MARIN COUNTY FARM BUREAU

P.O. Box 219, Pt. Reyes, CA 94956

February 19, 2013

President Judy Arnold and the Marin County Board of Supervisors
Via e-mail c/o Kristin Drumm: kdrumm@marincounty.org

Re: **Farm Bureau's Outstanding Issues**

Dear President Arnold and Honorable Supervisors,

Background
When the LCPA process began several years ago, Marin's farmers and ranchers filled the room at the initial workshops and hearings, and made us aware of a considerable number of policies that were unclear, unfair, and had the potential to damage Marin's agricultural sustainability. However, ranchers and farmers have found it difficult to take time away from their work to continue attending the numerous hearings.

When the process got to your board and Farm Bureau laid out those issues that remained problematic in the Planning Commission Approved Drafts, we realized they were numerous and we understood that you needed to prioritize and address what were seen as the most important issues first. The agriculture community appreciates that you have addressed many of these during your hearings thus far, including eliminating some unnecessary regulatory burdens so that farmers and ranchers will have the flexibility to be economically viable and sustainable, and for relocating the proposed California Coastal Trail off the working ranches and onto Highway 1.

There remain, however, a number of outstanding issues. There is even broader concern as the ranching community begins to realize that an updated Countywide Plan policy (AG-1.g Revise Agricultural Zoning Districts) mandates that Agricultural Production Zoning (APZ), or a similar zoning district, shall apply to lands in the Inland Rural Corridor.
Some of the issues were never addressed during your public hearings, and others were mentioned in staff reports but not resolved to the satisfaction of the ag community. We have broken these into two groups, Unaddressed Issues and Unresolved Issues. We would appreciate your close consideration of each of these issues before you adopt the LCPA. Please also carefully consider Attachment #1, containing our recommendation that could resolve a great many of the existing problems.

Comprehensive discussions on many of these can be found in two of the letters submitted by Marin County Farm Bureau on 9/28/2012 and 3/25/2012. Support for these positions are also included in letters from California Farm Bureau Federation 4/22/2010 and California Cattlemen's Association 10/2/2012.

Issues Not Addressed during the Board of Supervisors' Public Hearings

Unaddressed Issue #1 - Categorical Exclusion Orders

We appreciate that you have recognized that historic and ongoing customary and normal agricultural activities and agricultural accessory structures should not be considered development subject to the Coastal Permit process, (**Program C-AG-2.a Allowed Uses: Use allowed by right. No permit required).** However, although these are currently certified in the Categorical Exclusion Orders (see Categorical Exclusion Orders *PDF*, and Resolutions Amending Unit I and II *PDF)*, they only apply to certain properties. We request that you now specify that the Categorical Exclusion Orders be allowed on ALL C-APZ-zoned parcels in the Coastal Zone, and that for clarity and transparency the Categorical Exclusion Orders be featured somewhere prominently in the Amended LCP, listed for reference in the Code and referenced in the Appendix.

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Unaddressed Issue #2 - The "Constitutionality Clause"

As you will see, many of the unresolved issues relate to internally inconsistent LCPA and Development Code language, and some actually increase the County's exposure to liability for potential takings claims. We will discuss individual problematic policies below, but think it is important to point out that *all* of the problems can be fixed, literally, by the inclusion of a new clause:

Policy XX & Development Code Section XX - Constitutionality of Conditions

Where the County seeks to impose conditions on a property owner's proposed land use, the County bears the burden of demonstrating—on an individualized, case-by-case basis—that the proposed use will create an adverse impact on public access, public infrastructure or other public good. The County must then also demonstrate: (1) a nexus between the impact of the proposed land use and the condition; and (2) proportionality between the impact of the proposed land use and the condition, such that the condition directly mitigates for the adverse impacts of the proposed land use.

To our knowledge, your board did not address the Constitutionality Clause during a public hearing. We were told by staff that they did not think it appropriate to include because some of the laws it referenced (such as Nollan and Dolan) might be one day overturned in court, thus invalidating our LCP. This is a flawed argument, as can be seen in our Attachment #1 - "Constitutionality Clause" and Arguments in Support of Its Inclusion, which also includes a comprehensive discussion and the list of Development Code sections that should be referenced with the Constitutionality Clause.

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Unaddressed Issue #3 - Potential Takings Economic Evaluation

Presumably in response to potential takings liability, Staff drafted a new Section 2.70.180, which unfairly requires permit applicants whose land falls within ESHA to provide the County with proprietary, confidential financial and personal information. This fails to account for federal and state constitutionally guaranteed rights to privacy. And, because the Coastal Commission has a history of painting ESHA with an overly broad brush, this Section could apply to a large percentage of applicants. Please see the excellent arguments presented by Pacific Legal Foundation in its 10/1/2012 letter, and delete this requirement.

* * *

Unaddressed Issue #4 - Development Code Tables 5-1.a, b, c and d
(There are a number of different issues herein)

Key to MCFB's Recommendations:
Only the C-APZ-60 column has been edited
Added text = **bold and underlined**
Deleted from original = ~~Strikethrough~~
~~X~~ = Deleted original symbol for Use not allowed (–)
! = New column added at left to indicate where proposed changes made
(No changes recommended for Table 5-1.e)

FARM BUREAU RECOMMENDS:

TABLE 5-1-a - ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE-RELATED DISTRICTS

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	**C-ARP** Agricultural Residential Planned	**C-OA** Open Area	
	AGRICULTURE, MARICULTURE				
!	Farmhouse	PP (8)	PP	--	22. 32.025

(8) ~~Only one single-family dwelling per legal lot allowed~~. **Additional single-family dwelling units up to the C-APZ-60 zoning density, without a land division, may be permitted as a Conditional Use (U), when all applicable standards and requirements have been met**. Does not include intergenerational homes or agricultural worker housing. To create additional parcels and additional single-family homes, see also 22.86 (Subdivisions).

- Please note that we have added -60 to the C-APZ zoning designation in all the tables.

- The language in Footnote (8) "Only one single-family dwelling per legal lot allowed…," indicates that people are still confused about the difference between "allowed" and "permitted." Please see the Marin County Local Coastal Program Unit II , page 100, where "One single-family dwelling…" is listed as one of the "b. Permitted uses" in the APZ. If only one single-family dwelling was *allowed*, how would one explain the fact that there are a number of ranches containing more than one house, or that MALT continues to purchase development rights in the Coastal Zone? This language also inadvertently promotes unnecessary subdivision. Please clarify the intent and the law by adding our suggested language.

FARM BUREAU RECOMMENDS:

TABLE 5-1-b ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE - RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	**C-ARP** Agricultural Residential Planned	**C-OA** Open Area	
	MANUFACTURING AND PROCESSING USES				
!	Cottage industries	**PP** ~~X~~	U	--	22.32.060
!	Hunting and fishing facilities (Private)	**P** ~~U~~			
!	Private residential recreational facilities	**P** ~~U~~			

Discussion:

- Regarding Cottage Industries, it is absurd to not allow someone in a farm family to supplement their income by engaging in any of these enterprises. Because many have to take off-farm jobs because regulations in California make earning a living off the land difficult if not impossible, many agricultural families must find additional means to pay the bills. Governor Brown recently signed into law AB 1616 which makes cottage industries legal. Please update Table 5-1-b and Section 22.32.060 to reflect that this is a Permitted Use for our lands in the C-APZ-60 zone.

- Please see the definitions of Private Recreational Facilities and Rural Recreation, which exclude commercial facilities and public commercial enterprises. A literal interpretation could prevent a farm family from putting a target on a hay bale to use for target practice, placing a hot tub on their back porch, building an indoor lap pool for physical therapy, or erecting a basketball hoop where their kids can play without going through a cumbersome permitting process. These should be Permitted uses.

FARM BUREAU RECOMMENDS:

TABLE 5-1-c ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE - RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	RESIDENTIAL USES				
!	Guest houses	**P(6,10)** ~~X~~	P(6)	P(6)	22.32.090
!	Residential second units	**P(6, 10) X**	P(10)	--	22.32.140 22.32.115
!	Tennis and other recreational uses, private	**P U**	U	U	22.32.130

Discussion:

- Guest houses are allowed in every other zoning district. It is not only discriminatory and a violation of equal protection, but also insulting to assume that farmers and ranchers won't ever have out-of-town guests for whom they want to provide overnight accommodations from time to time without impacting the family's private space.

- Regarding Second Units: The state encourages development of second units to increase the availability of low income housing by reducing government regulation. Second-unit law applies to localities in the Coastal Zone so Marin's LCP cannot make an exclusion for the C-APZ-60 zone. According to Government Code 65852.2(j), second-unit law shall not supersede, alter or lessen the effect or application of the California Coastal Act (Division 20 of the Public Resources Code), except that local governments shall not be required to hold public hearings for coastal development permit (CDP) applications for second-units. As stated in correspondence, dated January 13, 2003 from the California Coastal Commission to all coastal communities, local governments in the coastal zone should amend their Local Coastal Program (LCP) to not require a public hearing in the consideration of second-unit applications. Further, local appeals should be handled in an administrative manner. Source: B1866, Government Code Section 65852.2 State Second Unit Law http://www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf.

- Please see our discussion of Private Residential Recreational Facilities in Manufacturing and Processing Uses from Table 5-1-b above.

FARM BUREAU RECOMMENDS:

TABLE 5-1-d ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE – RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	RESOURCE, OPEN SPACE USES				
!	Water conservation dams and ponds	**P(10)** ~~U~~	P	P	
!	Veterinary clinics and animal hospitals	**U** ~~X~~	U	--	

Discussion:

Water conservation dams and ponds for agricultural use are necessary for agriculture production and, in addition, their presence offers habitat to native and endangered animals. They should be Permitted Uses (P).

- What better place for veterinary clinic or animal hospital than within an agricultural zone? Those concerned with animal welfare should support a local vet clinic. Large animal vets are few and far between, and allowing the building of vet facilities will help to encourage location of vets within the area. This would also help to minimize travel time between ranch/farm, reducing the carbon footprint and likely decreasing the time that an animal might be in pain. It should be allowed with the proper Use Permit.

* * *

Unresolved Issues Already Addressed but Without Satisfactory Resolution

Unresolved Issue #1 - Conservation Easements and Covenants Not to Divide Should Not Be Required as Conditions for Permit Approval

C-AG-7.B.3

During the planning commission hearings, Farm Bureau and its attorneys unsuccessfully tried to make a case for substituting the word "may" for "shall" in the agricultural easement requirement language.

What we did succeed in doing, though, was raising the awareness of the planning commission to the potential takings implications of this policy. The language that the Marin Planning Commission ended up approving, however, begins with a clause that is both misleading and untrue:

"*Consistent with state and federal laws*, a permanent agricultural conservation easement… shall be required…"

Neither state nor federal law requires a conservation easement over lands used for non-agricultural development, land divisions, or multiple residential projects. This poorly-written phrase implies that they do. This policy can be corrected and clarified simply by adding the word, "*Where*" before the word consistent…, or using language similar to that in C-PA-2: "*Where a nexus exists between impacts of proposed development and provision of* [an easement]…"

Secondly, requiring the execution of a covenant not to divide in the same way eliminates valuable development potential and could also be construed as a taking without just compensation. It also hamstrings a farmer who may need to obtain financing and is forced to encumber his entire property, rather than a portion of it. This would result in jeopardizing the very land that the LCPA and CCC seek to preserve. Flexibility must be maintained. LCPA should avoid policies that micromanage. We are not advocating for non-agricultural development or subdivisions, only that the development potential be justly compensated as guaranteed by our Constitution. In the LUP's Introduction, which references Coastal Act Section 30010, the County acknowledges that it cannot "grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation." The draft policy language of C-AG-7.B.3 violates Coastal Act Section 30010 and our Constitution.

Please see our comprehensive discussion in our first endnote.[i] Please also see supportive arguments on page 3 of California Farm Bureau Federation's 4/22/2010 letter.

The California Coastal Commission continues its unsound propensity to unlawfully demand easements in exchange for permit approvals, and they are consistently stricken down in courts, in lawsuits that unnecessarily drain taxpayer dollars. CCC staff continues to insist upon easement dedications from applicants going through the Coastal Permit process. Clear and unequivocal language could put an end to these illegal and costly processes.

The most preferable option to create fair and legal policies with internal consistency and clarity is to incorporate the Constitutionality Clause and reference this policy and related Development Codes with it.

...

Unresolved Issue #2 - Intergenerational Housing Should Include More Than Two Homes

C-AG-5 allows for up to two Intergenerational Homes**.** We appreciate that County planners recognize the need for intergenerational housing as a principally permitted use (PP) in addition to the main Farmhouse. But limiting development to only two intergenerational homes is prejudicial against larger farm families, many of whom have been stewards of the land for generations. Limiting their economic viability further, if even one additional home was needed for that larger family, they would then be forced to dedicate a conservation easement and trigger a covenant not to divide, which would not only eliminate all development rights but eliminate the family's ability to grow in the future. Conservation easement and covenants not to divide are encumbrances that reduce the value of lands. Development rights have value to both the

government (in the form of taxes) and landowners (as proven by MALT purchases over the last 27 years). Development rights must be purchased, not taken. It's important to point out that most, if not all development proposals must go through a number of permitting processes. By allowing additional homes, it is not as if farmers and ranchers will have free development reign. This development would still need to be approved by the appropriate local agency prior to the CCC. These regulations don't exist in a vacuum. Please also see comments from CCA in the corresponding endnote.[ii]

Farm Bureau Recommends: Allow two intergenerational homes as a Principally Permitted Use (PP). Delete requirement for Use Permit (U) on a second intergenerational home. Allow additional intergenerational homes, beyond the first two, with a Use Permit (U), up to the zoning density.
The corresponding Development Codes, including 22.32.024, should also be modified accordingly.

Unresolved Issue #3 - The Aggregate Cap is Inconsistent with the Zoning
C-AG-9.3 restricts the aggregate square footage of all intergenerational residences 7,000 to square feet.

To suggest that the aggregate residential development on a subject legal lot shall not exceed 7,000 square feet is preposterous. The "aggregate cap" was removed by the Supervisors during the Countywide Plan update when the board acknowledged that it would change existing zoning without due process. To allow the same total square footage on a 60 acre parcel as you do a 1,300 acre parcel illegally changes the zoning of each ranch to a different density. This cap would also trigger a conservation easement and a covenant not to divide if the addition of one more home for a family member who wanted to get involved in the operation would exceed the 7,000 square feet limit. Again, it is important to point out that regardless of square foot cap, the home(s) would have to go through a local permitting process in order to be built. This process is the appropriate time for local agencies to use best judgment and discretion in permitting. A blanket ban on aggregate size exceeding 7,000 square feet is unjustifiable. Please also see supportive arguments on page 5 of California Farm Bureau Federation's 4/22/2010 letter.

Please delete #3 entirely. Related language in Development Code Section 22.62.060 should also be revised or deleted accordingly.

* * *

Unresolved Issue #4 - Restrictions Denying Use of 95% of Gross Acreage Without Compensation
C-AG-7.B.1 mandates that all non-agricultural development be grouped in a total of no more than 5% of the gross acreage. First and foremost, such a limitation might legally be construed as a taking, since the policy makes no mention of compensating a landowner for the 95% of that land where no development would be allowed. Compare this percentage with thresholds in Williamson Act or conservation organization policies. If the infrastructure supports the feasibility of the operation it should be allowed. Additionally, there are variations of what is compatible with ag (e.g. supporting infrastructure, water development infrastructure, worker

housing, etc.) When you start adding all the ranch roads existing and proposed, their cumulative square footage could be quite sizable.

Ag roads should be deleted from this policy. Without the construction of roads, you will still have landowners traveling over their property with quads and other vehicles. Having ranch roads serves to encourage travel on a segment of the property as opposed to taking various routes each time travel is required, thereby minimizing the environmental impact.

Septic leach fields must be placed where the land perks, so should not be required to be incorporated into groups. Similarly, it would be impractical or impossible to "group" power line easements and utility lines. Please make an exclusion for them.

Please also see supporting arguments from CCA's letter.[iii]

This questionably-legal policy is best resolved by incorporating reference to the Constitutionality Clause.

Unresolved Issue #5 - Restrictions to "Protect" Visual Resources

C-AG-7.B.1 mandates that all non-agricultural development not result in impacts including "significant natural visual qualities of the site" and "designated scenic protection area[s]."
C-DES-2 Protection of Visual Resources Ensure appropriate siting and design of structures to prevent obstruction of significant views, including views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes.
C-DES-3 Protection of Ridgeline Views requires that new development proposed on or near visually prominent ridgelines to be grouped below the ridgeline on the least visually prominent portion of the site.

Discussion:
We object to the notion that views of our agricultural lands somehow belong to others. The Courts have rejected the argument that the Coastal Act allows the Commission to completely ban any development that in any way impacts any view in the coastal zone.

The Court pointedly explained:
"[T]he Legislature [never] intended that permits be denied for all projects which infringed in any way, no matter how minimal, on any view, no matter how limited, for anyone, from any vantage point, no matter the proximity of unlimited and expansive views" *(Farr vs. the California Coastal Commission*).

There's a potential problem with restrictions on development on the tops of hills, spurs and ridgelines, which are often the best places to locate certain agricultural accessory structures because of their visibility from the rest of the ranch and/or their exposure to certain weather elements. For instance, a hay barn along the top of a ridgeline is a more preferable location for drying out baled hay than in a lower, less ventilated area. An 18 foot height limit would also compromise the usefulness of such a building. Viewsheds that are being protected are created by the stewardship of the landowner, who should be allowed the flexibility to construct structures

that are compatible with the agriculture operation. Please make an exception for agricultural accessory structures.

Please also see supportive arguments on page 2 of California Farm Bureau Federation's 4/22/2010 letter, and those by CCA in the related endnote.[iv]

Please make it clear in these policies and corresponding Development Code sections that the public is not entitled to prevent any development simply because they may not wish to look at it.

Unresolved Issue #6 - Internally Inconsistent Language in C-AG-7

Development Standards for the Agricultural Production Zone (C-APZ) Lands.

A. Standards for Non-Agricultural Uses:

4. Proposed development shall only be approved after making the following findings:

a. The development is necessary because agricultural use ~~of~~ on a portion the property would no longer be feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property.

b. The proposed development will not conflict with the continuation or initiation of agricultural uses on that portion of the property that is not proposed for development, on adjacent parcels, or on other agricultural parcels within one mile of the perimeter of the proposed development.

Discussion:

How is it possible to prove a. that "agricultural use of the property would no longer be feasible," and also b. that "the proposed development will not conflict with the continuation or initiation of agricultural uses…"? The statement would be clarified by adding the words "on a portion" in front of the words "the property" in 4a. This would also make 4a. more consistent with the second sentence which reads "The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land…" We have inserted and highlighted the proposed change above to help make this clearer.

Unresolved Issue #7 Wetland and stream buffer adjustments

C-BIO-20 Wetland Buffer Adjustments and Exceptions.

~~1. Consider granting adjustments and exceptions to the wetland buffer width standard identified in Policy C-BIO-19 in certain limited circumstances for projects that are implemented in the least environmentally damaging manner, as follows~~ A Coastal Permit that requires a buffer adjustment may only be considered if it conforms with zoning, and:

C-BIO-25 Stream Buffer Adjustments and Exceptions.

1~~. Consider granting adjustments and exceptions to the coastal stream buffer standards in policy CBIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. An adjustment or exception may be granted in any of the following circumstances:~~ A Coastal Permit that requires a buffer adjustment may only be considered if it conforms with zoning, and:

Your board had asked staff to come back with cleaner language regarding the buffer adjustments at the January 15th hearing. They replaced the language with the above underlined language.

This is extremely problematic; since no coastal permit "requires" a buffer adjustment, there would be no possibility of ever obtaining an adjustment. We believe that staff intended for adjustments to be possible but the language now prevents that. Farm Bureau would like to suggest the following language:

Buffer adjustments may be considered for coastal permits if the following criteria are met: Then a list of the criteria would be listed as it already is. Please don't forget our opposition to the 50 foot minimum. If the site assessment shows that a lesser minimum is necessary, that should be allowed.

* * *

With apologies for the length of this comprehensive request, please recognize that each of these issues is important to the agriculture community.

We thank you for your consideration, and for recognizing that the Coastal Act gives you the authority over, and the autonomy from, the Coastal Commission, when determining the precise content of our LCP. You know better than any state agency how much Marin's agriculture benefits the County, economically, culturally and environmentally. Thank you for continuing to support this in the future as the LCPA goes through the Coastal Commission certification process.

Dominic Grossi

Dominic Grossi
President
Marin County Farm Bureau

Attachments: 1 - "Constitutionality Clause"

Cc:
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Endnotes

[i] **Conservation Easement Requirement Language and Covenants Not to Divide**
The language "consistent with state and federal laws" is ambiguous and subject to misinterpretation. There are two major issues here. First, requiring a conservation easement (CE) without showing that it's proportionate and that a nexus exists, or paying just compensation for valuable lost development

potential, is not only illegal but devalues the land, impacting a rancher's ability to get loans, build infrastructure and increase economic viability, or even sell the land.

Secondly, requiring the execution of a covenant not to divide in the same way eliminates valuable development potential and could also be construed as a taking without just compensation. It also hamstrings a farmer who may need to obtain financing and is forced to encumber his entire property, rather than a portion of it. We are not advocating for non-agricultural development or subdivisions, only that the development potential be justly compensated as guaranteed by our Constitution. In the LUP's Introduction, which references Coastal Act Section 30010, the County acknowledges that it cannot "grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation." The draft policy language of C-AG-7.B.3, violates Coastal Act Section 30010 and our Constitution.

A mandatory one-size-fits-all CE limits the property owner's rights not only on development but certain ag activities. This should be a choice to participate—otherwise property owner commitment to adhering to, or even understanding CE requirements, can be an issue and can ultimately result in violations. In Sonoma County, no CE is entered into unless there is a willing seller. Ultimately, willing participation equals higher CE compliance, which results in a successful land protection program for the Marin Agricultural Land Trust and the County.

Also, in deliberations during the public processes, many people advocated for using the word "may" instead of the word "shall," including then MALT Executive Director Bob Berner in his item 4 on page 1 of his 7/27/2009 letter to the Planning Commission. The policy should allow for using a Williamson Act Contract to promote long-term preservation, as it does in C-AG-9.

Please also see Policy C-PA-2 for alternative language.

Here is a related excerpt from California Cattlemen's Association's (CCA's) 10/2/2012 letter supporting our argument:

"The language of section three is misleading and untrue. Neither state nor federal law requires a conservation easement over lands used for non-agricultural development. This language completely mischaracterizes the Supreme Court decision in *Nollan v. California Coastal Commission* 483 U.S. 825 (1987), which states that a nexus must exist between the proposed project and the requirement for the easement. It is required by law that either the landowner must be a willing volunteer in the establishment of the easement, or the state or county must take the property and reimburse the land owner via eminent domain, otherwise, the condition of an easement in exchange for a permit would classify as an illegal taking. The language above does not reflect this critical component, and CCA advises that it be changed to do so.

In addition to the egregious interpretation of the requirements of easements, this policy also prohibits farmers and ranchers from dividing their land should they need to do so for financial reasons. If this option is off the table, landowners may be either forced to sell all of their property, or be subject to restrictive uses of an easement. The Board may wish to consider that should agricultural lands be subject to an easement, the county will no longer receive property taxes. It would behoove the Board to consider whether or not it is wise to implement a policy which will certainly reduce revenues to the County."

[ii] **Intergenerational Housing**. Excerpt from CCA 10/2/2012 letter: CCA appreciates the acknowledgement by staff that agriculture in Marin County is composed almost wholly of family farms. Unlike other occupations, farming and ranching require generations of investment of both time and money, and to continue the work done by parents, children and grandchildren frequently step in to support the aging generation. In order to support the continuation and succession of family farms and ranches, the Planning Commission- recommended LCPA includes a provision to allow up to two "intergeneration homes" on agricultural properties in the Coastal Agricultural Production Zone (C-APZ). While CCA supports the concept of intergenerational housing allowances, we believe that limiting the number of homes to two, prohibits and discourages multiple generations from continuing to tend to the land. If the homes can be built in a manner that both provides for the continued stewardship of the land, while maintaining habitat and open space, then the homes should be permitted. These decisions should not be arbitrarily set as blanket rules, but instead, should allow for flexibility within local government policy making.

[iii] **Restrictions Denying Use of 95% Without Compensation** Excerpt from CCA's 10/2/2012 letter: While this language was likely mistakenly written in its current form, CCA would like to call the members' attention to the fact that this policy encourages agricultural facilities to be built in a location which avoids agricultural lands. Clearly, it is impossible to avoid agricultural land on a parcel that is zoned as such. CCA recommends that this language be changed to reflect a more coherent policy. CCA also would like to remind the Board that as most of this land is private property, should a landowner wish to disturb his productive land and forego some of his profit for the building of an agriculturally related structure, he should be allowed to do so. It seems to be a common notion amongst many of the staff that the farm or ranch owner will not do what is best for the continued production of his land. If it is more efficient and effective to build an agricultural structure near the area on which agricultural production occurs, the landowner should have the ability to do so. The alternatives to this policy may be that a rancher builds a barn five miles from his most frequently used pasture, and as a result of policy restriction, is forced to drive hay back and forth from the barn to the pasture as opposed to having built the structure in a location which was most beneficial for his use.

[iv] **Scenic Resource Protection** Excerpt from CCA's 10/2/2012 letter: Here again, the Board must determine whether or not they want to protect agriculture and open space, as the language severely hampers farmers and ranchers from a variety of practices that are necessary to ensure the continuation of their operations. It is not always reasonable that new structures be made near existing roads, and in fact, this may frequently be deleterious to agriculture. Those raising livestock want to ensure that their animals are away from the road, and thus, this provision ensures that the construction of any related facilities would be untenable. Additionally, the language states that "…development shall be sited to minimize impacts on scenic resources…" This is a catch-22. Firstly, who determines scenic resources? Secondly, should a landowner be prohibited from erecting a facility which would allow his continued participation in agriculture, then that very view shed which is being " protected" will be ultimately diminished by the landowner's inability to continue farming and ranching and providing coveted open space.

MARIN COUNTY FARM BUREAU

P.O. Box 219, Pt. Reyes, CA 94956

February 19, 2013
Attachment #1 - "Constitutionality Clause"

Recommended new "Constitutionality of Conditions" Clauses in LUP and Development Code

Recommended Revisions to Applicable Development Code Sections and Analysis

Arguments in Support of Its Inclusion

Issue: There are a number of proposed policies and Development Code sections in the Local Coastal Program Proposed Amendments dealing with permits conditioned upon the exaction of easements and other impacts on private property rights. The Planning Commission Recommended Drafts contain language that is often internally inconsistent, and which does not adequately lay out the requirement for consistency with state and federal law.

Intent: To incorporate language that is internally consistent by creating a new clause that would be incorporated as both a LUP Policy and a Development Code Section entitled the "Constitutionality of Conditions" and then reference that clause in all policies and codes related to it (i.e. "…consistent with Policy/Section XX…"). This approach would also simplify and clarify much of the LCP language by preventing redundancy. Specificity of the new clause will bring transparency necessary for applicants, the public, and government agencies, thereby reducing ill-advised and expensive appeals and lawsuits.

Analysis and Discussion:
The Fifth Amendment of the Federal Constitution limits the extent to which the County may demand that property owners comply with certain requirements in exchange for a County-issued permit. These requirements include but are not limited to: public access easements; non-agricultural development in C-APZ and C-ARP zones; open space easements; agricultural conservation easements and subdivision. For the County to legally condition the grant of a permit upon a property owner's acceptance of an easement condition or other limitation on land use, it must comply with the U.S. Supreme Court's holdings in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. *Nollan*, 438 U.S. 825 (1987); *Dolan*, 512 U.S. 374 (1994). Under these cases, the burden falls on the County to make an individualized determination that a proposed land use will adversely impact public access, public infrastructure or other public good. The County must then also demonstrate (1) a nexus between the impact of the proposed land use and the condition; and (2) proportionality between the impact of the proposed land use and the condition, such that the condition directly mitigates for the adverse impacts of the proposed land use.

Recommendation: In order to ensure such consistency, clarity and transparency, we propose an additional clause in both the Development Code and the Land Use Plan that sets forth the circumstances under which the County may impose requirements on property owners as a condition of obtaining a permit. We urge that this statement of the law be incorporated by reference into all the applicable sections of the Development Code and also into the corresponding policies in the Land Use Plan. Our recommended additions are in **bold and underlined** and recommended deletions in ~~strikethrough~~.

Policy XX & Development Code Section XX - Constitutionality of Conditions

Where the County seeks to impose conditions on a property owner's proposed land use, the County bears the burden of demonstrating—on an individualized, case-by-case basis—that the proposed use will create an adverse impact on public access, public infrastructure or other public good. The County must then also demonstrate: (1) a nexus between the impact of the proposed land use and the condition; and (2) proportionality between the impact of the proposed land use and the condition, such that the condition directly mitigates for the adverse impacts of the proposed land use.

Recommended Revisions to Applicable Development Code Sections and Analysis

The following proposed amendments to the Development Code, with reference to corresponding LUPA Policies, directly impact private property rights and therefore require consistency with state and federal law.

Conservation Easement and other land exactions and takings

22.65.030 - Planned District General Development Standards (Policy C-AG-7)

D. Building location:

> 1. Clustering requirement. Structures shall be clustered in a geologically stable, accessible location on the site where their visual prominence is minimized, consistent with needs for privacy. Clustering is especially important on open grassy hillsides; however, a greater scattering of buildings may be preferable on wooded hillsides to save trees. The prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography.
>
> In the C-APZ and C-ARP agricultural zones, non-agricultural development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use. **Consistent with Policy/Section XX**, non-agricultural development, including division of agricultural

lands, shall only be allowed upon demonstration that long-term productivity of agricultural lands would be maintained and enhanced as a result of such development. **Consistent with Policy/Section XX**, non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, and shall not require new road construction or improvements resulting in significant impacts on agriculture, significant vegetation, significant scenic resources, or natural topography of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. Any new parcels created shall have building envelopes outside any designated scenic protection area.

Analysis and Discussion

The imposition of an affirmative agricultural easement is subject to the requirements of *Nollan* and *Dolan* as outlined in Policy/Section XX. Recently, a trial court struck down a similar requirement because there was no nexus or proportionality between the easement requirement and the impact of the proposed development. *See Sterling v. California Coastal Commission*, No. CIV 482448 (Cal. Sup. Ct., Jul. 22, 2011).

2. Development near ridgelines. **Consistent with Policy/Section XX,** no construction shall occur-on top of, or within 300 feet horizontally, or within 100 feet vertically, of visually prominent ridgelines, whichever is more restrictive, unless no other suitable locations are available on the site or the lot is located substantially within the ridgeline area as defined herein. If structures must be placed within this restricted area because of site constraints or because siting the development outside of the ridgeline area will result in greater visual or environmental impacts, they shall be in locations that are the least visible from public viewing areas.

E. Land Division of Agricultural Lands. Land divisions affecting agricultural lands shall be designed consistent with the requirements of this Article. In considering divisions of agricultural lands in the Coastal Zone **and consistent with Policy/Section XX**, the County may approve fewer parcels than the maximum number of parcels allowed by the Development Code based on site characteristics such as topography, soil, water availability, environmental constraints and the capacity to sustain viable agricultural operations.

G. Open space areas:

1. Dedication required. Land to be preserved as open space, **consistent with Policy/Section XX** may be dedicated by fee title to the County or an agency or organization designated by the County before issuance of any construction permit or may remain in private ownership with appropriate scenic and/or open space easements or other encumbrances acceptable to the County. The County may require **consistent with Policy/Section XX** the reasonable public access across lands remaining in private ownership, consistent with federal and state law.

3. Open space uses. Uses in open space areas shall be in compliance with policies of the Marin County Open Space District. Generally, uses shall have no or minimal impact on

the natural environment. **Consistent with Policy/Section XX,** Pedestrian and equestrian access shall be provided where possible, and reasonable. The intent is to serve the people in adjacent communities, but not attract large numbers of visitors from other areas.

22.65.040 - C-APZ Zoning District Standards (Policy C-AG-2)

A. Purpose. This Section provides additional development standards for the C-APZ zoning district that are to preserve productive lands for agricultural use, and ensure that development is accessory and incidental to, in support of, and compatible with agricultural uses.

B. Applicability. The requirements of this Section apply to proposed development in addition to the standards established by Section 22.65.030 (Planned District General Development Standards) and Chapter 22.64 (Coastal Zone Development and Resource Management Standards), and all other applicable provisions of this Development Code.

C. Development standards. Development permits in the C-APZ district shall also be subject to the following standards and requirements in addition to section 22.65.030:

1. Standards for agricultural uses:

a. **Consistent with Policy/Section XX,** permitted development shall protect and maintain continued agricultural use, and contribute to agricultural viability.

b. Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other public services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies including Tomales Bay, either individually or cumulatively.

c. Permitted development shall have no significant adverse impacts on **environmentally sensitive habitat areas as delineated in the LCP maps,** ~~environmental quality or natural habitats,~~ and shall meet all other applicable policies, consistent with the LCP **and with Policy/Section XX.**

2. Standards for Non-Agricultural Uses

Consistent with Policy/Section XX, non-agricultural uses, including division of agricultural lands or construction ~~of two or more dwelling units~~ (excluding agricultural worker ~~or~~ **and** intergenerational housing) shall meet the requirements of Section 22.65.040C above and the following additional requirements:

a. Conservation easements. Consistent with state and federal laws **and Policy/Section XX,** the approval of nonagricultural uses, a subdivision, or construction of two or more dwelling units, excluding agricultural worker and intergenerational housing, shall include

measures for the long-term preservation of lands proposed or required to remain undeveloped. Preservation shall be accomplished by permanent conservation easements or other encumbrances acceptable to the County. Only agricultural uses shall be allowed under these encumbrances. In addition, the County shall require the execution of a covenant prohibiting further subdivision of parcels created in compliance with this Section and Article VI (Subdivisions), so that each is retained as a single unit.

See analysis following D1.

Public Access

22.64.180 - Public Coastal Access (Policy C-PA-2)

A. Application requirements.

1. Site Plan. Coastal permit applications for development on property located between the shoreline and the first public road shall include a site plan showing the location of the property and proposed development in relation to the shoreline, tidelands, submerged lands or public trust lands. ~~Any evidence of historic public use should also be indicated.~~ **It is the County's burden to demonstrate evidence of prescriptive rights in favor of the public. Only a court may declare the existence of prescriptive rights.**

Analysis and Discussion

While the County may consider evidence of historic public use, it is improper to ask a permit applicant to produce that evidence. The burden falls on the County to establish a prescriptive right; it may not coerce a permit applicant into assisting in that process. Moreover, only a court may declare prescriptive rights in favor of the public. *See LT-WR, LLC v. Cal. Coastal Comm'n*, 152 Cal. App. 4th 770 (2007).

B. Public Coastal Access standards.

1. Public coastal access in new developments. New development located between the shoreline and the first public road shall be evaluated for impacts on public access to the coast per Land Use Plan Policy C-PA-2. Where a nexus exists **and consistent with Policy/Section XX**, the dedication of a lateral, vertical and/or bluff top accessway ~~shall~~ **may** be required per Land Use Plan Policy C-PA-9, unless Land Use Plan Policy C-PA-3 provides an exemption.

2. Direct dedication of public coastal access. **Consistent with Policy/Section XX and** if feasible, direct dedication of an easement or fee title interest for a required coastal accessway is preferred per Land Use Plan Policy C-PA-4.

3. Acquisition of new public coastal accessways. The acquisition of additional public coastal accessways shall be pursued through available means per Land Use Plan Policy CPA-6 **and consistent with Policy/Section XX**.

MCFB Attachment #1- "Constitutionality Clause" and Arguments in Support of Its Inclusion

4. Protection of prescriptive rights. New development shall be evaluated to ensure that it does not interfere with **the public's prescriptive rights that have been adjudicated and confirmed by a court of law.** ~~the public's right of access to the sea where acquired through historic use per Land Use Plan Policy C-PA-7.~~

Analysis and Discussion

It is unacceptable to base permitting decisions on potential public prescriptive rights that have not been adjudicated and confirmed by a court of law. *See LT-WR, LLC v. Cal. Coastal Comm'n*, 152 Cal. App. 4th 770 (2007). To burden a landowner with a public access easement condition because of "any evidence of historic public use" impermissibly usurps the role of the judiciary in adjudicating interests in real property. Only courts are competent to declare prescriptive rights. They are bound by procedural safeguards that are designed to assess the credibility of evidence and to ensure fairness. Those same safeguards are absent from County proceedings which therefore do not adequately protect property owners.

Arguments Supporting Inclusion of the "Constitutionality Clause"

First, the County is obligated to follow the law as it exists today, not as it *might* exist in the future. Citizens of the County have a right to know what the existing law is—and, in particular, what their *rights* under existing law are. Just as importantly, by being open and transparent about its legal obligations under local, state, and federal law, the County substantially reduces the risk that its employees will violate the law and needlessly expose the County to liability.

Second, the premise of the County's argument is flawed. By all indications, *Nollan* and *Dolan*'s protections for property owners are here to stay. *Nollan v. California Coastal Commission* itself was decided over a quarter century ago, in 1987. The Supreme Court reaffirmed—and even extended—the principles articulated in *Nollan* seven years later, in *Dolan v. City of Tigard*. Then, in 2005, the Supreme Court in *Lingle v. Chevron USA Inc.* again reaffirmed *Nollan* and *Dolan*'s continued vitality, making it absolutely clear they are well-established precedents of the Court's takings jurisprudence. By contrast, the Court has never even remotely indicated a retreat from *Nollan* and *Dolan*. Given their pedigree, and the Court's repeated affirmance of the principles contained in *Nollan*, it is unreasonably speculative at best to suppose that *Nollan* and *Dolan* might be altered or overturned.

But even if they were, the principles of *Nollan* and *Dolan* have been incorporated into California law. In *Ehrlich v. City of Culver City*, the California Supreme Court said that the nexus and rough proportionality principles of those precedents are the standards that the state's Mitigation Fee Act imposes on cities and counties with respect to permit exactions. Thus, even absent the federal-law tests articulated in *Nollan* and *Dolan*, California municipalities still would be subject to state-law tests that are substantively identical. For the County's argument to be valid, it would have to see *both* a reversal of *Nollan* and *Dolan* by the U.S. Supreme Court *and* a reversal of *Ehrlich* by the California Supreme Court.

Of course, the odds of the U.S. Supreme Court and/or the California Supreme Court reversing itself are very low. A basic principle of American law is *stare decisis*—the idea that a precedent

will be respected unless the most convincing of reasons requires a change. The central case—*Nollan*—has been the law of the land for over 25 years. When it has spoken on *Nollan*, the Court has only reaffirmed it. Given *Nolla*n's well-established place in takings jurisprudence, and the fact that property owners and planners have relied upon it for so long, it is unlikely that the Court would overturn the case. The same can be said of *Ehrlich*, which has been the law of California for almost 20 years—with no indication of any alteration or reversal by the California Supreme Court.

Finally, the County's LCP is not set in stone and, in fact, is periodically revisited and revised. If, in the unlikely event that federal or state law changes, the County can amend its LCP to reflect that change.

MARIN COUNTY FARM BUREAU

P.O. Box 219, Pt. Reyes, CA 94956

February 19, 2013

President Judy Arnold and the Marin County Board of Supervisors
Via e-mail c/o Kristin Drumm: kdrumm@marincounty.org

Re: **Farm Bureau's Outstanding Issues**

Dear President Arnold and Honorable Supervisors,

Background

When the LCPA process began several years ago, Marin's farmers and ranchers filled the room at the initial workshops and hearings, and made us aware of a considerable number of policies that were unclear, unfair, and had the potential to damage Marin's agricultural sustainability. However, ranchers and farmers have found it difficult to take time away from their work to continue attending the numerous hearings.

When the process got to your board and Farm Bureau laid out those issues that remained problematic in the Planning Commission Approved Drafts, we realized they were numerous and we understood that you needed to prioritize and address what were seen as the most important issues first. The agriculture community appreciates that you have addressed many of these during your hearings thus far, including eliminating some unnecessary regulatory burdens so that farmers and ranchers will have the flexibility to be economically viable and sustainable, and for relocating the proposed California Coastal Trail off the working ranches and onto Highway 1.

There remain, however, a number of outstanding issues. There is even broader concern as the ranching community begins to realize that an updated Countywide Plan policy (AG-1.g Revise Agricultural Zoning Districts) mandates that Agricultural Production Zoning (APZ), or a similar zoning district, shall apply to lands in the Inland Rural Corridor.

> *The APZ zone and the C-APZ zone are not the same. A new "inland" APZ zone would not at all be constrained by the distinct, exacting requirements for protection of agricultural land that are specifically mandated by the Coastal Act in the Coastal Zone and incorporated in the C-APZ zone. Decisions to be made on the APZ zone will be by the Planning Commission and the Board of Supervisors through the open public process, and will not be subject to final authorization by the Coastal Commission as the C-APZ zone is.*

Some of the issues were never addressed during your public hearings, and others were mentioned in staff reports but not resolved to the satisfaction of the ag community. We have broken these into two groups, Unaddressed Issues and Unresolved Issues. We would appreciate your close consideration of each of these issues before you adopt the LCPA. Please also carefully consider Attachment #1, containing our recommendation that could resolve a great many of the existing problems.

Comprehensive discussions on many of these can be found in two of the letters submitted by Marin County Farm Bureau on 9/28/2012 and 3/25/2012. Support for these positions are also included in letters from California Farm Bureau Federation 4/22/2010 and California Cattlemen's Association 10/2/2012.

Issues Not Addressed during the Board of Supervisors' Public Hearings

Unaddressed Issue #1 - Categorical Exclusion Orders

We appreciate that you have recognized that historic and ongoing customary and normal agricultural activities and agricultural accessory structures should not be considered development subject to the Coastal Permit process, (**Program C-AG-2.a Allowed Uses: Use allowed by right. No permit required).** However, although these are currently certified in the Categorical Exclusion Orders (see Categorical Exclusion Orders *PDF*, and Resolutions Amending Unit I and II *PDF)*, they only apply to certain properties. We request that you now specify that the Categorical Exclusion Orders be allowed on ALL C-APZ-zoned parcels in the Coastal Zone, and that for clarity and transparency the Categorical Exclusion Orders be featured somewhere prominently in the Amended LCP, listed for reference in the Code and referenced in the Appendix.

The Coastal Act itself limits the geographic area in which development can be Categorically Excluded. Expanding the geographic scope of the Categorical Exclusions would require an amendment to the Coastal Act. This may be something to take up with the Commission at the upcoming Agriculture workshop.

> ***Section 30610 Developments authorized without permit…***
> *(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program…*
>
> ***Section 30610.5 Urban land areas; exclusion from permit provisions; conditions…***
> *(b) Every exclusion granted under subdivision (a) of this section and subdivision of (e) Section 30610 shall be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings under this division, and an order granting an exclusion under subdivision (e) of Section 30610, but not under subdivision (a) of this section may be revoked at any time by the commission, if the conditions of exclusion are violated. Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610.*

Staff will certainly feature the Categorical Exclusions in the final document as requested, and as we already committed to do in Program C-AG-2.a.

***

Unaddressed Issue #2 - The "Constitutionality Clause"

As you will see, many of the unresolved issues relate to internally inconsistent LCPA and Development Code language, and some actually increase the County's exposure to liability for potential takings claims. We will discuss individual problematic policies below, but think it is important to point out that *all* of the problems can be fixed, literally, by the inclusion of a new clause:

Policy XX & Development Code Section XX - Constitutionality of Conditions

Where the County seeks to impose conditions on a property owner's proposed land use, the County bears the burden of demonstrating—on an individualized, case-by-case basis—that the proposed use will create an adverse impact on public access, public infrastructure or other public good. The County must then also demonstrate: (1) a nexus between the impact of the proposed land use and the condition; and (2) proportionality between the impact of the proposed land use and the condition, such that the condition directly mitigates for the adverse impacts of the proposed land use.

County Counsel will address this issue before the Board.

To our knowledge, your board did not address the Constitutionality Clause during a public hearing. We were told by staff that they did not think it appropriate to include because some of the laws it referenced (such as Nollan and Dolan) might be one day overturned in court, thus invalidating our LCP. This is a flawed argument, as can be seen in our Attachment #1 - "Constitutionality Clause" and Arguments in Support of Its Inclusion, which also includes a comprehensive discussion and the list of Development Code sections that should be referenced with the Constitutionality Clause.

Staff did not say these court cases would be overturned, just that the law may continue to evolve and that the more comprehensive, encompassing language of the Planning Commission approved draft would better accommodate such change.

***

FARM BUREAU RECOMMENDS:

Unaddressed Issue #3 - Potential Takings Economic Evaluation

Presumably in response to potential takings liability, Staff drafted a new Section 2.70.180, which unfairly requires permit applicants whose land falls within ESHA to provide the County with proprietary, confidential financial and personal information. This fails to account for federal and state constitutionally guaranteed rights to privacy. And, because the Coastal Commission has a history of painting ESHA with an overly broad brush, this Section could apply to a large percentage of applicants. Please see the excellent arguments presented by Pacific Legal Foundation in its 10/1/2012 letter, and delete this requirement.

County Counsel will address this issue.

* * *

Unaddressed Issue #4 - Development Code Tables 5-1.a, b, c and d

(There are a number of different issues herein)

Key to MCFB's Recommendations:
Only the C-APZ-60 column has been edited
Added text = **bold and underlined**
Deleted from original = ~~Strikethrough~~
~~X~~ = Deleted original symbol for Use not allowed (–)
! = New column added at left to indicate where proposed changes made
(No changes recommended for Table 5-1.e)

FARM BUREAU RECOMMENDS:

TABLE 5-1-a - ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE-RELATED DISTRICTS

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	AGRICULTURE, MARICULTURE				
!	Farmhouse	PP (8)	PP	--	22. 32.025

(8) ~~Only one single family dwelling per legal lot allowed~~. **Additional single-family dwelling units up to the C-APZ-60 zoning density, without a land division, may be permitted as a Conditional Use (U), when all applicable standards and requirements have been met**. Does not include intergenerational homes or agricultural worker housing. To create additional parcels and additional single-family homes, see also 22.86 (Subdivisions).

- Please note that we have added -60 to the C-APZ zoning designation in all the tables.
  The existing Code (22.57.030.I), Article V (22.66.040 and Table 5) and the proposed code (22.62.060.B.1 and Table 5.1) all refer to "C-APZ." rather than C-APZ-60. Moreover, the format for other Zoning Districts, in the LCP AND the Countywide Development Code follow this format. It is unclear what this change is intended to do, and what if any benefit it would confer at the cost of widespread inconsistency in the Code format.

- The language in Footnote (8) "Only one single-family dwelling per legal lot allowed…," indicates that people are still confused about the difference between "allowed" and "permitted." Please see the Marin County Local Coastal Program Unit II , page 100, where "One single-family dwelling…" is listed as one of the "b. Permitted uses" in the APZ. If only one single-family

FARM BUREAU RECOMMENDS:

dwelling was *allowed,* how would one explain the fact that there are a number of ranches containing more than one house, or that MALT continues to purchase development rights in the Coastal Zone? This language also inadvertently promotes unnecessary subdivision. Please clarify the intent and the law by adding our suggested language.

The existing LCP Zoning Code (Title 22I) applies the terms Principal Permitted Uses vs. Conditional Uses (see for example sec. 22.57.032I and .033I). The Amendment adds a Permitted category to the Zoning Code. If the Board desires, we can add additional descriptions to the Introduction of the LCPA.

Ranches with more than one house may been developed before the Coastal Act. MALT purchases development rights to eliminate the potential for subdivision which still exists under the LCP.

TABLE 5-1-b ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE - RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	MANUFACTURING AND PROCESSING USES				
!	Cottage industries	**PP** ~~X~~	U	--	22.32.060
!	Hunting and fishing facilities (Private)	**P** ~~U~~			
!	Private residential recreational facilities	**P** ~~U~~			

Discussion:

- Regarding Cottage Industries, it is absurd to not allow someone in a farm family to supplement their income by engaging in any of these enterprises. Because many have to take off-farm jobs because regulations in California make earning a living off the land difficult if not impossible, many agricultural families must find additional means to pay the bills. Governor Brown recently signed into law AB 1616 which makes cottage industries legal. Please update Table 5-1-b and Section 22.32.060 to reflect that this is a Permitted Use for our lands in the C-APZ-60 zone.

  There is a substantial difference from the recently amended provisions for "Cottage Food Operations"(CFOs) and the much broader "Cottage Industries," which includes activities such as furniture making. CFOs are more similar to Home Occupations," which are already provided for in the LCPA. Staff will work to find the most flexible and permissive way to include CFOs in the LCP Amendments.

- Please see the definitions of Private Recreational Facilities and Rural Recreation, which exclude commercial facilities and public commercial enterprises. A literal interpretation could prevent a farm family from putting a target on a hay bale to use for target practice, placing a hot tub on their back porch, building an indoor lap pool for physical therapy, or erecting a basketball hoop where their kids can play without going through a cumbersome permitting process. These should be Permitted uses.

  "Private Residential Recreational Facilities" are allowed as a Conditional Use- just as they are in the current LCP.(These are defined as "privately owned …facilities provided for members or project/neighborhood residents" i.e private clubs.

  "Rural Recreation" includes outdoor archery, pistol, rifle, skeet shooting ranges and clubs;

FARM BUREAU RECOMMENDS:

rodeo facilities, guest ranches; and health resorts… The current LCP allows hunting, fishing and camping as a Conditional Use (U) but does not list these other rural recreation facilities. It is highly unlikely the informal personal uses putting a target on a hay bale for target practice or erecting a basketball hoop could be interpreted as a range, club, guest ranch or resort.

FARM BUREAU RECOMMENDS:

TABLE 5-1-c ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE - RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	RESIDENTIAL USES				
!	Guest houses	**P(6,10)** ~~X~~	P(6)	P(6)	22.32.090
!	Residential second units	**P(6, 10) X**	P(10)	--	22.32.140 22.32.115
!	Tennis and other recreational uses, private	**P U**	U	U	22.32.130

Discussion:

- Guest houses are allowed in every other zoning district. It is not only discriminatory and a violation of equal protection, but also insulting to assume that farmers and ranchers won't ever have out-of-town guests for whom they want to provide overnight accommodations from time to time without impacting the family's private space.

  Guest houses are not allowed in the C-APZ in the current certified LCP. They are specifically not considered to be an agricultural use, and are not allowed to be exempted (22.56.050.D.2(I)). If the Board wishes to allow them, it should be as a Conditional Use. This may however complicate the CCC's consideration of intergenerational homes.

- Regarding Second Units: The state encourages development of second units to increase the availability of low income housing by reducing government regulation. Second-unit law applies to localities in the Coastal Zone so Marin's LCP cannot make an exclusion for the C-APZ-60 zone. According to Government Code 65852.2(j), second-unit law shall not supersede, alter or lessen the effect or application of the California Coastal Act (Division 20 of the Public Resources Code), except that local governments shall not be required to hold public hearings for coastal development permit (CDP) applications for second-units. As stated in correspondence, dated January 13, 2003 from the California Coastal Commission to all coastal communities, local governments in the coastal zone should amend their Local Coastal Program (LCP) to not require a public hearing in the consideration of second-unit applications. Further, local appeals should be handled in an administrative manner. Source: B1866, Government Code Section 65852.2 State Second Unit Law http://www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf.

  The referenced state law provides for second units in Residential zones, but is silent on agricultural zones. A second unit would be similar to the proposed intergenerational unit, but would be more limited in size. It is unlikely that without the restrictions associated with the proposed intergenerational units, the Commission would see them as an allowable use in agricultural zones. Second units are not presently allowed in the C-APZ by the current LCP.

- Please see our discussion of Private Residential Recreational Facilities in Manufacturing and Processing Uses from Table 5-1-b above.

TABLE 5-1-d ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE – RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	RESOURCE, OPEN SPACE USES				
!	Water conservation dams and ponds	**P(10)** ~~U~~	P	P	
!	Veterinary clinics and animal hospitals	**U** ~~X~~	U	--	

Discussion:

Water conservation dams and ponds for agricultural use are necessary for agriculture production and, in addition, their presence offers habitat to native and endangered animals. They should be Permitted Uses (P).

These are Conditional Uses in the current LCP. Note that within the Categorical Exclusion area, "Water impoundment projects not to exceed 10 acre feet, in canyons and drainage areas not identified as blue lime streams on USGS 7 1/2 Minute Quad Sheets" are exempt.

- What better place for veterinary clinic or animal hospital than within an agricultural zone? Those concerned with animal welfare should support a local vet clinic. Large animal vets are few and far between, and allowing the building of vet facilities will help to encourage location of vets within the area. This would also help to minimize travel time between ranch/farm, reducing the carbon footprint and likely decreasing the time that an animal might be in pain. It should be allowed with the proper Use Permit.

  Staff agrees. While the current LCP provides for veterinary facilities as a conditional use in the C-APZ, Article V adopted by the Board in 2003 did not include this use in the C-APZ zone, and that is the direction we followed. Staff recommends the Board make this change.

* * *

Unresolved Issues Already Addressed but Without Satisfactory Resolution

Unresolved Issue #1 - Conservation Easements and Covenants Not to Divide Should Not Be Required as Conditions for Permit Approval

C-AG-7.B.3

During the planning commission hearings, Farm Bureau and its attorneys unsuccessfully tried to make a case for substituting the word "may" for "shall" in the agricultural easement requirement language.

What we did succeed in doing, though, was raising the awareness of the planning commission to the potential takings implications of this policy. The language that the Marin Planning Commission ended up approving, however, begins with a clause that is both misleading and untrue:

"*Consistent with state and federal laws*, a permanent agricultural conservation easement… shall be required…"

Neither state nor federal law requires a conservation easement over lands used for non-agricultural development, land divisions, or multiple residential projects. This poorly-written phrase implies that they do. This policy can be corrected and clarified simply by adding the word, "*Where*" before the word consistent…, or using language similar to that in C-PA-2: "*Where a nexus exists between impacts of proposed development and provision of* [an easement]…"

County Counsel to advise.

Secondly, requiring the execution of a covenant not to divide in the same way eliminates valuable development potential and could also be construed as a taking without just compensation. It also hamstrings a farmer who may need to obtain financing and is forced to encumber his entire property, rather than a portion of it. This would result in jeopardizing the very land that the LCPA and CCC seek to preserve. Flexibility must be maintained. LCPA should avoid policies that micromanage. We are not advocating for non-agricultural development or subdivisions, only that the development potential be justly compensated as guaranteed by our Constitution. In the LUP's Introduction, which references Coastal Act Section 30010, the County acknowledges that it cannot "grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation." The draft policy language of C-AG-7.B.3 violates Coastal Act Section 30010 and our Constitution.

Please see our comprehensive discussion in our first endnote.[i] Please also see supportive arguments on page 3 of California Farm Bureau Federation's 4/22/2010 letter.

The California Coastal Commission continues its unsound propensity to unlawfully demand easements in exchange for permit approvals, and they are consistently stricken down in courts, in lawsuits that unnecessarily drain taxpayer dollars. CCC staff continues to insist upon easement dedications from applicants going through the Coastal Permit process. Clear and unequivocal language could put an end to these illegal and costly processes.

The most preferable option to create fair and legal policies with internal consistency and clarity is to incorporate the Constitutionality Clause and reference this policy and related Development Codes with it.

County Counsel to advise.

…

Unresolved Issue #2 - Intergenerational Housing Should Include More Than Two Homes

C-AG-5 allows for up to two Intergenerational Homes**.** We appreciate that County planners recognize the need for intergenerational housing as a principally permitted use (PP) in addition to the main Farmhouse. But limiting development to only two intergenerational homes is prejudicial against larger farm families, many of whom have been stewards of the land for generations. Limiting their economic viability further, if even one additional home was needed for that larger family, they would then be forced to dedicate a conservation easement and trigger a covenant not to divide, which would not only eliminate all development rights but eliminate the family's ability to grow in the future. Conservation easement and covenants not to divide are encumbrances that reduce the value of lands. Development rights have value to both the

government (in the form of taxes) and landowners (as proven by MALT purchases over the last 27 years). Development rights must be purchased, not taken. It's important to point out that most, if not all development proposals must go through a number of permitting processes. By allowing additional homes, it is not as if farmers and ranchers will have free development reign. This development would still need to be approved by the appropriate local agency prior to the CCC. These regulations don't exist in a vacuum. Please also see comments from CCA in the corresponding endnote.[ii]

Farm Bureau Recommends: Allow two intergenerational homes as a Principally Permitted Use (PP). Delete requirement for Use Permit (U) on a second intergenerational home. Allow additional intergenerational homes, beyond the first two, with a Use Permit (U), up to the zoning density.
The corresponding Development Codes, including 22.32.024, should also be modified accordingly.

The Farm Bureau has sought such additional development throughout the LCP process, and the Planning Commission and Board have both considered MCFB's position carefully and sincerely. Recognizing that no more than one house per parcel is allowed under the current LCP without review and approval of a subdivision both bodies found that these provisions would provide significant new flexibility if they win approval from the Coastal Commission, and made the judgment that such a carefully balanced expansion of flexibility for agricultural operations at least has a fighting chance of becoming certified.

Unresolved Issue #3 - The Aggregate Cap is Inconsistent with the Zoning
C-AG-9.3 restricts the aggregate square footage of all intergenerational residences 7,000 to square feet.

To suggest that the aggregate residential development on a subject legal lot shall not exceed 7,000 square feet is preposterous. The "aggregate cap" was removed by the Supervisors during the Countywide Plan update when the board acknowledged that it would change existing zoning without due process. To allow the same total square footage on a 60 acre parcel as you do a
1,300 acre parcel illegally changes the zoning of each ranch to a different density. This cap would also trigger a conservation easement and a covenant not to divide if the addition of one more home for a family member who wanted to get involved in the operation would exceed the
7,000 square feet limit. Again, it is important to point out that regardless of square foot cap, the home(s) would have to go through a local permitting process in order to be built. This process is the appropriate time for local agencies to use best judgment and discretion in permitting. A blanket ban on aggregate size exceeding 7,000 square feet is unjustifiable. Please also see supportive arguments on page 5 of California Farm Bureau Federation's 4/22/2010 letter.

Please delete #3 entirely. Related language in Development Code Section 22.62.060 should also be revised or deleted accordingly.

This provision is part and parcel of the compromise to allow intergenerational homes, by demonstrating that such homes are bona fide components of a farming operation (the average size of a typical coastal Marin farmhouse is about 2000 sq. feet), rather than a non-agricultural "rural estate" home. This premise also would allow the farm house and first intergenerational home to be a principal permitted use not subject to appeal to the Coastal Commission, providing the operation with more certainty.

These provisions in no way change overall density, but simply provides a more flexible alternative. The LCPA continues to allow one unit per 60 acres under conditions that are similar to the LCP requirement currently in place.

* *
*

Unresolved Issue #4 - Restrictions Denying Use of 95% of Gross Acreage Without Compensation

C-AG-7.B.1 mandates that all non-agricultural development be grouped in a total of no more than 5% of the gross acreage. First and foremost, such a limitation might legally be construed as a taking, since the policy makes no mention of compensating a landowner for the 95% of that land where no development would be allowed. Compare this percentage with thresholds in Williamson Act or conservation organization policies. If the infrastructure supports the feasibility of the operation it should be allowed. Additionally, there are variations of what is compatible with ag (e.g. supporting infrastructure, water development infrastructure, worker housing, etc.) When you start adding all the ranch roads existing and proposed, their cumulative square footage could be quite sizable.

Ag roads should be deleted from this policy. Without the construction of roads, you will still have landowners traveling over their property with quads and other vehicles. Having ranch roads serves to encourage travel on a segment of the property as opposed to taking various routes each time travel is required, thereby minimizing the environmental impact.

Septic leach fields must be placed where the land perks, so should not be required to be incorporated into groups. Similarly, it would be impractical or impossible to "group" power line easements and utility lines. Please make an exclusion for them.

Please also see supporting arguments from CCA's letter.[iii]

This questionably-legal policy is best resolved by incorporating reference to the Constitutionality
Clause.

These provisions simply carry forward the requirements of the existing LCP, and are moreover consistent with Policy AG-1.6 adopted by the Board in the 2007 CWP.

Unresolved Issue #5 - Restrictions to "Protect" Visual Resources

C-AG-7.B.1 mandates that all non-agricultural development not result in impacts including "significant natural visual qualities of the site" and "designated scenic protection area[s]."
C-DES-2 Protection of Visual Resources Ensure appropriate siting and design of structures to prevent obstruction of significant views, including views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes.
C-DES-3 Protection of Ridgeline Views requires that new development proposed on or near visually prominent ridgelines to be grouped below the ridgeline on the least visually prominent portion of the site.

Discussion:
We object to the notion that views of our agricultural lands somehow belong to others. The

Courts have rejected the argument that the Coastal Act allows the Commission to completely ban any development that in any way impacts any view in the coastal zone.

The Court pointedly explained:
"[T]he Legislature [never] intended that permits be denied for all projects which infringed in any way, no matter how minimal, on any view, no matter how limited, for anyone, from any vantage point, no matter the proximity of unlimited and expansive views" *(Farr vs. the California Coastal Commission*).

There's a potential problem with restrictions on development on the tops of hills, spurs and ridgelines, which are often the best places to locate certain agricultural accessory structures because of their visibility from the rest of the ranch and/or their exposure to certain weather elements. For instance, a hay barn along the top of a ridgeline is a more preferable location for drying out baled hay than in a lower, less ventilated area. An 18 foot height limit would also compromise the usefulness of such a building. Viewsheds that are being protected are created by the stewardship of the landowner, who should be allowed the flexibility to construct structures

that are compatible with the agriculture operation. Please make an exception for agricultural accessory structures.

Please also see supportive arguments on page 2 of California Farm Bureau Federation's 4/22/2010 letter, and those by CCA in the related endnote.[iv]

Please make it clear in these policies and corresponding Development Code sections that the public is not entitled to prevent any development simply because they may not wish to look at it.

> *The quoted portion of C-AG-7.B.1 merely re-states the comparable section of existing LUP Agricultural policy 5.a (pg.99); it is no change. The other policies provide sufficient discretion to accomplish a good fit between agricultural development and view protection. The exemption of certain agricultural structures from visual policies was brought to the Planning Commission, which decided not to make such special provisions.*

Unresolved Issue #6 - Internally Inconsistent Language in C-AG-7

Development Standards for the Agricultural Production Zone (C-APZ) Lands.

A. Standards for Non-Agricultural Uses:

4. Proposed development shall only be approved after making the following findings:

a. The development is necessary because agricultural use ~~of~~ on a portion the property would no longer be feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to

demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property.

b. The proposed development will not conflict with the continuation or initiation of agricultural uses on that portion of the property that is not proposed for development, on adjacent parcels, or on other agricultural parcels within one mile of the perimeter of the proposed development.

Discussion:

How is it possible to prove a. that "agricultural use of the property would no longer be feasible," and also b. that "the proposed development will not conflict with the continuation or initiation of agricultural uses…"? The statement would be clarified by adding the words "on a

portion" in front of the words "the property" in 4a. This would also make 4a. more consistent with the second sentence which reads "The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land…" We have inserted and highlighted the proposed change above to help make this clearer.

> *Both these criteria apply in the current LCP, and can be evaluated based on information developed on a case by case basis.*
> *Adding "on a portion" negates the standard, which is intended to address the viability of the ag. operation as a whole (the same consideration that would allow development of additional income producing operations on an ag. parcel).*

<u>Unresolved Issue #7 Wetland and stream buffer adjustments</u>

C-BIO-20 Wetland Buffer Adjustments and Exceptions.

~~1. Consider granting adjustments and exceptions to the wetland buffer width standard identified in Policy C-BIO-19 in certain limited circumstances for projects that are implemented in the least environmentally damaging manner, as follows~~ <u>A Coastal Permit that requires a buffer adjustment</u> <u>may only be considered if it conforms with zoning, and</u>:

C-BIO-25 Stream Buffer Adjustments and Exceptions.

1~~. Consider granting adjustments and exceptions to the coastal stream buffer standards in policy CBIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. An adjustment or exception may be granted in any of the following circumstances:~~ <u>A Coastal Permit that requires a buffer adjustment may only be considered if it conforms with zoning, and</u>:

Your board had asked staff to come back with cleaner language regarding the buffer adjustments at the January 15th hearing. They replaced the language with the above underlined language.

This is extremely problematic; since no coastal permit "requires" a buffer adjustment, there would be no possibility of ever obtaining an adjustment. We believe that staff intended for adjustments to be possible but the language now prevents that. Farm Bureau would like to suggest the following language:

<u>Buffer adjustments may be considered for coastal permits if the following criteria are met:</u>
Then a list of the criteria would be listed as it already is. Please don't forget our opposition to the 50 foot minimum. If the site assessment shows that a lesser minimum is necessary, that should be allowed.

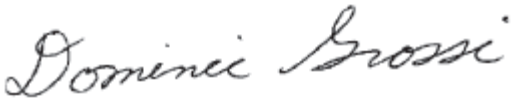
> *Staff recommends the change as follows: <u>A buffer adjustments may be considered for coastal permits if the following criteria are met:</u>*

* * *

With apologies for the length of this comprehensive request, please recognize that each of these issues is important to the agriculture community.

We thank you for your consideration, and for recognizing that the Coastal Act gives you the authority over, and the autonomy from, the Coastal Commission, when determining the precise content of our LCP. You know better than any state agency how much Marin's agriculture benefits the County, economically, culturally and environmentally. Thank you for continuing to support this in the future as the LCPA goes through the Coastal Commission certification

process.



Dominic Grossi
President
Marin County Farm Bureau

Attachments: 1 - "Constitutionality Clause"

Cc:
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Endnotes

[i] **Conservation Easement Requirement Language and Covenants Not to Divide**
The language "consistent with state and federal laws" is ambiguous and subject to misinterpretation. There are two major issues here. First, requiring a conservation easement (CE) without showing that it's

February 21, 2013

Attention: Marin County Board of Supervisors

Dear Supervisors Susan Adams, Katie Rice, Kate Sears, Steve Kinsey, and Judy Arnold:

The Bolinas Community Land Trust (BCLT) and the Community Land Trust of West Marin (CLAM) would like to jointly take this opportunity to comment on the LCP planners' staff report and recommendations for the LCPA. As advocates and providers of affordable housing, we would first like to thank the LCP planning staff for working with us so diligently during this process. It is clear that we both want this outcome: removal of excessive barriers and reduction of costs to encourage homeowners to build second units as a source of affordable housing. To this end, the County should implement State Second-Unit Law AB1866, thus removing barriers and increasing affordability in the permitting process. We submit that in order to rent affordably, one must be able to build affordably.

Our comments for this LCPA meeting are as follows:

We urge the Board of Supervisors to adopt the LCP Staff's request for direction to include language for Administrative Appeals for inclusion in the LCPA before the LCPA goes to Coastal Commission. State law directs local governments to omit public hearings for both the application and the appeal.

We also respectfully request that the Board of Supervisors read this paragraph from State Law AB1866, as it clarifies our position, before the February 26, 2013 hearing:

"**Does Second-Unit Law Apply to Localities in the Coastal Zone?**

Yes. The California Coastal Act was enacted to preserve our natural coastal resources for existing and future Californians. While second-units utilize existing built areas and usually have minimal environmental impact, the need for second-units should be balanced against the need to preserve our unique coastal resources. For these reasons, second-unit law shall not supersede, alter or lessen the effect or application of the California Coastal Act (Division 20 of the Public Resources Code), except that local governments shall not be required to hold public hearings for coastal development permit (CDP) applications for second-units (Government Code 65852.2(j)). As stated in correspondence, dated January 13, 2003 from the California Coastal Commission to all coastal communities, <u>local governments in the coastal zone should amend their Local Coastal Program (LCP) to not require a public hearing in the consideration of second-unit applications. Further, local appeals should be handled in an administrative manner."</u>

We have researched AB1866, analyzed Marin County's recommendations for second units in the Housing Element, met with County planners to discuss our shared goals,

attended numerous workshops and hearings, and worked closely with the County housing and LCP planners to advocate for:

- Consistency in language between Planning, Code, and LCPA documents
- Removing requirements which increase costs and don't serve the public well
- Simplifying the review and permitting process

We are grateful for the County's attention to these important matters and would also like to thank the Board of Supervisors for removing the second-unit prohibition in Bolinas. We have a chronic and serious shortage of affordable housing in West Marin, and some LCP policies and the Bolinas prohibition have exacerbated this shortage.

Workers in agriculture, retail, food service, guest accommodations, entertainment, health care, firefighting, teaching, and other public services provide necessary functions in our communities. Yet, the income of these workers requires them either to live locally in sometimes grossly substandard conditions, or to endure long commutes from more affordable communities. The former is degrading and unhealthy; the latter is personally stressful and environmentally destructive. Both reduce quality of life and societal and economic sustainability. Over the years, the affordability gap has become progressively wider, since the rise in real-estate prices has far outstripped the rise in wages.

A community's vitality and sustainability require sufficient affordable housing for its workforce and residents. Visitors to the Coast depend on the services, amenities and entertainment provided by local workers. These community qualities directly enhance the experience of visitors to the Coast, which in turn enhances the economic viability of our small communities. Now is the time to address the affordable housing shortage through the LCPA.

In closing, we deeply appreciate your attention to this matter and urge you to recommend that staff adopts this amendment to LCPA.

Sincerely,

Steve Matson, Board President, the Bolinas Community Land Trust (BCLT)
Maureen Cornelia, Board President, the Community Land Trust of West Marin (CLAM)
Don Smith, Bolinas Affordable Housing Advocate

cc:

Brian Crawford, Director, Marin Community Development Agency
Jack Liebster, Principle LCP Planner
Leelee Thomas, Marin County Affordable Housing Planner
Lesa Kramer, BLCT Executive Director - Contact: 415-868-8880
Kim Thompson, CLAM Executive Director – Contact: 415-663-1005

Inverness Association

Incorporated 1930

Post Office Box 382
Inverness, California 94937

To: Marin County Board of Supervisors
From: Inverness Association
Date: 2/22/2013
RE: LCP hearing 2/26/13: appeal areas

The Board of Directors of the Inverness Association respectfully submits these comments regarding the proposed revisions to Coastal Commission appeal jurisdiction areas (Staff Report Attachment #3 p. 13; Appeal jurisdiction areas, Maps 28a, 28b.)

Under the current LCP all non-federally owned land west of Highway One is in the geographic area that allows appeals of a coastal permit to the Coastal Commission. This area includes the entirety of the village of Inverness.

In contrast, the preliminary LCP Amendments (Map 28a) show that nearly all of the community of Inverness has been removed from the appeal jurisdiction area, leaving as appealable to the Commission only those parcels located with 100 feet of a stream and the parcels in the Inverness Seahaven subdivision between Sir Francis Drake Boulevard and the northern Inverness community boundary. No explanation for these revisions affecting the Inverness area have been provided.

In fact, the new Map 28a is not consistent with the requirement that the appeals area includes property between the sea and "the first public road paralleling the sea … connected with other public roads providing a continuous access system" [14 CCR § 13577 (i)(1)]. Beginning at the southern Inverness community boundary there is no public road that provides continuous access to the north and to the south along the California coast. The Inverness public road system consists of Sir Frances Drake Boulevard and many side roads, almost all of which are "dead ends" and do not have a return loop or connection. The current LCP therefore designates all of Inverness and the segments of Tomales Bay State Park west of Highway One as part of the appeals area.

The regulation governing the establishment of an appeals area (14 CCR § 13577) has two types of exceptions to this "first public road paralleling the sea" standard:

1. Areas where the grounds for appeal do not concern whether development conforms to the certified LCP [§ 13577 i(3); PRC 30603, (b) (1) and (b) (2)]

   This exception is not applicable. Development on parcels in Inverness is regulated by the current, certified LCP and is intended to conform to LCP policies.
2. All parcels between the sea and a public road, plus parcels immediately adjacent of the sea inland of that public road [§ 13577 i(2)].

   To be applicable this exception must include parcels adjacent to the road inland of the sea (Tomales Bay).

The Inverness Association requests that prior to adopting the LCPA the Board obtain an explanation for the revised appeals area. Lacking a compelling explanation, a development in any portion of Inverness should conform to the certified LCP and should be appealable to the Coastal Commission if it is believed not to meet that requirement.

TO: All the folks on the Marin County Planning Commission as well as the Marin County Board of Supervisors,

I would like to provide a source of information concerning WECS and the wasteful assault by the Wind industry on Marin County and the rest of the state of California in general. I am including links to the latest data, which was only released just last month by the EIA, U.S. Energy Information Administration.

The information I will be commenting on as well as additional information can be found here at…
http://eia.gov/cneaf/electricity/page/glossary.html
and/or at …http://www.eia.gov/totalenergy/data/annual/

I have added two tables representing the "value" the Wind industry has been in California for 2010 and 2011.

It has been a daunting task trying to apprise the decision makers and influential parties in the updating and amendment project concerning the LCP and the subsequent recommendations for the California Coastal Commission. Despite all the work done by groups like the EAC of Marin, West Marin / Sonoma Coastal Advocates, and many others, there is a resistance to acknowledging that WECS don't belong here and there is absolutely no merit to further consideration. There is a manufacturer of the turbine blades in Pt. Reyes who has come out against WECS in Marin, reinforcing what Supervisor Kinsey has stated on multiple occasions, there is no resource here for large, much less commercial or industrial, scale WECS. They need a yearly average wind speed of 15 mph to provide even a measurable amount of electricity. Look at the charts and tables provided by the EIA, for the entire US. Isn't it interesting that the Wind industry gets no real attention ?. You will see in table 3.1.B that Wind represented about 37.7% of the total power generated by "Other Renewable Sources" from 2001 thru 2011. Only in this tabulation is Wind energy actually referenced separately, hereon, it is combined with the category of "Other Renewable Sources". The NET Generation by Energy Source, within the Electrical Utilities sector, for the period 2001 thru 2011, for "Other Renewable Sources" was 0.004% of the total. The share of that rather disgraceful amount for that 10 year range attributed to Wind is 37.7% of that 0.004% and is **0.135%. YES, just over one tenth of 1%**, on a national scale. Since 2010 the Wind energy industry was able to struggle by on just over $10 Billion, in subsidies alone, aside from tax benefits. The sole purpose of this industry is to abscond all the funds they can from the well intentioned monies earmarked for developing renewable energy. They have not performed and have only disguised their total lack of productivity behind terms like "capacity". Capacity is meaningless unless it is attainable. Capacity is akin to the indications you see on automobile speedometers for their maximum speed. The car in your garage has a maximum speed, an "installed capacity", of maybe 120 mph, or more. Can you get in it and do that ? NO, not any more than the overly touted "installed capacity" of WECS can. In fact, the "capacity factor" of WECS , about 35%, is the same as it is for your car, about 35% of your car's "installed capacity". The absolute truth here is the Wind industry has been defrauding $Billions from taxpayers in a ruse to make a handful of developers and investors rich at the expense of this country's environment, its wildlife, and the scenic values of the landscape. By any and all measures a vile and veritably criminal act. Do the decision makers of Marin County want to share in the responsibility for this devastation ?. You owe it to those you are representing now, and all those you will be impacting in the future, to be extremely prudent with the precious environment of Marin County. Given what your intentions seem to be it does not appear you have educated yourselves to this folly. Are you benefiting from this assault in other than a moral way ? The truth will surface soon enough, and there will be an accountability, who will cleanup the mess ?. Can you be that gullible ? You have a very serious decision to make that can leave you with a legacy you can be proud of, or disgraced by. There was an enormous effort, logically, afforded the entire process of amending and updating the LCP. There will be a tremendous consequence to the enactment of this monumental development framework for Marin County, along with significant implications for all of California. **Please**, you must be extremely careful.

Most respectfully,

Chips Armstrong
707-778-7722
Petaluma

Table 3.1.B. Net Generation by Other Renewable Sources: Total (All Sectors), 2001 - 2011

(Thousand Megawatthours)

Period	Wind	Solar Thermal and Photovoltaic	Wood and Wood-Derived Fuels	Geothermal	Other Biomass	Total (Other Renewable Sources)
Annual Totals						
2001	6,737	543	35,200	13,741	14,548	70,769
2002	10,354	555	38,665	14,491	15,044	79,109
2003	11,187	534	37,529	14,424	15,812	79,487
2004	14,144	575	38,117	14,811	15,421	83,067
2005	17,811	550	38,856	14,692	15,420	87,329
2006	26,589	508	38,762	14,568	16,099	96,525
2007	34,450	612	39,014	14,637	16,525	105,238
2008	55,363	864	37,300	14,840	17,734	126,101
2009	73,886	891	36,050	15,009	18,443	144,279
2010	94,652	1,212	37,172	15,219	18,917	167,173
2011	120,177	1,818	37,449	15,316	19,222	193,981
	465,350					1,233,058

37.740% = net generation by Wind from 2001 to 2011 of total of OTHER RENEWABLE SOURCES

Sources: U.S. Energy Information Administration, Form EIA-923, Power Plant Operations Report; U.S. Energy Information Administration, Form EIA-906, Power Plant Report; U.S. Energy Information Administration, Form EIA-920 Combined Heat and Power Plant Report; and predecessor forms.

Beginning with 2008 data, the Form EIA-923, Power Plant Operations Report, replaced the following: Form EIA-906, Power Plant Report; Form EIA-920, Combined Heat and Power Plant Report;
Form EIA-423, Monthly Cost and Quality of Fuels for Electric Plants Report; and Federal Energy Regulatory Commission, FERC Form 423, Monthly Report of Cost and Quality of Fuels for Electric Plants.

Table 3.2.A. Net Generation by Energy Source: Electric Utilities, 2001 - 2011

(Thousand Megawatthours)

Period	Coal	Petroleum Liquids	Petroleum Coke	Natural Gas	Other Gas	Nuclear	Hydroelectric Conventional	Other Renewable Sources	Hydroelectric Pumped Storage	Other	Total
Annual Totals											
2001	1,560,146	74,729	4,179	264,434	--	534,207	197,804	1,666	-7,704	486	2,629,946
2002	1,514,670	52,838	6,286	229,639	206	507,380	242,302	3,089	-7,434	480	2,549,457
2003	1,500,281	62,774	7,156	186,967	243	458,829	249,622	3,421	-7,532	519	2,462,281
2004	1,513,641	62,196	11,498	199,662	374	475,682	245,546	3,692	-7,526	467	2,505,231
2005	1,484,855	58,572	11,150	238,204	10	436,296	245,553	4,945	-5,383	643	2,474,846
2006	1,471,421	31,269	9,634	282,088	30	425,341	261,864	6,588	-5,281	700	2,483,656
2007	1,490,985	33,325	7,395	313,785	141	427,555	226,734	8,953	-5,328	586	2,504,131
2008	1,466,395	22,206	5,918	320,190	46	424,256	229,645	11,308	-5,143	545	2,475,367
2009	1,322,092	18,035	7,182	349,166	96	417,275	247,198	14,617	-3,369	483	2,372,776
2010	1,378,028	17,258	8,807	392,616	52	424,843	236,104	17,927	-4,466	462	2,471,632
2011	1,301,107	11,688	9,428	414,843	29	415,298	291,413	21,933	-5,298	604	2,461,045
								98,139			27,390,368

SO WIND is ?? 37037 or 37.74% of Other Renewables

37037 / 27390368 = 0.1352 %

The TOTAL NET generation from Wind was 0.135% = in TOTAL, from 2001 thru 2011

Total Electricity System Power

2010 Total System Power in Gigawatt Hours

Fuel Type	California In-State Generation (GWh)	Percent of California In-State Generation	Northwest Imports (GWh)	Southwest Imports (GWh)	California Power Mix (GWh)	Percent California Power Mix
Coal	3,406	1.70%	783	18,236	22,424	7.70%
Large Hydro	29,861	14.60%	-	1,333	31,194	10.80%
Natural Gas	109,481	53.40%	1,330	10,625	121,436	41.90%
Nuclear	32,214	15.70%	-	8,211	40,426	13.90%
Oil	52	0.00%	-	-	52	0.00%
Other	0	0.00%	-	-	0	0.00%
Renewables	30,005	14.60%	7,586	2,205	39,796	13.70%
Biomass	5,745	2.80%	1,149	-	6,894	2.40%
Geothermal	12,740	6.20%	-	673	13,413	4.60%
Small Hydro	4,441	2.20%	554	-	4,995	1.70%
Solar	908	0.40%	-	51	959	0.30%
Wind	6,172	**3.00%**	5,883	1,481	13,536	**4.70%**
Unspecified Sources of Power	0	0.00%	14,978	19,881	34,859	12.00%
Total	**205,018**	**100.00%**	**24,677**	**60,492**	**290,187**	**100.00%**

100.00%

Source:
QFER and SB 1305 Reporting Requirements. In-state generation is reported generation from units 1 MW and larger

Previous year's information (2009 Total System Power)

Total Electricity System Power

2011 Total System Power in Gigawatt Hours

Fuel Type	California In-State Generation (GWh)	Percent of California In-State Generation	Northwest Imports (GWh)	Southwest Imports (GWh)	California Power Mix (GWh)	Percent California Power Mix
Coal	3,406	1.70%	2348.966	26,612	30,800	7.70%
Large Hydro	29,861	14.60%	-	61,055	90,916	10.80%
Natural Gas	109,481	53.40%	164,570	224,623	284,676	41.90%
Nuclear	32,214	15.70%	-	72,641	104,856	13.90%
Oil	52	0.00%	-	-	-52	-0.10%
Other	0	0.00%	-	-	0	0.00%
Renewables	30,005	14.60%	48,739	64,844	80,949	13.70%
Biomass	5,745	2.80%	1,149	-	6,894	2.40%
Geothermal	12,740	6.20%	-	26153	38,893	4.60%
Small Hydro	4,441	2.20%	1661.956	-	4,995	1.70%
Solar	-907.992	0.40%	-	285.6706667	260.1721667	0.23%
Wind	6,172	**3.01%**	14,620	18,446	22,273	**4.70%**
Unspecified Sources of Power	0	0.00%	43,120	53,061	63,001	12.00%
Total	**205,018**	**100.00%**	**390,629**	**523,384**	**656,139**	**100.00%**

100.00%

Source:

QFER and SB 1305 Reporting Requirements. In-state generation is reported generation from units 1 MW and larger

Previous year's information (2009 Total System Power)

East Shore Planning Group
P. O. Box 827
Marshall, CA 94940

February 22, 2013

To the members of the Marin County Board of Supervisors:

This is to express the support of the East Shore Planning Group for the Staff Report's proposed revisions to the draft LCP regarding agricultural processing and retail sales.

We also hope to be in a position to give unqualified support to these sections of the draft LCP when it is presented to the California Coastal Commission for approval. We would intend to do so if the draft provisions in the Staff Report are adopted by the Board of Supervisors.

The East Shore Planning Group is a California not-for-profit corporation formed in 1984. Its members are about 90 owners and tenants of properties in Marshall and on the east shore of Tomales Bay, which is in the unincorporated area of Marin County and is in the Coastal Zone. The ESPG is the primary local organization involved with issues of development in the area and authored the East Shore Community Plan.

The ESPG has been actively involved with the LCP process since March 2009, when we submitted the first of our several letters to the Planning Commission (all on the LCP website). From the start, the ESPG has had the objectives of protecting the special qualities of the Highway One corridor along the east shore of Tomales Bay from unregulated commercialization and associated issues of traffic, safety, noise, our community's character and the unique coastal experience the east shore of Tomales Bay offers to visitors. At the same time, we strongly support the ranchers and farmers in our area (which is one of the primary components of the East Shore Community Plan).

While the Planning Commission's LCP draft regarding agricultural processing and sales would achieve many of our objectives, we agree that it is an awkward, cumbersome and confusing document. It was the result of a process that attempted to liberalize some of the Countywide plan provisions in favor of agriculture; but doing so created unintended loopholes that needed to be closed, which resulted in the odd provisions regarding types of products and percentages.

Shortly after the Board of Supervisors January 15 meeting, the ESPG invited David Lewis of UCCE, Dominic Grossi of the Marin County Farm Bureau and Lisa Bush to meet with us to see if we could come to a positive resolution. (A copy of that letter dated January 29, 2013, is on the LCP website). This resulted in a meeting on February 4 with several ESPG members, David Lewis of UCCE and Jack Liebster, who also arranged space for the meeting at the CDA offices.

During the meeting there was a frank discussion of what made sense for the east shore, for farmers and ranchers and generally for the Coastal Zone with regard to these issues. We also discussed the draft procedures for issuing coastal permits, which offer the opportunity for a hearing if requested and appeals to the Planning Commission and Board of Supervisors (but not to the Coastal Commission in most cases). We also were assured that conditions similar to those in use permits could attach to a coastal permit, if appropriate.

We came to a consensus that the simple provisions in the Countywide plan respecting agricultural processing and retail sales in non-coastal areas would generally serve all stakeholders well. This was a position that previously had been advanced by David Lewis and others in the agricultural community. It also maintains consistency between the general Marin County regulations and the Coastal Zone, which was desired by the agricultural community.

Accordingly, the current Staff Report recommends this approach with two clarifications – to require that the operator is directly involved with agricultural production on the subject property, and to ensure adequate parking and ingress and egress. We have reviewed the proposed language and find it completely satisfactory. We urge that the Board of Supervisors adopt it without change.

Having been involved with this process for nearly four years, we are aware that there are many nuances to the issue, and seemingly minor changes in language could have considerable significance. If the Board of Supervisors believes that there should be changes in the proposed language, we would respectfully reserve the opportunity to make substantive comments at a later Board of Supervisors meeting where the matter could be finalized.

I would like to close by giving sincere thanks from the ESPG Board of Directors, from our LCP Committee, from our membership and from myself to all those who have been so gracious with their time and so helpful with ideas and information in this process. These particularly include Jack Liebster, Kristin Drumm and Christine Gimmler, as well as the more senior CDA staff, Commissioner Wade Holland and Supervisor Steve Kinsey. They all have had a role in helping us address these important issues which are of critical importance to the east shore in the years ahead.

Sincerely yours,

Lori Kyle

Lori Kyle, President

CC: Supervisor Steve Kinsey
Planning Commissioner Wade Holland

SONOMA COUNTY FARM BUREAU

Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

February 22, 2013

Board of Supervisors
County of Marin
Civic Center
San Rafael, CA 94903
BOS@co.marin.ca.us

Members of the Board:

Local Coastal Plan Amendment

As the voice of agriculture in your neighboring county, Sonoma County Farm Bureau wishes to express its appreciation for your recognizing agriculture as a vital element of your society and economy. As we watched your draft evolve over the past year, we were impressed by the progress made as a result of the intensive dialogue between the County and the agricultural constituents led by Marin County Farm Bureau (MCFB).

However, there still remain some gaps that have to be bridged. They are clearly identified and solutions suggested in MCFB's letter dated February 19, 2013, and its Attachment #1. We fully support their view that the requested changes are essential for the survival of agriculture in the coastal areas of Marin and should be helpful for protecting your County government, too.

Agriculture is a constantly evolving industry. Between 1950 and 2000, the average hourly agricultural output per farmer in the U.S. grew 12 times, and the annual milk production per cow increased 240%. We now produce more from less land and using less water. Yet, even with increased productivity and improved resources conservation, we have to struggle for our survival due to the rising costs of production, intensifying inter-regional and international competitions, ever-growing regulations, and frequent natural calamities.

If we compare agriculture to manufacturing industry, land is our factory floor and the buildings our offices. No manufacturing industry will survive if it did not have the freedom to optimize the use of their plant and facilities; to change their products, production methods, and distribution systems; and to have an option for vertical integration. In agriculture, all these necessary freedoms are tied to land use. This is why land use regulations for agriculture deserve unique attention.

The Sonoma County Local Coastal Plan recognizes this fact, and puts a broad emphasis on the protection of agriculture (and forestry) in the coastal areas while doing away with most of the detailed stipulations. Local government is given the power to formulate its own local coastal plan. All the changes, additions, and deletions being proposed by MCFB are in line with the basic policies of the Coastal Act. Therefore, we believe it is the best for the future of Marin County that you adopt all the changes requested by MCFB, and we earnestly urge you to do so.

Respectfully submitted,

Tito.

Tito Sasaki, AICP
President

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MARIN COUNTY RANCHER/FARMER IONE CONLAN COMMENTS ON LOCAL COASTAL PLAN HEARING FEBRUARY 26, 2013

President Judy Arnold and the Marin County Board of Supervisors
Via e-mail c/o Kristin Drumm: kdrumm@marincounty.org

Re: **Local Coastal Planning Outstanding Issues**

Dear President Arnold and Honorable Supervisors,

My word of gratitude here to our Board President, Past President, and Members of the Marin County Board of Supervisors, Planning Director Brian Crawford and his hard working staff, for all the hours, days, months of work product and attempts to understand the farmer/rancher's dilemma in providing food and fiber in this wonderful place in the Universe known as Marin County…….

All the while these farmers/ranchers are working at trying to make a living above the poverty level, for their families. And as noted by the American Farm Bureau, each farmer feeds his own family plus about 150 others.

Some of you may be aware, consumer proteins, produced locally such as beef, lamb, poultry & eggs, do not receive a cost price support as do other agricultural pursuits such as our local dairy farms.

Dairy operations, by Federal and State complex laws guarantee that when the price falls below a certain profit margin, the government steps in and pays out price support to keep our dairies viable.

Therefore, for our dairies, when the price is below a certain norm, the USDA & CDFA, in a complex set of rules, calculate government support subsidies which kick in, thus keeping the dairy industry alive.

So you could say "*We the people support our dairies across America"*

There is no such price support for the balance of our local protein producer farmers, who produce meats, such as beef, lamb, pork, and poultry & eggs.

Yet the costs of their feed is the same as their dairy brothers, perhaps not of the superb alfalfa hay quality, but none the less, the cost of feed today is astronomical for dairy as well as beef, lamb, pork & poultry, but only the dairies have price subsidy.

Also notable, for our local Marin cattle ranchers, there is no government Bureau of Land Management (BLM) lands presently available for beef producers.

However most counties in most states throughout USA, have such land available and cattle ranchers enjoy BLM government leases extending for what is now proposed to be twenty years, and usually for a nominal amount, as the cattle grazing reduces fire hazards and enhances the growth of natural grasses.

<u>As a Marin beef producer we do not have BLM land advantage available to us.</u>

Those of us producing beef cattle meat protein in Marin County, marketing our products, compete with every other rancher throughout USA producing the same commodities. <u>But alas, the playing field is not equitable.</u> .

On my lands, the beautiful grass fed animal welfare cared for animals, are anti biotic, & hormone free beef, which competes for buyers, in markets, auction and harvesting plants with culled dairy cows.

Or as a Cargill acquaintance of mine notes, “we buy cull cows, happy cows for our McDonalds happy cows meals”

Yes cull cows, not grass fed, not hormone free, not antibiotic free, but good old fashioned worn out cows. Hence you saw the down dairy cow which made the news all over America, as cull dairy cows make up a great portion of hamburger meat for consumers, along with imported beef from Mexico, Canada, Central and South America.

My goal here is not to demean dairies or cull cows, or beef producers elsewhere, my goal is to share with you information about the inequities that exist right here in our own county, and to share with you what the Marin County beef producer has to compete with in the market place

<u>Therefore, for a beef producer to survive, the Marin cattle ranch has to have the ability to have diversity</u>.

That means hunting lodge facilities if appropriate, duck blinds and skeet shooting, (such as we saw recently our President Obama regularly practicing), Farm Stays, Farm Stands, Farm Tours, and Bed and Breakfast Buildings.

How can a producer on the Coast in Marin County California, operating .under the aegis of the California Coastal Commission (CCC), Marin County environmental rules, possibly compete with producers in other areas of California and United States who have the advantage of nominal cost BLM pasture & no expensive permit costs and prohibitions against using their lands to its highest and best use?

Other private *inland ranches in California,* are allowed to ranch, unfettered with rules of intergenerational housing, merging parcels, trails, extracted easements for permit allowance, clustering of buildings, limitations on processing facilities, and farm stands micromanaged with "no picnic tables allowed", costly permits and restrictions & prohibitions against, duck blinds, skeet shooting, hunting lodges, veterinary clinics, farm stays and Bed & Breakfasts.

Seems unfair doesn't it? Especially since most of these Marin farms and ranches were in existence some about 100 years, before powerful *appointed* Planning Commissioners, and CA Coastal Commission and staff came into existence.

Interesting how that took place isn't it? Like the colonization of old. The new Settlors, brilliant in their superior wisdom arriving at virgin lands to "colonize" the land and rule the existing natives.

Yes, most of these new Settlors, came to California & Marin County, because of the pristine rolling hills, miles to hike and cycle, clean air, beautiful coastal waters, huge expanses of land and quiet peace, observing those pastoral scenes with cows slowly grazing green pastures.

Yet we find inequity here and there in the County, we find homeless, some crime areas, confined of course; and we tout the finest "Certified Farmer's Market" in California.

However there are aberrations, we find our Certified Local Grown Marin County Farmer's Market's allows beef, lamb & pork, million dollar producers selling product produced on 30,000 acre operations in Oregon and Northern California

Counties hundreds of miles away, allowed to trump local producers in local markets, because the out of county producers "*showed up when we first started"*

Then we have Coastal homes with private docks on the Bay which are exempt from Coastal Commission jurisdiction by what some have called, "Gerrymandering machinations" and exclusionary provisions provided by mysterious calculations.

I have no knowledge of that, however it is seemingly questionable.
When we have mansions with docks and intrusions into the waters all over Marin, Tiburon, Belvedere, San Rafael, et al., which seemingly are not under the jurisdiction of the CCC., which docks and beautifully appointed boat houses are remodeled at whim and will, (I was a guest in one recently) with overlaying jurisdictions that exclude them from the CA Coastal Commission.

However the estuary which fronts my farm land has an unobtrusive insignificant simple lot line land adjustment to align a fence line, which permit, I and my Surveyor applied for, has been pending for almost ten years before our CA Coastal Commission Staff…….

Out here in West Marin, we have the elite Oceana Marin Development, with an open air community sewer pit evaporation pond, with migrating bird flocking therein & traveling over, in and resting on my organic closed herd cattle pastures,

…….all the building activity on the skyline ridgeline, within viewshed of my lands, building new homes, seemingly exempt and unfettered by all the rules and regulations that would be imposed on farmer Jones, who is just trying to survive on the farm,,,

… without cell service, and winter power lines, out of service annually whose *family were engaged in agriculture on the ranches preceding the development of Oceana Marin by at least a 100 years!*

<u>Discreet and unintelligible Maps and Exclusionary Provisions, tucked obscurely in maps with fine print, and euphemistic language</u>
Do I understand that this area of Coastline called Oceania Marin has its own exclusionary clauses sandwiched in unintelligible language that we common farmer folk find hard to follow?

Whoa, those lands so finely excluded are within slingshot of my farms, so whatever exclusion they are allowed, I should be entitled to the same or else we must call these special privileged "Exclusionary Provisions" "illegal discrimination"

Their homes sit on the ridge line overlooking the ocean, but I cannot have a home on the ridgeline overlooking my farm, when they are within a stone's throw of that ocean, visible from the County Road and from all public viewshed?

Let us ask our Marin planning staff to include all the rest of us nearby, adjacent & contiguous landowners the same privileges as Oceania Marin, and other agricultural lands that are provided accommodating "exclusionary" privileges.

Recently a ranch visitor, an erudite old college buddy of mine came upon me studying with great intensity the new volume of LCP amendments,

(I have seven Bankers Boxes of LCP materials and comments) all the while trying to get my satellite service to access the LCP website to ferret out the new map exclusions for Oceania Marin et al, a stone's throw from my back 40, which lands apparently have negotiated a special dispensation, which I, and my neighbors should be allowed to enjoy equally.

(You see, those of us up here at the tip of our county have no cell service, and difficulty in satellite connection stability. Perhaps Oceania Marin does not have that issue?...

In wind and storm, we lose power, telephone land lines, so in emergency, we are back in the eighteenth century, just to share with you a bit of our inconveniences.)

Well my dear old college buddy made a startling comment, he noted that those of us in Marin County under the aegis of the CCC, in the meat protein business need a long overdue ***Deus Ex Machina***

Having forgotten most of what little Latin I learned many years ago, I had to look that one up. Yes, a kind of divine intervention, now I remembered my Greek & Roman plays, where a *"God out of a machine":* was introduced into the play to save the day. *"Only God can save us"* noted the German philosopher Martin Heidegger. ***Exactly what many of us out here in West Marin exclaim daily.***

WHAT TO EXPECT IN THE FUTURE

A new report from California Climate and Agricultural Network, CalCAN, Triple *Harvest*, reports that 50,000 acres of California farmland each year for the past 30 years has been lost to development.

There is even threat from farmland being devoted to solar panels and other ostensible energy green concepts, which in fact reduces viable farm land.

And in certain areas of California, the state's new "fracking" boom means oil and gas companies are quietly going around purchasing subsurface mineral rights from cash strapped owners of farms, putting agricultural land and water at risk.

Notwithstanding local Marin County regulations to the contrary, Florida Light and Power sent out ambassadors, for which I and my ranch was approached to sign easements for future development for power, *if and when the regulations might be changed*.

I read these lopsided contracts carefully, and discouraged all neighbors and landowners I could influence.

Several Marin County landowners signed such contracts, which though jettisoned by County adjudication for now, those existing contracts remain viable, as most were 30 year contracts, which contracts encumbers the landowner & successor in interest for many years into the future.

In the San Joaquin Valley, 45 large scale-solar projects were approved to cover about 17,570 acres of the valley's most productive farming and grazing land, and an additional 59 acres under consideration (see Cal Can report *Triple Harvest Feb 2013)*

These examples point out my fear and apprehension, of how today's cash strapped landowners, may be accepting payments, encumbering their lands for the future, as these contracts are executed customarily without notification or knowledge of planning commission and county planners.

These contracts will emerge years from now, long after those who seek to rule from the grave are no longer county planning rule makers.

For all of the above shared reasons, we landowners ask the Marin County Board of Supervisors to revisit the regulations in place for Farm Income Diversification and postpone the final approval until such time as staff has had an opportunity to address these pressing issues

All stakeholders must have an opportunity to be heard which cannot be accomplished in 3 minute capsules, presently allowed.

Please revisit the restriction and prohibitions re Tours, Farm Stands, Farm Stays, Bed & Breakfasts, and Farm Plants-processing facilities for milk, cheese, sausages, meats, eggs and other protein production small plants

I support the issues discussed in the Marin County Farm Bureau's latest letter to this Board, as well as subsequent submittals, however I notice the paucity of any comments or proposals for modification to Farm Production Facilities, Farm Stays, Farm Stands, Farm Tours, and the unreasonable reversal of the long standing "principally permitted use" of Bed & Breakfast Facilities.

BED & BREAKFASTS

Bed & Breakfasts have been allowed in the CA Coastal Jurisdiction area as a *principally permitted* use for many years, negotiated and allowed since the mid 1980's.

There is no reasonable credible reason to wipe this out, except for uninformed or personal basic bias and prejudice against farmers surviving in Marin County.

So, spearheaded by one or two *appointed Planning Commissioners*, who such as I, may not be around in twenty or thirty years, they have turned the clock back, and destroyed this B&B opportunity for our succeeding generations and jettison this presently *"principally permitted"* use,

This unfair and irrational deletion further diminishes the value of our Marin County lands, depriving landowner's of opportunities that are available to our contiguous county landowners and those throughout USA.

These *unelected appointed* Planning Commissioners, well meaning as we may believe, should not have the rule of a monarch, to destroy this existing viable opportunity for our successors in interest to have an opportunity to share the beauty of our West Marin by building and operating a Country Bed & Breakfast.

Now, by attaching an impossible expensive hurdle, these Commissioners will be assured that no Bed & Breakfast application will come forward, without the prohibitively expensive permit process of the CA Coastal Commission.

Why has this been allowed?

Local planning rules in place are onerous enough, without the superfluous additional CCC permit process. We question the motives of removing Bed & Breakfasts from the existing CCC & local planning "*principally permitted use"*

We landowners, stakeholder, perhaps prospective B&B innkeepers, request this Board revisit this issue and allow the Bed & Breakfast provision, presently allowed as a *principally permitted* use to remain intact as it has been for over ten years.

FARM STANDS LIMITED TO 500 SQ FT DO NOT ALLOW FOR STORAGE OF REFRIGERATION,

PROPER DISPLAY AND STORAGE OF PRODUCT AND SHELTER DURING INCLEMENT WEATHER.

Agritourism, with Farm Stand Facility, has been the subject of a full term course at UC Davis, with a price tag of over one thousand dollars tuition.

Farm Stands, are a source of income for the local farmer. If proper off road parking is provided on the farm, the building should be large enough and adequate to place refrigeration for perishable product, store product, and handling boxes, sinks for washing product, hygiene and cleanliness

Bathroom facilities for travelers, a picnic table and rest spot in shelter, especially with the unpredictable coastal winds in West Marin should be allowed. Local planning regulations take care of the details, so this should be a "principally permmited use" without the added layer of a CCC permit.

PLANT FACILITIES SHOULD BE PROPERLY ALLOWED TO PROVIDE ADEQUATE SPACE TO PRODUCE THE PRODUCT, GOVERNED BY THE LOCAL PLANNING DEPARTMENT, AND NOT BE A SUBJECT OF COASTAL COMMISSION STAFF, WHO HAVE NO KNOWLEDGE OF FARMING PRODUCTION

Let us remind this wise Board, that we on our farmlands, have survived, bankruptcy, drought, predators human and animal, and still persist, in spite of inheritance taxes, causing us to buy our lands over and over again, to keep them in agriculture, and keep the family heritage intact.

We ask this Board to postpone the approval of this LCP, and request that the Planning staff revisit the following areas:

1**. Bed & Breakfast** to continue as a "principally permitted use"
2. **Farms Tours** allowed a "principally permitted use"
3. **Farm Stays** allowed as a "principally permitted use" without restrictions & micro management of time limitations on when &how breakfast & supper is served
4. **Farm production facilities** a "principally permitted use" placed under the control land permit process of the local planning department which decides Sq Ft limitations
5. **Farm stands** a "principally permitted use" with maximum of 1,000 Sq Ft with picnic tables allowed, along with adequate off road parking

Thank you for this opportunity to comment on the LCP of Marin County.

CONLAN RANCHES CALIFORNIA
Ione Conlan
Director, California Beef Cattle Improvement Association (CBCIA); *Advisor* to California Secretary of Agriculture Karen Ross, on Organic Production (COPAC) ; *Director*, Marin County Farm Bureau; *Director* California Wagyu Breeders Assoc *Advisor*, North American Meat Assoc (NAMA*); Pres & CEO* CRC, Inc; *Active Member* of California Cattlemen's Association; American Society of Farm Managers & Rural Appraisers (ASFMRA); North Bay Woolgrowers Assoc; Redwood Empire Holstein Assoc; American Wagyu Assoc; California Cattlemen's Association, Marin Organics, Animal Welfare Approved Assoc; American Grass Fed Assoc; Jesuit USF University of San Francisco Alumni Association.
Conlan Ranches California was inducted into the prestigious California Agricultural Heritage Club in 2007 as a family continuously in agriculture in the same location for over 125 years.

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February 24, 2013

To: The Marin County Board of Supervisors
Via email c/o Kristin Drumm: kdrumm@marincounty.org

Dear Supervisors:

My husband and I operate a sheep dairy in West Marin. As a member of both the Marin ranching community and the East Shore community, I recently became aware of the East Shore Planning Group Steering Committee's correspondence with the County about the Local Coastal Plan, and specifically about ESPG's request that use permits be required for on-ranch sales of ranch products along Highway One.

For agriculture to remain sustainable in West Marin, ranchers need the flexibility to adapt their operations in response to changing times and financial pressures. I was very pleased to hear that the Board of Supervisors is considering adopting language from the Development Code in the Coastal Zone that allows on-ranch sales of products grown or produced on a ranch, from facilities of less than 500 square feet, without a use permit. The costs associated with obtaining a use permit would be prohibitive for many ranchers, given the small scale of their on-ranch sales, and such sales can be an essential route to sustainability for some ranches.

While I do not personally share ESPG's belief that on-ranch sales of agricultural products is likely to impact traffic, I understand their concern that an operation, if large enough, might increase traffic.

Ideally the rules for coastal Marin ranches should be consistent with those for agriculture in the rest of the county, and I believe that the application of the rules in place for the rest of the county, limiting the size of a sales area to 500 sf without need for a use permit, should accomplish that goal. If you feel that additional restrictions are warranted for ranches along Highway One, I would urge you to use some other measure that would distinguish operations of a size that is likely to impact traffic

from those ranches with small-scale on-ranch sales that will not appreciably add to traffic congestion, and, importantly, are those least able to afford the costs involved in obtaining a use permit. Facilities that will be doing enough of a sales volume to significantly impact traffic--on the scale of an oyster farm or restaurant--will be large enough to afford the expense of a use permit. It would be unfair to burden an operation so small that it is unlikely to impact traffic with a use-permit requirement that effectively prevents it from engaging in on-ranch sales.

Sincerely,

Marcia Barinaga

west marin environmental action committee

ESTABLISHED 1971

February 25, 2013

Marin County Board of Supervisors
Via email: bos@marincounty.org

Dear Supervisors:

The Environmental Action Committee of West Marin (EAC) has been intimately involved in the Local Coastal Program Amendment process since it began in 2009. EAC has attended every workshop, public meeting, all public hearings at the Planning Commission in 2011 and 2012 and the Board's public hearings. EAC strongly believes that the proposed LCP amendments must be measured against the existing Certified LCP, not the Countywide Plan or any other document except the Coastal Act.

We offer the following comments on the staff report for February 26, 2013.

#1 p. 5. Protection of Visual Resources

C-DES-2, as approved by the Planning Commission, fails to include protection against *impairment* of significant views, in addition to prohibiting obstruction of significant views. The current LCP provides that:

> To the maximum extent feasible, new development shall not impair or obstruct an existing view of the ocean, Bolinas Lagoon, or the national or State parklands from Highway 1 or Panoramic Highway. [LCP Unit I: LUP Policy 21]

In an appeal of a Muir Beach permit that will be heard March 6, the Coastal Commission staff makes clear that impairment of a significant view is an additional standard, beyond the total obstruction of a view. (WA9-2-2013, pp. 2, 13).

The language approved by the Planning Commission also omits the current LCP's protection for views of national or State parklands.

Recommended revision:

C-DES-2 Protection of Visual Resources. Ensure appropriate siting and design of structures to prevent **impairment or** obstruction of significant views, including views both to and along the coast**, and views of the national or State parklands,** as seen from public viewing areas such as

highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes. The intent …

As the Board observed in previous hearings, the current LCP includes eloquent language describing the visual resources that require protection, and in particular, the following paragraph:

> Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. The magnificent visual character of Unit II lands is a major attraction to the many tourists who visit the area, as well as to the people who live there. New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed. [LCP Unit I, p. 194]

We recommend once again that the LCPA include the timeless "background" language describing visual and environmental coastal resources in the current LCP that provides essential context for LCP policies.

#1, p. 13, Categorically Excluded Projects

The determination that a proposed development is categorically excluded from the requirement to obtain a coastal permit can be appealed directly to the Coastal Commission. However, the recommended change to 22.68.040.B does not provide a meaningful period in which to appeal and review the county's determination. Thus, an applicant could initiate development that has been determined to be categorically excluded before there is an opportunity for the Coastal Commission to receive an appeal and review the determination.

In order to ensure that an appeal to the Coastal Commission of a determination of categorical exclusion can effectively be made:

We recommend that the LCPA include a timely reporting requirement for (1) posting notice of the determination on the website, (2) notification of subscribers to website of a new determination, and (3) transmittal of notice to the Coastal Commission. Furthermore, the language needs to provide that the determination is not effective until *X* working days after the notice has been posted and no appeal has been filed.

#1 p. 14 Contiguous properties under common ownership
22.70.030 – Coastal Permit Filing, Initial Processing
A. Application and filing…

The discretion given to the Director to include all contiguous properties under common ownership in a coastal permit has two defects:

> (1) the provision needs to provide substantive standards for when contiguous parcels are included. Without standards for making the determination, neither the applicant nor a

member of the public could successfully appeal the Director's determination either to include contiguous parcels, or not include them.

(2) the provision needs to specify mechanisms that will legally restrict development on a legal contiguous lot that is itself not the subject of the coastal permit application. If ownership of that contiguous lot is subsequently transferred, what legal provision will ensure that the conditions (for example, no development within 100 feet of an ESHA) will continue to bind the new owner?

Example 1: Contiguous Lot 1 and Lot 2 have the same owner and Lot 2 is entirely within an ESHA buffer. A coastal permit is issued which specifies building envelopes for development on Lot 1, outside of the buffer, and requires that there be no development on Lot 2. Lot 2 is later transferred to a new owner, who applies for a coastal permit on the grounds that the lot is entirely within the buffer and thus not subject to the requirement of no development within a buffer.

Example 2. In the C-APZ district, contiguous Lot 1 and Lot 2 have the same owner. The owner applies for a coastal permit to develop intergenerational housing on Lot 1. That permit is issued and specifies building envelopes on Lot 1with the requirement that Lot 2 have no residential development. Lot 2 is subsequently transferred to a new owner, who applies for a permit to build a farmhouse.

We recommend:

1. **include substantive standards for a determination that contiguous parcels under common ownership are subject to a single coastal permit**
2. **specify mechanisms that will legally restrict development on a contiguous lot that is not subject to the coastal permit**

#1, pp. 14-15 Appeal of second unit permits.

Staff will develop, if requested by the Board, a draft provision for an *administrative* streamlined appeal process (with no public hearing) for second unit permits in the coastal zone, and bring language to a future LCPA hearing.

The provision will need to distinguish between the coastal development permit, and the second unit permit for use of a structure. A coastal development permit (for either an addition to an existing structure, or a new structure) is subject to the LCP's public hearing requirements regardless of the use of that structure, and an appeal of that coastal permit requires a public hearing. It is only the separate permit for the use of the structure as a second unit that cannot be required to have a public hearing.

#1, pp. 17- 19. Ag processing and ag retail sales at limited scale.

All agricultural processing and agricultural retail sales uses are currently conditional uses. A key concern accompanying these uses of agricultural parcels in the coastal zone is the potential for increased traffic congestion on rural roads. It is important that these uses be periodically reviewed in order to take account of current and anticipated conditions.

If the Board decides that smaller processing and retail sales uses are to be principal permitted uses:

We recommend: that the coastal permit for agricultural processing and retail sales be time-limited, and specify a date by which the permit will be reviewed and potentially renewed.

#3 p. 13. Appeal jurisdiction areas, Maps 28a, 28b.

The EAC concurs with the comments for today's hearing of the Inverness Association that the draft appeal jurisdiction area Map 28a is incorrectly drawn for Inverness.

There is no "first public road" in the entirety of Inverness that provides continuous access to the north and to the south along the California coast. The current LCP appeal jurisdiction includes the entirety of Inverness.

We recommend: that development throughout the Inverness area conform to the certified LCP and be appealable to the Coastal Commission if it is believed not to meet that requirement.

Thank you for your consideration of our concerns and comments.

Sincerely yours,

B. Mitchell

Bridger Mitchell, President, Board of Directors

February 25, 2013

Marin County Board of Supervisors

Via Email: bos@marincounty.org

Re: Local Coastal Program Amendments (LCPA), Fifth Board Public Hearing - Remaining carryover topics related to Agriculture, Biological Resources, Community Design, Community Development, Wind Energy Conversion Systems (WECS), Transportation, Maps (Categorical Exclusion Areas), and Coastal Permit Administration

Dear Marin County Board of Supervisors,

West Marin Sonoma Coastal Advocates (WMSCA) would like to reiterate the following positions opposing the installation of WECS in Marin County's Coastal Zone:

1. Adoption of LCPA permitting 100-foot WECS defies the California Coastal Plan:

Marin is the first coastal county to be challenged with industrial-scale wind turbine proposals within the Coastal Zone. The adoption of the LCPA permitting 100-foot WECS will impact the entire 1100-mile California Coastal Zone by setting a precedent to open up all coastal counties to industrial wind energy development. This defies the intent of the California Coastal Plan which is to preserve and protect agricultural and scenic resources.

2. Insufficient wind resource in Marin County's Coastal Zone:

Wind speed maps from the California Energy Commission (CEC) show that there are only marginal wind resources in Marin County's Coastal Zone (see attached 30-meter elevation wind speed map of Marin County). These maps illustrate wind speeds at 30-, 50-, 70- and 100-meter elevations. Industrial-scale development of wind energy in the Coastal Zone is not economically feasible. There is no commercially marketable wind in the Coastal Zone.

3. Impacts on viewshed, tourism, property values, Highway One and the California Coastal Trail:

Impacts from the installation of industrial-scale wind turbines have been documented worldwide such as viewshed destruction, loss of tourism and reduced property values. In Marin County tourism generates 85 million dollars in local business for Point Reyes National Seashore (PRNS) with 2.2 million visitors annually. Development of industrial-scale turbines would compromise views on both sides of Highway One, directly impacting scenic values and, therefore, economic values from decreased tourism. Scenic views along the California Coastal Trail which runs on the East side of Highway One would also be compromised. Additionally the County's WECS Ordinance would allow turbines of unlimited height (one per 20 acres) in the adjoining Agricultural Production Zone, further impacting the viewshed.

4. Wildlife impacts:

There are well-established documented negative impacts to birds and bats, including California species of special concern, from collisions with meteorological towers and wind turbines. Organic and traditional agriculture will suffer when nocturnal and diurnal insect predators are killed.

5. Increased carbon footprint and infrastructure impacts:

There is an increased carbon footprint for WECS from the manufacture, delivery and installation of industrial-scale wind turbines. The construction of wind turbine power plants requires aggregates, lime, rare earth elements from China, massive excavations for tower foundations, road width expansion and

reinforcement to facilitate delivery of turbine components in oversized trucks. Rural roads in West Marin can't handle these impacts. Additionally, turbine facilities require infrastructure such as access roads which can be cut diagonally across farmers' fields, transmission corridors and transmission lines, compromising agricultural uses.

6. Wind energy versus solar power:

Wind's viability and reliability does not compare favorably to solar installations on existing rooftops, over parking lots and retrofitted homes. For example, the turbine at McEvoy Ranch in Marin County was hit by lightning and was out of commission for ten months. In contrast, the solar components at the ranch continued to function and produce electricity during that time.

7. Marin County Board of Supervisors (BOS) LCPA Workshop #1, March 20, 2012:

Jack Liebster stated the following in reference to the CEC 30-meter elevation wind speed map of Marin County (attached): "This is a map provided by the CEC and it's really when you get up into the pink and red color there that you have a significant resource. This isn't the final word but it is an indication that perhaps the wind resources along our part of the coast are not as commercially significant as other areas."

Supervisor Steve Kinsey stated: "You know I had been clear that we do not want industrial-scale wind energy in West Marin. There's no need for it, no demand for that scale, and the transmission facilities to bring wind all the way back would be so significantly costly and disruptive that it isn't viable. If we're really creating a relatively marginal or limited opportunity for wind, then why bother, why not just make it a Wind Energy Free Zone?"

8. WMSCA California Environmental Quality Act (CEQA) lawsuit and California Coastal Commission (CCC) appeal:

On December 6, 2011, the Marin County BOS set aside permits it granted for two meteorological research towers near Tomales proposed by NextEra Energy, Inc. The Board also set aside the project's categorical exemption from environmental review. The Coastal Permits were approved without requiring the preparation of an initial study as required under CEQA. The Marin County Planning Commission had denied the permits but the Board reversed the Commission's decision. This formed the basis of WMSCA's January 2011 lawsuit in Marin County Superior Court. The lawsuit requested that the County set aside the NextEra project and conduct environmental review before any further consideration of approval, in light of serious environmental concerns. WMSCA also filed an appeal to the CCC, along with Marin Audubon and the Environmental Action Committee of West Marin. Two Coastal Commissioners filed appeals individually. The Board's set-aside of the project and categorical exemption, agreed to by NextEra, accomplished the precise goals of the environmental lawsuit.

9. CEQA Categorical Exemption:

WMSCA strongly requests an EIR for the LCPA Update if it includes WECS. Proposition 20 required the State of California to preserve, protect and restore the California coast. Succeeding coastal legislation requires a full EIR should Marin, or any coastal county, decide industrial wind will be allowed on over 37,000 acres in their Coastal Zone, as does Marin's proposed LCP. WECS to 40-feet will be allowed on 18,125 acres West of Highway One and WECS to 100-feet will be allowed on 19,448 acres East of Highway One.

The use of a categorical exemption to exempt the Marin County LCP, with its provisions for industrial wind, from an EIR, is in conflict with and in violation of CEQA. The LCP, as currently written, introduces a new industrial use to the Coastal Zone. In the case of allowing a higher, more intense use, especially a new industrial use in the Coastal Zone, an EIR is necessary.

Avian mortality from industrial-scale wind turbines has been well-documented throughout California. Wind turbines will cause significant adverse impacts on the Coastal Zone's listed bird and bat species, including Osprey, White-tailed Kite, Northern Harrier, Sharp-shinned Hawk, Cooper's Hawk, Red-shouldered Hawk, Red-tailed Hawk, Rough-legged Hawk, Ferruginous Hawk, Golden Eagle, Merlin, American Kestrel, Barn Owl, Great Horned Owl, Burrowing Owl, and the state endangered Bald Eagle and Peregrine Falcon.

The inclusion of industrial wind in West Marin's LCP, including areas such as Tomales Bay, designated by the Ramsar Convention on Wetlands as a "Wetland of International Importance" and recognized as an "Important Bird Area" by the National Audubon Society, without first completing an EIR, must not go forward. Industrial wind will not only threaten coastal resources, it will destroy coastal avian populations.

Marin County should not be putting resident and migratory bird species listed under both the state and federal environmental laws at risk without first preparing an EIR. **WMSCA urges that all references to industrial wind, both on the West and East sides of Highway One, be dropped from the LCP.**

Conclusion

The creation of the Golden Gate National Recreation Area (GGNRA) and PRNS, 40 and 50 years ago respectively, is part of Marin County's environmental legacy. GGNRA and PRNS, along with Marin Agricultural Land Trust and the California Coastal Act, all serve to remind us of the courageous decisions made in the face of huge development pressures.

WMSCA wholeheartedly supports Supervisor Kinsey's insightful proposal for a "Wind Energy Free (Coastal) Zone" to preserve and protect California's coastal resources in West Marin for future generations.

Respectfully submitted on behalf of WMSCA,

Beverly Childs McIntosh
San Anselmo, California

Susie Schlesinger
Petaluma, California

Helen Kozoriz Shoemaker
Oakland, California

Frank Egger
Fairfax, California

Sid Baskin
San Rafael, California

Durward Armstrong
Petaluma, California

Enclosure:
1. CEC 30-meter elevation wind speed map of Marin County

Cc:
North Central Coast District Supervisor, California Coastal Commission

Path: T:\Projects\CEC\Wind Speed\Wind Maps 2006\A Maps\WS 30m Bay Area tlines_subs R _A size.mxd Date: 2/10/2012 Time: 9:44:35 AM

MARIN ORGANIC
Learn • Connect • Eat Well

February 25, 2013

County of Marin Board of Supervisors
Via email c/o Kristin Drumm kdrumm@marincounty.org

Subject: Marin County Local Coastal Program Update

Our county's food system and landscape is unique and needs to stay accessible to all. Marin Organic has the pleasure and honor to work with 41 organic producers in the county and have done so for the past 12 years. We support the Marin Farm Bureau and the farmers and ranchers that have submitted letters to the Board of Supervisors supporting revisions to the Local Coastal Program (LCP) focusing on the survival of agriculture in the coastal zone that includes streamlined regulation. We commend everyone's efforts to make agriculture the forefront of our local economy.

Our agricultural community needs to stay competitive within the local and regional markets that we participate in. Farmers need flexibility, diversification and less regulation. Over regulation and over permitting agriculture in our county is detrimental to their livelihoods. Farmers can not afford more regulation burden. Changes in our local food system require farmers to diversify their operations. The current draft of the Local Coastal Program constrains the positive movement of our food system by regulating agriculture further causing higher barriers to entry, economic burden to the farmers and ultimately, less local food available to our regional food system.

Marin Organic wants to continue to encourage the next generation to come back to the farm. We want to encourage young people to make their livelihood from farming and ranching in Marin County. The average age of a farmer in America is 57 and in the United States we lose an average of 3,000 acres of productive farmland everyday. Marin County has the potential to be a model throughout the country for supporting young farmers, encouraging multi-generational farming, diversification of operations and marketing models that support the livelihood of agriculture. For this to occur, there must exist the potential for economic viability for small scale farming in the County and that requires access to land and a reasonable regulatory framework that encourages entry into the system.

Marin Organic builds community and commitment to local, organic farms and ranches – ensuring that consumers, both today and into the future, place a high value on local organic food and can readily make a choice to access those products. We provide experiential learning programs for youth and adults through our K-12 Farm Field Studies Program and our Learn|Connect|Eat Well Series of adult programs. We foster direct relationships between organic producers, restaurants, and consumers in the Bay Area. We work directly with over 40 producers and 40 local business owners to facilitate local sourcing and building a viable economic platform for our food system. We also increase access to local organic agricultural products, especially for those with few opportunities to regularly enjoy them through our Gleaning Program and partnership with the San Francisco/Marin Food Bank.

Your support of Marin County's diverse agricultural heritage is needed and greatly appreciated.

Sincerely,

Kerry McGrath
Producer and Access Program Manager

~ CLASS ~

Coastal Landowners for Agricultural Sustainability & Security
Valley Ford, CA 94972

February 25, 2013

President Judy Arnold and the Marin County Board of Supervisors
c/o Marin County Community Development Agency
Via e-mail c/o Kristin Drumm: kdrumm@marincounty.org

Re: **Marin County Local Coastal Program Amendments:**
Agricultural Exclusions in the Categorical Exclusion Orders and Related Maps

Honorable Supervisors,

Coastal Landowners for Agricultural Sustainability & Security (CLASS) is an ad hoc group of stakeholders, mostly from Marin, but also from several other coastal counties, who want to protect agriculture production on our lands and, at the same time, retain our property rights.

We call your attention to one of the significant problems remaining in the Planning Commission Approved Draft LCPA, identified by Farm Bureau in its 2/19/2013 letter as Unaddressed Issue #1: the Categorical Exclusion Orders and the related Categorical Exclusion Area Maps, in particular Map 27g and 27j, Revised 1/24/13.

Unless the Categorical Exclusion Orders (CEOs) are amended to apply to *all* of the active, productive farms and ranches in the Coastal Zone, all the farmers and ranchers in the so-called "Non-Excludable Areas" are technically at risk of being held accountable for noncompliance by the very existence of an unpermitted barn or shed on their property, or just for practicing agriculture! All it would take is a complaint from a disgruntled neighbor, or from one of the growing number of "public advocates" who alert violations to the Coastal Commission's attention, which could then slap them with fines, enforcement orders and cease-and-desist orders as they would be, by definition, legally in violation of doing or having "Development" without a permit!

Background

One of Marin's existing CEOs deals with "Agricultural Exclusions." These are "Uses Allowed by Right, No Permit Required." They encompass customary and common agricultural activities, along with a list of ag-related structures including barns, storage, equipment, other necessary buildings; water storage tanks, specific water impoundment projects, electric utility lines, and certain fencing.

Without the Agricultural Exclusions in place, these uses - including ag activities themselves - would all technically fall under the Coastal Act's Definition of Development requiring a Coastal Development Permit.

So, because it allows normal agricultural practices without requiring a CDP, having Agricultural Exclusions is good***!***

Unfortunately though, the "Excludable Areas" do not include ANY of the agriculturally-zoned land between the mean high tide line of the first public road paralleling the sea, or one-half mile inland. These lands are called "Non-Excludable." And, as you can see on the Maps, they encompass a very large number of Marin's farms and ranches – in fact, all the rural lands running along the East shore of Tomales Bay, and north along the coastline to the Sonoma County line, including my own ranch and those of all my neighbors. They also run inland all the way to the County boundary east of Highway 1 along the Esteros Americano and de San Antonio, and inland along Walker Creek.

We believe a strong case can be made that customary and common agriculture activities, uses and structures on these working ranches would comply with Section 30610 of the Coastal Act dealing with coastal resource protection and, as such, should be considered "Excludable Areas."

The Draft LCPA does contain Program C-AG-2.a., which mandates “seek[ing] to "clarify the [Ag Exclusions] for the agricultural community," and to clarify or add to the CEOs. We believe the time for clarity and precise language is *now*, for the benefit of not just the ag community but for the public at large.

Other problems and inconsistencies in the existing CEOs are confusing at best. Many are mostly technical and include, among other things:

- Those two Revised Maps show areas of Northern Marin County covered under LCP Unit II, but their legends refer to Categorical Exclusion Order E-81-2 which, according to the CEOs, is from LCP Unit I, which essentially applies to only Southern Marin.

- One of the officially-adopted documents says that "agriculture means the *tilling* of the soil," while another states that it means the "*filling* of the soil."

- The various PDF versions of the CEOs, including the three related to Agricultural Exclusions, are internally inconsistent with each other, difficult to read and follow, and contain handwritten notations and marks.

Our Request

We agree with Farm Bureau’s arguments, and join their request that you direct staff to amend the Categorical Exclusion Orders so that they are clearly applied to *all* C-APZ-zoned parcels in the Coastal Zone, that the appropriate maps reflect the areas accordingly, and that the amended CEOs are incorporated within the body of the LCPA, not as separate, difficult-to-access reference materials. This will provide the clarity, consistency and transparency that the public needs and deserves in the amended Local Coastal Program, and will serve to protect agriculture as the County intends.

Going Forward

CLASS has been keeping watchful eyes on the various LCP amendment processes underway, as we recognize that policies and regulations certified in one county will ultimately set precedent elsewhere, not only for us, but for California's inland agriculture. More farmers and ranchers in Marin's Inland Rural Corridor are now realizing that the updated Countywide Plan mandates that the LCP's zoning regulations will one day apply to them, too.

We are very grateful to you for having rerouted the proposed California Coastal Trail off the working ranches and onto Highway 1, recognizing the disruption it would cause to agriculture operations as well as the potential takings issues inherent in easement exactions.

Thank you, too, for continuing to protect agricultural and private property interests by recognizing that the Coastal Act authorizes ***you,*** the local government, to determine the precise content of our LCP, with authority over, and autonomy from, the Coastal Commission. We trust you will stand your ground as it goes through the lengthy certification process.

CLASS supports all of Marin County Farm Bureau’s positions, as well as the positions taken by California Farm Bureau Federation, Sonoma County Farm Bureau, California Cattlemen’s Association, Pacific Legal Foundation and attorney Doug Ferguson, as reflected in their respective letters to date. CLASS also supports the recent letter from the affordable housing advocates including

CLAM, who pointed out that state law allows second units in the Coastal Zone and that the Coastal Commission encourages them.

In closing, we certainly appreciate that you are motivated to wrap up this years-long process and adopt an LCPA sooner rather than later. But please keep in mind that the initial Public Review Draft of Marin's LCPA was based on a template from the City of Malibu's LCP, so it's no wonder that the agriculture community has found so *many* issues in need of revision to reflect agriculture's importance to our County!

Please, do not hesitate to continue the February 26th hearing until March 12th or some future date if need be, so that you can give *all* your deference to *each* of Farm Bureau's important, but as-yet unresolved issues, as outlined in its February 19, 2013 letter. CLASS fully supports all of their positions and we request that you take the time to publicly deliberate every single one of them.

Thank you very much for your thoughtful consideration of our concerns and requests.

Sincerely,

Nancy Gates

Volunteer, CLASS
Member, Marin County Farm Bureau
Member, California Cattlemen's Association

cc:
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February 25, 2013

President Judy Arnold and the Marin County Board of Supervisors
Via e-mail to Kristin Drumm: kdrumm@marincounty.org

Re: Addressing Marin County Farm Bureau's unresolved Local Coastal Program Amendment issues

Dear President Arnold and Honorable Supervisors:

This briefly supplements my January 14 letter indicating that I would later be addressing some unresolved issues that have not been fully addressed by the Board. Since sending that letter I have been provided with, and have reviewed, a copy of the 2/19/13 letter that has now been sent to the Board by the Marin County Farm Bureau. I understand and support many of the points there raised, and have little to add to those MCFB arguments. Since that letter also pertains to a few issues on which I have not been so closely involved as has the Farm Bureau, however, I wish to focus here on two legal issues:

1. Attachment #1 to the 2/19/13 letter appropriately questions the constitutionality of certain conditions sought to be imposed by the County on permit applicants, and seeks simply to remind a reader that the County's legislation needs to the reader of Constitutional protections that are are sometimes overlooked. Boiled down to its basics, the Attachment says: "The County of Marin should carefully respect what the Supreme Court has earlier decided is the law of the United States pertaining to what conditions a permit applicant can be required to agree. To make this entirely clear, the Constitutional rights of an applicant need to be repeatedly referenced and explained in the Marin County Code provisions respecting a planning entitlement application, not only for the benefit of the applicant, but as well for the benefit of any other reader of the application that is filed."

While the Count's Board and staff might be tempted to dismiss such requested reminders of Constitutional limitations as duplicative and unnecessary, they are so close to this subject matter as to perhaps forget that this legislation will in the future be studied and relied upon by persons lacking that factual background. If my above cryptic summary of Attachment #1 is deemed accurate, I urge that Attachment #1's requested wording changes be adopted in their entirety by the Board. (Should County Counsel

advise the Board that Attachment #1's urgings need some further refinement, however, I volunteer my pro-bono participation in that drafting process.)

2. Proposed aggregate square footage limitations should not be aggregated. The 7,000 SF aggregate density limitation proposed in Policy 5.1.d is substantively the same as the "aggregate cap" concept that was proposed in the Countywide Plan Update – and was at that time determined by the Board to be inappropriate. Nothing has really changed to make what was inappropriate then be now appropriate. Such a simplistic policy seeks to trump the need for -- and the fairness of -- weighing each portion of every development proposal on its own unique merits. That need, however, hasn't gone away. This proposed new policy would replace such measured consideration with an instant, one-size-fits-all downzoning to occur without just compensation for lost property values. I strongly support the Board retain the logic of its earlier dismissal of such a concept.

Yours very truly,
Doug Ferguson
Douglas P. Ferguson

ccs to:

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C O M M U N I T Y M A R I N

February 26, 2013

Steve Kinsey, President
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: LOCAL COASTAL PROGRAM AMENDMENTS (LCPA) **– Carry Over Issues, Agriculture and Biological Resources**

Dear President Kinsey and Supervisors:

"Community Marin," a consensus document written by major environmental non-profit organizations, recently completed its 2013 Update after several years in preparation. The update will be introduced to the Board in the coming weeks. However, even as "Community Marin" was in revision, it contained recommendations that apply generally to resources in the Coastal Zone, if not to specific policies in the LCP Amendments. For that reason we have continued to comment on the evolving LCPA.

We wish to commend CDA staff for their efforts over the past several years to reach out to all interested parties and their continuing analysis of outstanding issues and points of view. Areas that are of particular relevance to Community Marin are discussed below.

I. **Agricultural Operations: Viticulture**

The Planning Commission separated viticulture from the list of routine agricultural activities and designated it as a permitted use, requiring a coastal permit as well as a separate permit under the County Viticulture ordinance. The Board disagreed, and now viticulture is included as an agricultural operation that does not require a coastal permit, citing the County's Viticulture Ordinance as an adequate mechanism for "regulating" viticulture.

Community Marin has long held that changes in intensity of agricultural use and new agricultural uses, such as change from livestock grazing to row crops, should be subject to review, in this case to a coastal permit. (Note that this requirement would not apply to conversion from one type of row crop to another unless such conversion involved significant <u>new</u> grading or intensity in use of water.) Staff argues that due to the pervasive lack of water in the coastal agricultural zone, requests for conversion to viticulture would be rare. We contend that conversion of grazing land to viticulture would require new grading, cultivation, and/or irrigation, any of which could affect surface and/or groundwater resources as well as alter sediment regimes in water courses.

Viticulture should be removed as a principal permitted use in C-AG-2 (4), and should be restored to Chapter 22.62.060 (B) and Table 5-1-a as a permitted use.

II. Intergenerational Housing

Our comments in this regard are based on a long-standing Community Marin Recommendation 3.1 (under Agriculture), which states that *". . .any residential development is secondary and subordinate to the primary agricultural use of sites*." CCC staff appears to agree and would like to see intergenerational homes and homestays categorized as residential, visitor-serving. . .uses as appropriate. . .and that such uses be required to adhere to strict development standards.

CDA staff has argued that all intergenerational homes would be subject to a Coastal Permit approval. The second intergenerational home . . . would also require a Use Permit, subject to all LCP policies as well as the standards contained in (various sections cited) the Code. In our view, the <u>first</u> intergenerational home, as a principal permitted use, would receive a lesser level of review than a second intergenerational home.

CDA Staff also argues that a covenant that restricts intergenerational homes to "family members" is enforceable because the likelihood of abuse is limited and the number of homes that could be permitted on any given property is also limited. Further, staff states that restrictive covenants and deed restrictions are commonly used by the County.

The "first" intergenerational home should <u>not</u> be included as a principally permitted use under the definition of "agriculture" and should be subject to both a Coastal Permit <u>and</u> a Use Permit, and the second intergenerational home would be a conditional use, subject to full environmental review.

A covenant that restricts occupancy of intergenerational homes to "immediate family" would be intrusive and difficult to monitor, and would raise numerous issues especially for future generations as families expand and become more complex. In our view, it could not be practically enforced by the County.

Community Marin also recommends that additional dwellings (other than the "farm house") should be clustered (not "placed in one or more groups. . .to the extent feasible" – C-AG-7 (B) (1)) on a total of 5 percent of the total acreage. The total square footage of homes, including garages, should not exceed 7,000 sq. ft., and as a further means of limiting estate-size homes in agricultural districts, the total maximum floor area for a residence and associated non-agricultural accessory structures such as garage and home office should not exceed 4,000 sq. ft.

III. Grazing in Wetlands

Community Marin contains numerous recommendations for protection and buffering of wetlands. Although none of them refers specifically to grazing in wetlands, Community Marin recommends prohibiting agricultural practices that would harm these resources and sensitive wildlife habitat. (E.g., Recommendation 3.9 *"There should be no agricultural activity or any development within 100 feet of a wetland or riparian habitat."*)

Program C-Bio-11.a – Grassy Uplands Surrounding Bolinas Lagoon – refers to the need to develop effective policies to protect against significant disruption of habitat values of upland grassland feeding areas around Bolinas Lagoon for shorebirds. It has been revised to read: "Limited ~~grazing~~ <u>agricultural</u> use of these lands may be permitted."

Because the term 'agricultural' can include anything from bee-keeping to viticulture, we recommend that the term grazing be retained as more appropriate to protecting the resources used by wading shorebirds.

The policy under C-BIO-14 has undergone much discussion and several revisions. Community Marin supports the recommended revision to C-BIO-14 .

We accept the staff revised addition to C-BIO-14 with the understanding, however, that if an "artificial" water feature (such as swale or pond) has replaced historic wetlands that have been degraded in the course of agricultural activities, the replacement should be considered "wetland" regardless of perceived origin.

IV. Wetland and Stream Buffers and Buffer Adjustments

The need to maintain minimum 100-foot protective buffers around tidal, seasonal, and other non-tidal marshes, and along stream banks, with or without riparian vegetation, is a key recommendation in Community Marin, and has remained so over several decades. Therefore, the additions to C-BIO-20 and 25 which allow a "fall-back" from the recommended 100-foot buffer to a minimum buffer of 50 feet would greatly weaken the protections that have been set up in policies like C-BIO-19 (Wetland buffers) or C-BIO-24 (Stream buffers). The language already allows exceptions based on possible "taking" of property, and contains mitigation measures that include net environmental benefit.

Language in C-BIO-20 1. and C-BIO-25 1. that would allow a wetland buffer to be adjusted to a minimum of 50 feet should be stricken from both policies. As stated many times before, a 100-foot buffer to protect wetlands and streams (adjusted in the eastern urban corridor) has been standard in Marin County through the last two countywide plans and should not be weakened for wetlands in the Coastal Zone. The 50-foot minimum, while appearing to limit adjustments, and recommended by Coastal Commission Staff, also would serve as an open invitation to those seeking minimum solutions.

Community Marin appreciates the opportunity to comment on the LCPA in these final months of a long process, and again acknowledges the painstaking work down by Staff. Our ongoing concern is that important protections afforded to biological resources in the Coastal Zone over the past 30 years might be weakened in the Amendment. In the long term, maintaining a healthy ecosystem also benefits the long-term agricultural productivity and essential water quality of the region. Our recommendations are offered in that spirit.

Sincerely,

Nona Dennis, for Community Marin

cc. Marin Audubon Society
eac of West Marin
Marin Bayland Advocates
Sierra Club Marin Group
Marin Conservation League
SPAWN

February 26, 2012

To the Marin County Board of Supervisors:

I am a property owner in Bolinas where I recently completed a second unit. The process was extremely lengthy, costly and cumbersome, made all the worse by a NIMBY neighbor who moved in after I had already completed all of my plans. The design of my house was completely to code and well within all building restrictions including: height, size, materials, and clustering. My property is behind my neighbors and uphill and therefore also in no way impacted their view, and was in fact only visible from one point in their driveway. However due to the way the codes are written in Marin my neighbor was able to take me through three sets of appeals, each of which cost me a lot in architectural and legal fees. In the end I would estimate that the cost of these setbacks totaled close to 40 thousand dollars, which does not include anything for the time, (a year), lost delaying the project while fighting the battle just to get permission to submit for building permits.

As you know building in Marin is a very costly endeavor and permitting fees are not cheap. By the time someone goes to the county with a set of plans trying to seek approval they have already spent thousands if not tens of thousands of dollars on architectural and engineering fees. If we want to promote second units, and other forms of affordable housing in our communities we must make it easier and more affordable for people to get the permits to build. One way to do this is to restrict the rights of neighbors to interfere with such projects. While some neighbors may have legitimate complaints and may be willing to work towards a common solution, many more are simply exercising their right to interfere with what goes on in their neighbors yard. Please restrict the appeals process by having approval of second units become a ministerial process. Your planners are smart and knowledgeable people. They know how to read the codes and the plans and can easily spot when plans are outside of the scope of the law.
Thank you,

Arianne Dar
Bolinas, CA

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February 26, 2013

President Judy Arnold and the Marin County Board of Supervisors
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

Via e-mail c/o Kristin Drumm: kdrumm@marincounty.org

Dear President Arnold and Honorable Supervisors,

The California Cattlemen's Association (CCA) appreciates the opportunity to comment on the most recent staff comments as prepared for the February 26, 2013 Board of Supervisors meeting on the continued development of the Local Coastal Plan (LCP). As may be recalled from comments made at the October and January meetings, as well as the corresponding letters, CCA is very concerned with a variety of issues contained within the LCP. While several issues will be enumerated herein, we would like to take this opportunity to thank the staff and Board of Supervisors (Board) for several of the positive amendments which have been made thus far. CCA's membership is appreciative of the acknowledgement and resolution of some major concerns, and hopes that those remaining will be addressed in an equally favorable fashion.

As CCA has said before, Marin County's LCP should be a reflection of the priorities of the County, and not a capitulation to an unelected board. Insofar as the LCP is consistent with the Coastal Act, it should be approved by the California Coastal Commission (CCC). The Board has a responsibility, as an elected body, to represent their constituency and demonstrate sound decision making based on public comment. CCA hopes that the Board will rise to the occasion and develop an LCP which is reflective of the wants and needs of Marin County, and not of CCC staff.

In addition to representing the interests of Marin County, it is also important that the Board consider the regulatory environment in which they are creating the LCP. This document does not exist in a vacuum. The policies created in the LCP are layered underneath federal law as they relate to wetlands, the Clean Water Act, the Federal Endangered Species Act and regulations created by the Environmental Protection Agency. Under these guiding federal laws, those landowners governed by the LCP are also regulated by the state under Porter Cologne, the California Environmental Quality Act, the Coastal Act, the California Endangered Species Act, and regulations created by the Department of Fish and Wildlife, CALFIRE, the Department of Water Resources, the California Environmental Protection Agency, the Air Resources Board and the Williamson Act. Locally, regulation exists to manage air quality, water quality, building, roads, commerce and development. It is critical to keep in mind that many of the provisions contained within the LCP will require further regulation by the CCC in addition to the incomplete list of the aforementioned governing bodies. Many of the existing and amended policies in the LCP result in

micromanagement and regulatory involvement in the minutiae of agricultural operations; a role which is inappropriate given the overabundance of existing regulations.

To further analyze and contextualize the regulatory environment into which the LCP will be placed, Board members must continuously consider the farmer and rancher and the effects these regulations will have on his ability to produce. A majority of the agricultural land in Marin County is in Williamson Act contracts. The Williamson Act expressly enumerates the activities which are and are not permitted. In order for a landowner to remain in the Williamson Act, their property and the structures on it must be maintained for the exclusive purpose of agricultural production. If a landowner is in this contract, the law assumes continued agricultural production and preservation. Not only are these land owners contractually obligated to maintain their agricultural ground, but they do so as a livelihood and in a generations-long tradition. These agricultural lands have been maintained for both economic and environmental sustainability, for these are inextricably linked; one cannot exist without the other. By the nature of his work, the landowner is inherently obligated to manage the land sustainably. By adding to an ever growing list of regulations that determines how an agricultural land owner must operate his property, this LCP makes assumptions that the landowner will not consider environmental impacts before engaging in a project. However, it must be recognized that agricultural landowners make decisions based primarily on the viability and health of their land. CCA implores the Board to keep this in mind as the final LCP is developed.

Brush Clearing:

Although several of the topics within the LCP have been approved by the Board, the lack of finality on the document gives reason to again point out several of the outstanding issues. What is perhaps the most vital of the outstanding issues relates to brush clearing. 22.68.030 defines on-going agricultural operations for the purposes of determining the necessity for coastal permits. The definition reads, "On-going agricultural operations including cultivation, crop and animal management and grazing are not considered to be development or a change in the density or intensity of the use of land. For the purposes of this Chapter, "on-going agricultural operations" are those which exist presently or historically, and do not entail new encroachment within 100 feet of the edge of a wetland, stream or riparian vegetation." This definition, which is used throughout the LCP, should be clarified to include brush clearing as a component of on-going agricultural activities. Many ranchers will attest to the fact that best management practices sometimes require the resting of pasture for a period of time. In the period of rest, these pastures may produce brush that limits grazing ability and forage production. In order to regain full use of the pasture, ranchers often need to engage in brush clearing and vegetation management to ensure that they have sufficient forage for their livestock. If the Board does not include this language, then farmers and ranchers may be forced to obtain permits, effectively punishing them for engaging in best management practices.

The importance of understanding brush clearing in the context of agricultural operations cannot be understated. In the introductory section of the LCP, development is defined to include "… the removal or harvesting of major vegetation other than for agricultural purposes…." Despite the inclusion of vegetation removal as an exemption from development, this language appears nowhere else in the document, and its absence from the definition from "on-going" agricultural activities is troubling. CCA recommends that vegetation management and brush clearing be added as a principally permitted use under "on-going" agricultural activities.

Buffer Zones:

While the concern for ESHA, riparian, and wetland environments is appreciated, CCA believes that the Board's establishment of strict buffer zones is inappropriate. Despite site review by a biologist in areas in

which development may impact sensitive habitat, the Board inexplicably demands a buffer zone. If the site is to be reviewed as a condition of permitting, then that review should also be used to establish a proper buffer zone as determined by scientific expertise. To issue a blanket buffer zone discredits and devalues scientific opinion.

CCA is also concerned with the requirements to demonstrate "net environmental improvement" in order to qualify for a buffer zone adjustment. While net improvement of the property is a noble goal, the Board should reconsider this requirement within the context of agricultural operations. As CCA has stated before, farmers and ranchers are an integral part of the environment and landscape across the coast and their land management ensures open space and sweeping view sheds. Should agricultural land owners wish to expand their operation, it is suggested that they be permitted without the condition of a net environmental benefit as long as they can demonstrate that the development has de minimis effects on the landscape. Study after study has proven that these farmers and ranchers are stewards of the land, and their practices result in benefits which far exceed those that can be provided by public management. Their historical and future contribution to the health of the environment should be acknowledged.

ESHA:

With regards to ESHA, CCA requests that the Board consider removing this designation entirely. Both the state and the federal government spend millions of dollars annually to ensure that threatened or endangered species of plants and animals are protected. The designations of endangered species are vetted by scientists and are open to public comment. This public process ensures that all relevant information is shared before a final determination of listing is made. The determination and designation of ESHA, on the other hand, is arbitrary, inconsistent and requires no public process. If the CCC and local governments believe that there are species of plants and animals that deserve protection, then they should petition the state and federal government, as do individuals and non-governmental entities. Neither local governments nor the CCC should indiscriminately and capriciously make these determinations without public input, for these determinations, as evidenced by the LCP, have the real effect of influencing policy and the citizenry.

Development Standards for the Agricultural Production Zone:

The policy created for development within agricultural production zones exemplifies the inherent flaws of the LCP. It reads,

> Permitted development shall protect and maintain continued agricultural use and contribute to agricultural viability. Development of agricultural facilities shall be sited to avoid agricultural land (i.e., prime agricultural land or other land suitable for agriculture) whenever possible, consistent with the operational needs of agricultural production. If use of agricultural land is necessary, prime agricultural land shall not be converted if it is possible to utilize other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted.

This policy not only expressly mandates where development can occur, but makes a value judgment which favors prime farm land over non-prime. It should not be the business of government to pick winners and losers. While the protection of prime farm land is vitally important to agriculture in the state, it must be remembered that non-prime farm land is almost always grazing land. The landowner should have the ability to determine whether or not he will build on prime or non-prime farmland. If he is engaged in the production of row crops, then he will likely choose to build on other ground. If, however, he is cattle rancher, he may have no choice but to build on land designated as prime. This flexibility in

choice must be left to the land manager who will ultimately choose to build in an area that allows for the continuation and success of his agricultural production; a goal expressed in the LCP and by the CCC.

Examples of this form of micromanagement are found throughout the LCP, and CCA will refer to our previous letters, as well as those from the Marin County Farm Bureau to provide them.

CCA is grateful of the opportunity to discuss these LCP amendments, and would suggest that the Board wait to make a final determination on these changes until after the Agriculture Workshop is held by the CCC.

Family farms in Marin, and all throughout the state, help to feed the country and the world. Many of these lands have been managed by the same families for generations, and blood, sweat, and tears have undoubtedly gone into the continued preservation of California's coveted open space. What many often forget is that these open spaces created by farming and ranching have been maintained as such without the burdensome regulations we see today. The agricultural community has an inherent obligation and desire to maintain the viability and sustainability of their land, but is finding it increasingly difficult to do so as strangling regulations choke these land stewards, eventually forcing them off the land.

The Board must give consideration to the long term effects of these LCP policies and recognize the existing commitment to sound land management that is demonstrated by our membership.

Sincerely,

Margo Parks
Director of Government Relations

From: Scheuring Chris
Sent: Tuesday, February 26, 2013 11:38 AM
To: Drumm, Kristin
Cc: BOS; McDonough Nancy; Chasteen Dianne K.; Fredrickson Justin; Rice Jack; Matteis Richard
Subject: LCPA - February 26, 2013

Dear Ms. Drumm:

Please accept these brief comments on agenda item # 18 for today's hearing of the Marin County board of supervisors, as it relates to certain Local Coastal Program Amendments under consideration. They are presented on behalf of the California Farm Bureau Federation ("CFBF"), its membership, and its policy. Please present them to the board of supervisors with our respect.

CFBF has a long history of engagement on coastal issues, as they affect agriculture and come up before the Coastal Commission and local county boards under the aegis of the Coastal Act. We apologize for presenting only this brief and informal written statement, but the CFBF attorney who is most familiar with these issues had a conflict today, and could not appear personally or prepare his own remarks.

CFBF has enacted written policy which calls for the authority of the Coastal Commission relative to agriculture and agricultural practices to be rescinded, and that authority returned to local government. (CFBF # 130.) That is a call for legislative action regarding the Coastal Act that cannot be addressed by your board today; however, we believe that decisions about the disposition of resources and agricultural land use should be a matter of local prerogative before boards such as yours, under the auspices of local planning processes which include the agricultural community.

CFBF is committed to the overall protection of the agricultural industry (CFBF # 140), and believes that this commitment should also be Marin County's and should express itself through policy actions such as the one the board may take today.

With respect to your local coastal planning efforts, we believe that agricultural lands should not be designated as open-space or viewshed for land use planning purposes (CFBF # 144), unless supported by the local agricultural community (CFBF #136). That support is not evident in the case of the Marin County Farm Bureau today, and the amendments the board is considering.

We also believe that landowners should not be required to donate rights-of-way for recreational trails or other recreational uses as a condition for obtaining any use permit (CFBF # 149). We oppose any requirement for a permit to undertake ordinary agricultural activities, or to support the same. We hope that your board will make sure that these principles are reflected by its actions today.

With respect to Marin County's Local Coastal Program overall, the CFBF stands in support of its membership within Marin County. We urge you to consider and address the issues presented in the comment letter of the Marin County Farm Bureau, dated February 19th.

Thank you.

Chris Scheuring
Legal Services Division
California Farm Bureau Federation
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