



March 16, 2017

Marin County Board of Supervisors
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903
Via Electronic Mail

Re: Recommendation for a Bird Nesting Ordinance

Dear Supervisors,

The Environmental Action Committee of West Marin (EAC), Point Blue Conservation Science, and Audubon Canyon Ranch are writing to express our concerns with vegetation management practices by Marin County that threaten bird habitats. On behalf of our organizations, we request the Supervisors consider an ordinance to protect diverse bird populations, observe and enforce the federal and state laws that currently protect nesting birds, and restrict vegetation work to non-nesting season.

Many of us are fortunate to live in Marin County, an area that provides diverse and excellent habitats for birds and other wildlife. Marin County is located along the Pacific Flyway¹, where over 54 percent of all North American birds have been sighted and recorded. Birds are relatively easy to observe and are indicators of habitat quality.

A healthy environment for birds also provides benefits to other wildlife and people. Parts of West Marin are world-renowned for bird watching and are designated as Important Bird Areas by the National Audubon Society.² The Point Reyes Peninsula, Tomales Bay, Drakes Estero, and Bolinas Lagoon attract birdwatchers nationally and internationally. These birdwatchers contribute to the economic well being of Marin County. Bird watching, observing, and research studies are an economic asset for the county, attracting regional and national visitors. For example, the Environmental Action Committee of

¹ The Pacific Flyway is a major north-south flyway for migratory birds in America, extending from Alaska to Patagonia. Every year, migratory birds travel some or all of this distance both in spring and in fall, following food sources, heading to breeding grounds, or travelling to overwintering sites.
<http://www.audubon.org/birds/flyways>

² Important Bird Areas are areas identified using an internationally agreed upon set of criteria as being globally important for the conservation of bird populations. The program was developed and sites are identified by BirdLife International. Currently there are over 12,000 IBAs worldwide.
<http://www.audubon.org/important-bird-areas>

West Marin’s annual Point Reyes Birding and Nature Festival alone attracts over 500 people to Marin County.

There are great threats to migratory birds and their populations are declining³, so we must work to protect them. It is our recommendation that Marin County comply with existing protections, revise the county’s vegetation management program, and establish a new county ordinance to better protect migratory birds.

Resident and Migratory Bird Protections

There are federal and state laws to protect birds, nests, eggs, and young. These laws are in place to protect important species from intentional and unintentional harm.

- The Migratory Bird Treaty Act (MBTA) is a federal law that makes it unlawful to “take” (kill, harm, harass, shoot, etc.) listed migratory birds like geese, ducks, shorebirds, raptors, songbirds, and seabirds, including nests, eggs or young without a valid permit.^{4,5}
- Section 3503 of the California Fish and Game Code states, “[i]t is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.”⁶

Marin County’s Increased Vegetation Management Efforts are Harming Migratory Birds.

We are concerned that in recent years, there has been a perceived increase in tree and shrub cutting, pruning, and other vegetation management activities in Marin County. This increase in cutting, pruning and vegetation management is harming birds, nests, eggs, and young.

Arborists work year-round, and our organizations are concerned that there is a lack of awareness of potential impacts to birds or knowledge of the laws that protect birds. In West Marin, these activities are carried out by Marin County maintenance crews and contractors, including: Davey Tree Company, PG & E, and local arborist companies. Much of the vegetation management maintenance occurs during bird nesting season.

³ The State of North America’s Birds 2016 is a report of bird population health.
<http://www.stateofthebirds.org/2016>

⁴ The Migratory Bird Treaty Act (MBTA) <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>

⁵ The migratory birds protected by the MBTA are listed in U.S. Government publication 50 CFR 10.13.
<https://www.gpo.gov/fdsys/granule/CFR-2000-title50-vol1/CFR-2000-title50-vol1-sec10-13>

⁶ California Fish and Game Code Section 3503:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FGC§ionNum=3503

2015 and 2016 Major Vegetation Projects in West Marin

In West Marin throughout 2015 and 2016, there was a large amount of vegetation clearing implemented during nesting season that has affected migratory birds.

- In 2015, Marin County maintenance workers removed and pruned an extensive amount of native vegetation along Sir Francis Drake Boulevard between the towns of Inverness and Point Reyes Station. The majority of this project work occurred during the peak of bird nesting season, and involved impacts to habitat composed of California buckeye and alder trees in addition to thimbleberry and other native understory shrubs.
- In March 2016, PG & E removed a large tree in Inverness along Sir Francis Drake Boulevard at the gateway to the Point Reyes National Seashore that contained an active osprey nest. Ospreys are a raptor species protected by the federal MBTA and by California's Fish and Game Code Section 3503.
- In Spring/Summer 2016, some large, old, eucalyptus trees were removed along the west side of Nicasio Road, just south of the town of Nicasio. There was an American kestrel pair nesting in a cavity in one of the trees that was removed. American kestrels are protected by the federal MBTA and by California's Fish and Game Code Section 3503.

All of the vegetation removal and pruning described above was conducted during the peak of bird nesting season. To our knowledge, there was no nesting bird search done prior to, or during, the work to determine whether nesting birds were present. It is probable nests were destroyed and birds were adversely impacted as a result of these projects. In the case of the tree along Sir Francis Drake Boulevard at the gateway to the Point Reyes National Seashore, it supported an active osprey nest that was destroyed. The impact was tragic and violated the federal MBTA and California's Fish and Game Code Section 3503.

Compliance with Federal MBTA and California Fish and Game Code Section 3503

It is of critical importance to ensure there are adequate protections for the diverse birdlife in Marin County. To achieve these protections we request the following:

1. Marin County observe and enforce the federal MBTA and California's Fish and Game Section 3503 to protect migrating birds, nests, eggs, and young.
2. Marin County create a program to educate maintenance staff, commercial arborists, and other entities who conduct vegetation work in the county about these laws and require them to abide by the laws.
3. Marin County should restrict vegetation maintenance work to the non-nesting season or have expert third party surveys done prior to vegetation removal through adoption of a county ordinance to protect birds, nests, eggs, and young.

Establishment of Marin County Ordinance

Marin County should adopt an ordinance to protect migrating birds, nests, eggs, and young. A comprehensive ordinance to protect birds would recommend when each type of vegetation and habitat should be trimmed or removed taking into account that different habitat types harbor different species at different times of the year. Exceptions could be made for imminent threats to human safety or property with review from a qualified biologist, but other maintenance should be scheduled outside bird nesting season. Marin County should require prior bird nesting surveys if an agency or company wants to do vegetation management outside of approved seasons.

The most critical bird nesting season is March 1 through August 1. This leaves seven months to undertake most clearing projects. Some species, such as hummingbirds, owls, jays, and towhees nest earlier (mid-December). An ordinance should take this into account.

Thank you very much for taking the time to consider this issue. We look forward to working with the county so that we can all work towards protecting Marin County's rich avifauna, and so that the county can comply with existing state and federal law, as well as international treaties.

Sincerely,

Morgan Patton, Executive Director
Environmental Action Committee of West Marin

Ellie Cohen, President and CEO
Point Blue Conservation Science

John Petersen, Executive Director
Audubon Canyon Ranch

cc:

Raul M. Rojas, Director, Marin County Public Works
Mike Best, Avian Protection Plan Program Manager, Pacific Gas and Electric Company