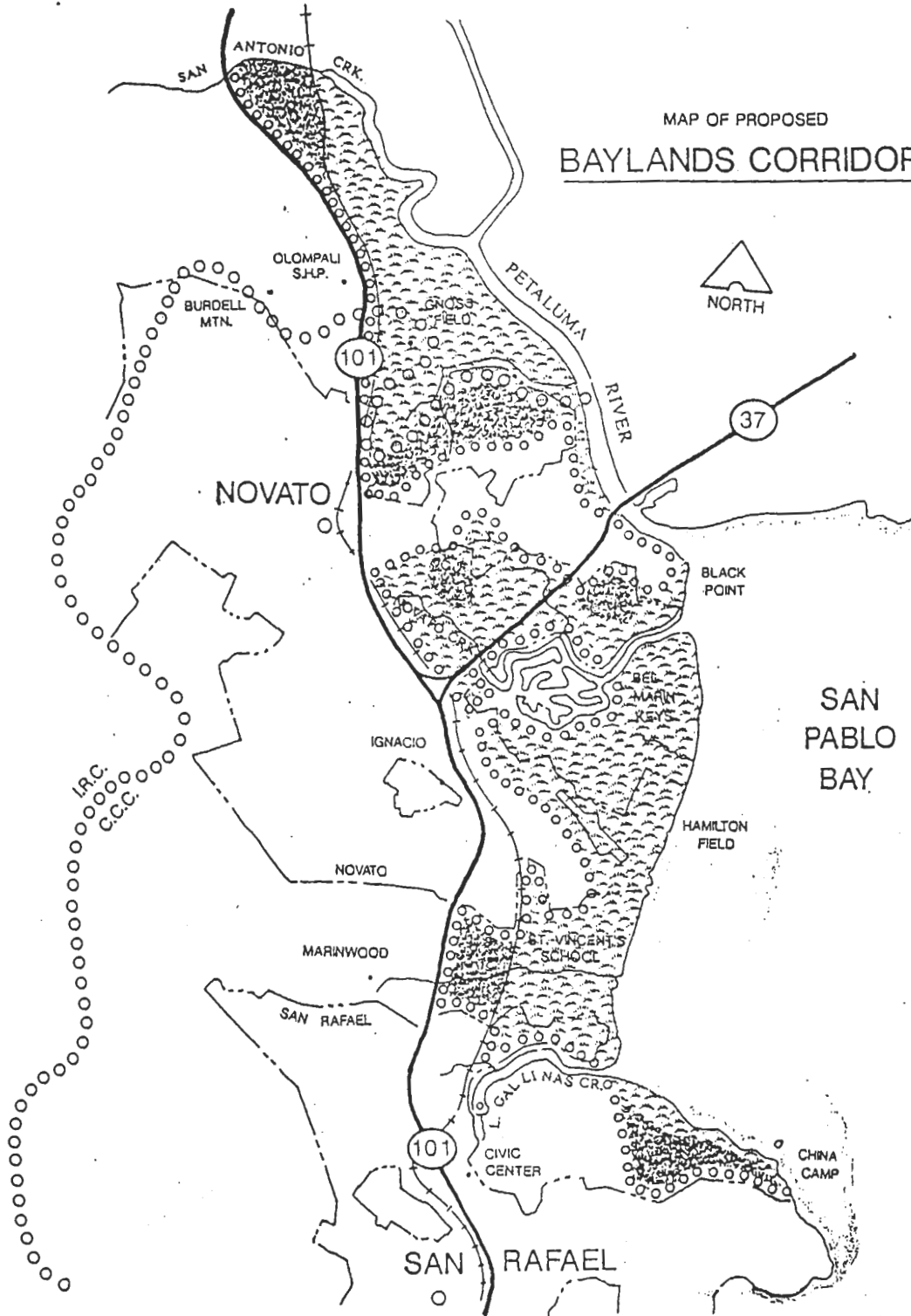
Because the Countywide Plan should be an expression of consistent countywide planning policies, the Countywide Planning Agency should review and act on this recommended Plan revision, with the intent of recommending that it be incorporated into the general plans of the County, San Rafael, and Novato.

Steps Recommended to Establish the Baylands Protection Corridor






1. The Board of Supervisors should initiate the process by directing the staff of the Marin County Community Development Agency to prepare specific amendments to the *Marin Countywide Plan* maps and text to incorporate the Baylands Protection Corridor with appropriate policy language. (The fact that the text and maps in the Plan are computerized should minimize the burden of technical work by the Marin County Community Development Agency.)
2. The proposed Countywide Plan amendment establishing the Corridor should be presented to the Countywide Planning Agency for comments.
3. Noticed public hearings on the amendments to the Countywide Plan should be conducted before the Marin County Planning Commission and Board of Supervisors. These public hearings will require several months.
4. Following adoption of the Baylands Protection Corridor as an amendment to the Countywide Plan, the general plans of Novato and San Rafael should be amended to incorporate the corridor and appropriate policies. The Novato General Plan revision is under way now. The San Rafael General Plan will probably not be revised for several years.
5. Revise zoning ordinances, local environmental guidelines, and other regulations to implement the Baylands Protection Corridor policies. This could require extensive staff time by the planning departments of the County, Novato, and San Rafael.

Establishing the Baylands Protection Corridor in the *Marin Countywide Plan* and the cities' general plans would recognize the importance of these lands for the protection of environmental resources and public health and safety, based on recent scientific findings. It would provide a firm legal basis for appropriate regulations and would present a clear concept to advance public awareness of the importance and functions of Bayfront lands, and of the types of development and resource protection which are suitable there.

MAP OF PROPOSED
BAYLANDS CORRIDOR



LEGEND

- 
 EXISTING BOUNDARY BETWEEN INLAND RURAL CORRIDOR (I.R.C.) and CITY CENTERED CORRIDOR (C.C.C.)
- 
 PROPOSED BOUNDARY OF BAYLANDS CORRIDOR
- 
 AREA IN EXISTING BAYFRONT CONSERVATION ZONE
- 
 PROPOSED ADDITIONS TO EXISTING BAYFRONT CONSERVATION ZONE
- 
 CITY LIMIT