

September 26, 2012

The Marin County Board of Supervisors  
Via e-mail c/o Kristin Drumm: [kdrumm@maincounty.org](mailto:kdrumm@maincounty.org)



Re: Local Coastal Program Amendments

Dear Supervisors,

UCCE, its partner organizations, and Marin farmers and ranchers have worked diligently over the past 20 years to increase opportunities for product and income diversification on Marin farms and ranches. Farm diversification has become increasingly important both globally and locally, especially for marginally profitable farms that might not otherwise be able to survive the price fluctuations and income seasonality typical to many farm enterprises. Agricultural diversification has been directly responsible for allowing many of the younger generation of Marin farmers and ranchers to stay on their family farms and keep them in business.

The County of Marin has strongly supported the diversification movement by providing permit assistance through the Marin County Agricultural Ombudsman, through Countywide Plan policies and programs, and through creative adaptations of Development Code regulations allowing small-scale agricultural processing and sales, and farm tours without use permits in A zoning districts. On-farm processing and retail sales provide an avenue for sustainable distribution of Marin County agricultural products. On-farm sales eliminate shipping and allow direct purchase by community members and out-of-town visitors.

Proposed language in the Marin County Local Coastal Program Land Use Plan and Development Code Proposed Amendments would unreasonably limit these same land uses within the Coastal Zone, putting coastal farmers and ranchers at a disadvantage and making agritourism, farmstead processing, and on-farm sales impossible for many farmers to afford. Small-scale sales and processing uses, and other agritourism uses should be allowed by Categorical exclusion so that permit costs do not consume potential profits needed to help support farm operations. At a combined cost of nearly \$16,000 for a Coastal Permit, a Use Permit and Design Review, the cost of permits for conditional uses may prevent families from undertaking agricultural product sales, processing and other agritourism uses or may make these uses marginal or unprofitable.

Please consider the following recommendations pertaining to the Proposed Land Use Plan Development Code Amendments in order to allow reasonable and affordable agricultural diversification and appropriate management for farmers and ranchers within the Coastal Zone. Recommendations are summarized at the end of this letter.

#### **PROPOSED LAND USE PLAN AMENDMENTS**

1. **“Program C-AG-2.e Community-Specific Retail Sales Policies.** Policies should be developed in the LCP’s Community Development section, as appropriate, to address the concerns of specific communities with respect to retail sales (roadside especially). As necessary, greater constraints on these activities could be specified for individual communities or roadway segments than the general provisions in the LCP’s Agriculture section (up to and including, for example, the possibility of specifying an outright

prohibition of roadside agricultural sales in a particular area or along a particular stretch of roadway).”

**Response.** Restrictions against retail sales in certain communities would create an uneven playing field for agricultural producers. Existing traffic and parking issues should be dealt with through appropriate governing agencies, rather than punishing local farmers based on fear of potential traffic increases. Residents of state highways and other major thoroughfares should reasonably expect significant traffic on these roads.

**Recommendation.** Eliminate this program from the draft Land Use Plan.

2. **“Program C-AG-2.f Facilitate Agricultural Tourism.** Review agricultural policies and zoning provisions and consider seeking to add educational tours, homestays and minor facilities to support them as a Categorical Exclusion.”

**Response.** This supports local agriculture.

**Recommendation.** Pursue with the Coastal Commission establishment of a Categorical Exclusion for educational tours, homestays, and minor facilities to support them.

3. **“C-ES-1 Community Character of the East Shore of Tomales Bay.** Maintain the existing character of low-density, residential, agriculture, mariculture, and fishing or boating-related uses. Allow expansion or modification of development for visitor serving or commercial development on previously developed lots along the east shore of Tomales Bay, provided that such expanded uses are compatible with the small scale and character of existing development along the Bay.”

**Response.** This seems to conflict with **C-AG-2.e Community-Specific Retail Sales Policies.** If the East Shore can accommodate “expansion or development of visitor serving or commercial development on previously developed lots along the east shore of Tomales Bay”, then there is similar ability to accommodate on-farm retail sales, processing, and tours.

**Recommendation.** As above, pursue with the Coastal Commission establishment of a Categorical Exclusion for on-farm retail sales, processing, and tours and address existing traffic and parking issues through appropriate agencies.

## **PROPOSED DEVELOPMENT CODE AMENDMENTS**

Remove approximately 2 ½ pages of proposed language beginning with 22.32.026 – Agricultural Processing Uses on page 4, through 22.32.027 – Agricultural Retail Sales and Facilities (Coastal), ending on page 7 and replace it with parallel language in the existing Development Code. Pursue with the Coastal Commission establishment of a Categorical Exclusion for agricultural processing uses, including tours of processing facilities, and on-site retail sales of all farmstead products as provided for in the existing Development Code. Specific reasons are outlined below.

### 4. **22.32.026 – Agricultural Processing Uses.**

...4. “A Conditional Use Permit shall be required if the processing facility is open routinely to public visitation or if public tours are conducted of the processing facility more than 24 times per year.”

**Response.** What is the purpose of this? Why do tours of processing facilities require a Use Permit for over 24 tours, while Educational Tours do not have a cap? Making tours principally permitted or conditional is inconsistent with **Program C-AG-2.f Facilitate Agricultural Tourism.**

**Recommendation.** Remove this language.

5. **"22.32.027 – Agricultural Retail Sales and Facilities (Coastal).**

(Coastal) In Coastal agricultural Zoning Districts C-APZ and C-ARP, retail sales are allowed as a Principal Permitted Use provided they meet the following standards:

**A. Limitations on use:**

1. Retail sales must be conducted:

(a) Without a structure (e.g. using a card table, umbrella, tailgate, etc.); or

(b) From a structure or part of a structure that does not exceed 500 square feet in size and does not exceed 15 feet in height.

2. Items sold must be principally unprocessed produce grown in Marin County or at a site outside Marin County that is operated by the operator of the sales facility. For purposes of this section, "principally" shall mean at least 75% by dollar volume of sales. The operator of the sales facility must be directly involved in the agricultural production on the property on which the sales facility is located.

3. Sales of consigned produce grown in Marin County (or grown at a site outside of Marin County that is operated by a consignor whose principal agricultural activities are within Marin County) shall be allowed as part of the principal permitted use, provided that all produce being sold satisfies the criteria for the principal permitted use findings.

4. A Use Permit is required for picnic or recreational facilities. A Use Permit is also required for on-site consumption other than informal tastings at no charge of product offered for sale.

5. Sufficient parking is provided."

**Response.** 1(b) Existing buildings should not be limited to 15 feet tall. 2. Why must 75% or dollar volume of sales be of principally unprocessed products? This would exclude sales of local cheese, for example, unless the cheese maker also had a vegetable farm and sold mostly vegetables. 3. Local farmers do not "consign" produce. Consignment sales rarely, if ever, occur.

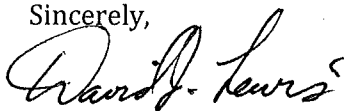
**Recommendation.** On-farm product sales uses should be allowed under a Categorical Exclusion consistent with the agricultural sales use for A zoning district in the Marin County Development Code, which has not generated an unmanageable number of retail sales facilities. The height limitation should be eliminated and sales of goods produced by other Marin County farmers should be allowed, regardless of consignment.

**SUMMARY OF RECOMMENDATIONS**

1. Eliminate **Program C-AG-2.e Community-Specific Retail Sales Policies** from the draft Land Use Plan.
2. Address existing traffic and parking issues in specific communities through appropriate agencies.
3. Remove approximately 2 ½ pages of proposed language beginning with **22.32.026 – Agricultural Processing Uses on page 4, through 22.32.027 – Agricultural Retail Sales and Facilities (Coastal)**, ending on page 7 and replace it with parallel language in the existing Development Code.
4. Pursue with the Coastal Commission establishment of a Categorical Exclusion for agricultural processing uses, including tours of processing facilities; on-site retail sales of all farmstead products; farmstays; and educational tours as provided for in the existing Development Code.

Thank you for your consideration,

Sincerely,



David J. Lewis  
Director



Lisa Bush  
Agricultural Ombudsman



September 26th , 2012

**Honorable Supervisors,**

The Valley Ford Young Farmers Association submits this letter in hopes that you will make necessary changes to the Planning Commission Approved Marin County Local Coastal Program Land Use Plan & Development Code Proposed Amendments (Proposed LCP) to minimize permit requirements and costs consistent with the recently passed California State AB1616, The Homemade Food Act.

In the proposed LCP, agricultural practices such as cheese making, other types of agricultural processing, and sales require Coastal Permits and Use Permits in some situations. These permits, added to the cost of Building and Health Permits, which can (and often do) add up to many thousands of dollars, that a small farm wanting to make a value-added product- simply does not have. To not allow us to affordably process and sell our farm products to the best of our ability does not reflect well of our historical 'foodshed', and the ability to continue providing local food.

I, as a young farmer living on my families' ranch in North-West Marin have looked through our family photo albums and heard the stories from my grandparents and parents of the ways agriculture has evolved through the generations. When my great-great grandfather first bought the property it was a Jersey dairy; when my great- grandfather managed our land; in the height of Petaluma's "butter and egg capital" days, it was a hatching egg business; when my grandfather managed the land it was a beef and sheep operation. Now, as it is beginning to transition from my fathers' generation to my generation, we are continuing the beef and sheep operation, while also going back to raising chickens for eggs and meat. As diets and markets change in the general population, we as local producers must adapt, and we must be able to make a living too.

All of the permit requirements and regulation for practices necessary for a family farm or ranch to adapt, may be cost prohibitive to continue in agriculture. If a family farm or small farm that gives farm tours for the education of the general publics' understanding of food systems is subject to extensive permitting, it will discourage rather than encourage that farm to continue, and not only is there a loss to the farmer, but a loss to the greater education about food systems. We unfortunately live in a time where two-thirds of Americans are overweight or obese. The knowledge value of healthy, fresh food systems is priceless.

Giving farmers and ranchers more ability with straight forward, economically realistic policies will only increase the economic potential of small family farms, such as reflected in these Countywide Plan policies:

**Policy AG-2.3. Support Small-Scale Diversification.** Diversify agricultural uses and products on a small percentage of agricultural lands to complement existing traditional uses, ensure the continued economic viability of the county agricultural industry, and provide increased food security.

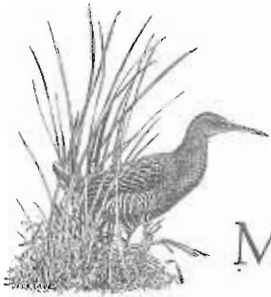
**AG-2.4 Encourage Agricultural Processing.** Encourage processing and distribution of locally produced foods to support local food security and strengthen Marin's agricultural industry.

These policies, minimizing the need Coastal Permit and Use Permits, and the passage of California AB1616 will only strengthen our farming communities and local food sources for generations to come.

**Respectfully Yours,**

A handwritten signature in black ink that reads "Anna Erickson". The signature is written in a cursive style with a long, sweeping tail on the letter "n" at the end.

Anna Erickson  
President,  
Valley Ford Young Farmers Association  
[www.valleyforyoungfarmers.com](http://www.valleyforyoungfarmers.com)



# Marin Audubon Society

P.O. Box 599 | MILL VALLEY, CA 94942-0599 | MARINAUDUBON.ORG

September 27, 2012

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

RE: COMMENTS ON LOCAL COASTAL PLAN

Dear Chairman Kinsey and Supervisors:

Thank you for the opportunity to comment on the most recent draft of the Local coastal Plan. The process to this point has been long and complex and we appreciate the great effort the staff has made to reach out and consider input from the community. While many of the recommended policies are beneficial, we are concerned that in the overall, policies of the Draft LCP would provide weaker protections for West Marin's important natural resources in than those in the existing LCP. Please consider the following comments and recommendations to strengthen environmental protections:

Provision for Seas is a clear benefit for the coastal zone as ESHAs as a concept are non existent in the rest of the county. There are some important wildlife resources, specifically migratory and raptor species, whose habitats should be included as ESHAs.

## CC-BIO 2 ESHA Protection

The standard should be to avoid impacts to ESHA's. We recommend that:

2. Public access to ESHA's should be controlled not just to minimize disturbance but to avoid disturbance. We are also concerned that controlling the timing and intensity of access would be impossible and recommend the following language: Control public access so that it preferably avoids disturbance to wildlife by locating access paths away from ESHA's and ESHA buffers.

3. b. Mitigation measures that minimize or reduce impacts are not equivalent to measures that eliminate adverse impacts. Change this policy to read"...where elimination is not possible will, (mitigation measures) that reduce and compensate for environmental effects to less than significant levels." Such measures as increasing habitat elsewhere could be used.

We support more clearly establishing minimum mitigation ratios as recommended by staff.

Code Section 22.130.030 Environmentally Sensitive Habitat Area

We recommend retaining the list of special habitats: A. Central dune scrub; B. Coastal terrace prairie, C. Serpentine bunchgrass; D. Northern maritime chaparral. These habitats are not included in the suggested revised language and their importance should not be lost.

Code Section 22.64.050 b. provides that “a site assessment be prepared by a qualified biologist hired by the county and paid for by the applicant” if an initial assessment by the county indicates the presence of an ESHA. Throughout the LCP, wording should be clarified that this requirement applies to all biological submittals required from applicants.

#### CC-BIO 14 Wetlands

We support policies BIO-14 and BIO-19 from the LCPA Land Use Plan stated on page 39, Attachment 2. Wetlands would not exist in any location if the required hydrology did not exist, either as ground or surface water, for the specific period of time. There is no distinction in regulatory definitions that a wetland be “natural.”

Provision to continue grazing (Attachment 3 page 8) in wetlands, as provided in existing policy BIO-14, of April 1, 1981, clearly benefits property owners. To ensure there is no wetland loss, these areas should be recorded and there should be a requirement that they do not lose their wetland classification, even though characteristics may change due to use.

We are willing to go along with the above policy (also stated in Attachment 2, page 39), as long as the wetlands are recognized as wetlands and continue to be classified as wetlands even though the activities may have obliterated wetland characteristics, and as long as there is no exclusion for so called “artificial” wetlands.

The Farm Bureau has requested wetland exclusions for stock ponds, wallows and ditches. If historic wetlands are to be used and degraded through that use, new wetlands should be recognized as wetlands no matter what the perceived origin. Otherwise wetlands and the many benefits they provide would be lost in both ways.

#### C-BIO-20 WETLAND BUFFER ADJUSTMENTS (page 14)

A 100-foot wide wetland buffer should be required. A one-hundred foot wetland buffer has been the standard in Marin County for the last two countywide plans and should not be weakened just because a wetland is in the coastal zone. There should be no allowances for reducing the wetland buffer width, except to prevent a taking, i.e. if the property is so small that there is nowhere else to build. To do otherwise would weaken protections for these important habitats.

Also, this proposed policy allows for a wetland buffer adjustment if “The County determines that the applicant has demonstrated that a 100 foot buffer is unnecessary....” This indicates that applicants can hire and submit reports from consultants. We oppose this language and strongly recommend that it be clarified by inserting the Section 22-64-

050 that such reports shall be prepared by a qualified biologist hired by the county and paid for by the applicant.

#### C-BIO-21 WETLAND IMPACT MITIGATION

The no net loss provision in this policy is important to retain. The clarifications are all; beneficial except a requirement for 3:1 for off-site mitigation should be included.

#### C-BIO-25 STREAM AND RIPARIAN BUFFER ADJUSTMENTS (page 14)

Contains similar weakened language allowing for reduce buffer based on input from an applicant's consultant. The discussion above also applies here. We strongly object to the language suggested on page 48-49, Attachment 2. There should be no provision for reducing stream buffer width.

In no case should the buffer width be less than 100 feet on either side of the stream, as measured from the top of the streambank." as provided in LCP Unit 11 (see Attach 2, page 42).

#### C-BIO-24 COASTAL STREAMS AND RIPARIAN VEGETATION

We have consistently objected to allowing water supply and flood control projects in-streams because these facilities require dams, alter they hydrology and adversely impact wildlife and stream habitats. While the suggested addition of limiting language for water supply projects "where no other less environmentally damaging method of water supply is feasible, is an improvement, (Attachment 3, page 7), it and the flood control project policy would still result in significant adverse impacts to streams and should not be adopted.

#### C-BIO-5 b. SAFE HARBOR

The revised Safe Harbor language seems fine but warrants future work to clarify as recommended on page 9 Attachment 3

Thank you for considering our input.

Sincerely,



Barbara Salzman Co-chair  
Conservation Committee





# MARIN COUNTY FARM BUREAU

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

September 28, 2012

The Marin County Board of Supervisors  
Via e-mail c/o Kristin Drumm: [kdrumm@marincounty.org](mailto:kdrumm@marincounty.org)

Re: Local Coastal Program Amendments: October 2<sup>nd</sup> hearing

Dear President Kinsey and members of the board,

The Marin County Farm Bureau respectfully submits its comments and concerns on the Local Coastal Program Amendments (LCPA). Our letter will use staff report to address staff's recommendations, and we will use language from the Land use plan to address issues that we feel are not adequately addressed in the staff report.

To begin, Farm Bureau would like to recognize all the hard work by staff on this Local Coastal Plan update, they have done an incredible job working with so many different organizations and individuals.

Our first comment will be to offer support for the new section titled, **Policies for Interpretation of the Land Use Plan (INT)**. This will be beneficial for future staff for interpreting the policies. **C-INT-1 Consistency with Other Law** is very important, however, the language is inadequate. It does not inform the public of their constitutional rights. The language should be specific and clear about the property owner's rights and the government's obligations, so that if a landowner consults the Land Use Plan, he/she is able to respond effectively to unlawful attempts to burden or violate his/her property rights. Please refer to Attachment 3 where we offer a constitutionality clause that would fit nicely into your **Policies for Interpretation of the Land Use Plan (INT)**.

## **Policy C-AG-2**

*...For the purposes of the C-APZ, the principal permitted use shall be...horticulture, ~~viticulture~~,  
vermiculture...*

*Viticulture is a permitted use. Conditional uses in the C-APZ zone include...*

## **§22.68.030 – Coastal Permit Required**

A Coastal Permit is required for development in the Coastal Zone ...unless the development is categorically excluded, exempt, or qualifies for a De Minimis Waiver.

Development is defined in Article VIII of this Development Code and is interpreted to include ... the significant alteration of landforms.... On-going agricultural operations including cultivation, crop and animal management and grazing are not considered to be a significant alteration of land forms development.

### **Discussion**

Currently viticulture is listed as a principally permitted use. As agriculture is the primary use of the land and viticulture is agriculture, it should clearly stay as a principally permitted use and not be changed to a permitted use as staff is recommending.

Farm Bureau supports the changes to section 22.68.030 of the development code.

### **III. Intergenerational Housing**

- *LCPA Land Use Plan: Policy C-AG-5*
- *LCPA Development Code: Section 22.32.024; Land Use Table 5-1-a*

In order to support the viability of agriculture in the Coastal Zone and support Marin's existing family farms, the Planning Commission-recommended LCPA includes provisions to allow up to two "intergenerational homes" on agricultural properties in the Coastal Agricultural Production Zone (C-APZ) district, subject to density requirements. Coastal Commission staff and representatives of environmental groups have expressed concerns regarding the concept of intergenerational housing, which are addressed by staff in Part B. However, a brief summary of staff's responses is provided below.

- Agriculture in Marin County overwhelmingly consists of family farms. The ability of a family to live on the farm and to manage agricultural operations is essential.
- Intergenerational homes support multi-generational family farm operation and succession and should be considered part of the agricultural use of the property.
- All intergenerational homes would be subject to Coastal Permit review and extensive development standards related to issues such as access, clustering, and density requirements as well as criteria such as the applicant's history of and financial commitment to long term commercial agricultural production.
- Restrictive covenants would be required to ensure that intergenerational housing units are continuously occupied by the owner or operator's immediate family.
- Intergenerational homes would be subject to the total residential size limit for agricultural properties which would tend to encourage several smaller homes rather than one large estate home on a given property.

### **Discussion**

Farm Bureau strongly supports the concept of intergenerational housing as it is absolutely necessary to the survival of our family farms. However, 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, which would not only eliminate all development rights but eliminate the family's ability to grow in the future. 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. Farm Bureau asks that you allow additional intergenerational homes, beyond the first two, with a Use Permit (U), up to the zoning density. In addition, the "total residential size limit" needs to be removed. This aggregate cap was removed during the Countywide Plan Update and should be removed here as well.

**C-AG-6 Non-Agricultural Development of Agricultural Lands.** Require that non-agricultural development, including division of agricultural lands shall only be allowed upon demonstration that long-term productivity on each parcel created would be maintained and enhanced as a result of such development. In considering divisions of agricultural lands in the Coastal Zone, 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.

**Discussion:**

The word "enhance" is subjective. Also, the definition assumes the agricultural operation can be "enhanced," when that may not be case. Nor should it be required in order to have a successful operation. The words "and enhanced" should be removed. We should be striving to maintain agriculture, not force someone to "enhance" it. Enhancing agriculture requires a major investment of time and money, therefore this policy would de facto be discrimination. In fact, construction of additional infrastructure on the property may be needed to maintain the operation. This policy is further problematic because it does not define "maintain" or say how one would demonstrate how long-term productivity would be maintained.

**C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.**

Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP , and in particular the policies of the Natural Systems and Agriculture Element of the LUP.

**A. Standards for Agricultural Uses in the C-APZ:**

All of the following development standards apply:

1. 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 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.

4. In order to retain the maximum amount of land in agricultural productions or available for future agricultural uses, farmhouses, intergenerational homes, and agricultural homestay facilities shall be placed in one or more groups along with any non-agricultural development 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

### **Discussion**

This new language in C-AG-7.A.1 is trying to make sure that development does not occur on productive agricultural land. But the way it reads is confusing since it says that the facilities shall be sited to avoid agricultural Land, but all of our facilities on our ranches are going to have to be on our agriculture land. This can easily be fixed by inserting the word “productive” in front of the words agricultural Land. Please make this change in the development code as well,

### **22.65.040 – C-APZ Zoning District Standards**

#### **C. Development standards**

##### **1. Standards for agricultural uses:**

##### **a. Permitted development....**

Farm Bureau does not support the new language in C-AG-7.A.4. Please see our discussion below regarding the 5% of gross acreage.

### **C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.**

#### **B. Standards for Non-Agricultural Uses:**

In addition to the standards of Section A above, all of the following development standards apply to non-agricultural uses, including division of agricultural lands or construction of two or more dwelling units (excluding agricultural worker or intergenerational housing). The County shall determine the density of permitted residential units only upon applying Policy C-AG-6 and the following standards and making all of the findings listed below.

1. In order to retain the maximum amount of land in agricultural production or available for future agricultural use, homes, roads, residential support facilities, and other 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, or shall not require new road construction or improvements resulting in significant impacts on agriculture, natural topography, significant vegetation, or significant natural visual qualities of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations and shall be designed and sited to avoid hazardous areas. ~~Any new parcels created shall have building envelopes outside any designated scenic protection area.~~

### **Discussion:**

- We appreciate that the County recognizes that best management practices on a ranch might dictate that development may be allowed within more than one "group." However, we have a strong concern about limiting all non-agricultural development to 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.
- Are the scenic protection areas already mapped or can anyone just claim that it should be a scenic protection area at the time of permit approval and halt someone from getting a permit? A person's view of our ranch should not be allowed to prevent us from building where we need to. A viewshed should not take precedence over agriculture viability, and sometimes the placement of non-agricultural structures in a "scenic area" could reflect a best management practice for ag viability.

### **C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.**

#### **B. Standards for Non-Agricultural Uses:**

3. Consistent with state and federal laws, a permanent agricultural conservation easement over that portion of the property not used for physical development or services shall be required for proposed land divisions, non-agricultural development, and multiple residential projects, other than agricultural worker housing or intergenerational housing, to promote the long-term preservation of these lands. Only agricultural and compatible uses shall be allowed under the easement. In addition, the County shall require the execution of a covenant not to divide for the parcels created under this division so that each will be retained as a single unit and are not further subdivided.

#### **Discussion:**

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 hamstring 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 MALT Executive Director Bob Berner in his July 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.

### **C-AG-8 Agricultural Production and Stewardship Plans.**

1. ~~A master plan may require~~ Submission of an Agricultural Production and Stewardship Plan (APSP). ~~An APSP shall also be required for approval of land division or non-agricultural development of Agricultural Production Zone (C-APZ) lands when the master plan requirement has been waived,~~ except as provided for in (3) below.

#### **Discussion:**

Farm Bureau supports the changes in C-AG-8.

### **C-AG-9 Residential Development Impacts and Agricultural Use. Ensure that lands designated for agricultural use are not de facto converted to residential use, thereby losing the long-term productivity of such lands.**

3. In no event shall a single-family residence subject to these provisions exceed 7,000 square feet in size. Where one or two intergenerational residence units are allowed in the C-APZ zone, the aggregate residential development on the subject legal lot shall not exceed 7,000 square feet.

#### **Discussion:**

- 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. 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 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.

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

### **C-BIO-2 ESHA Protection Development Proposal Requirements in ESHAs.**

3. Avoid fences, roads, and structures that significantly inhibit wildlife movement, especially access to water. (*relocated text from PC-Approved C-BIO-1.2*)

### **Discussion**

- There are many instances where fences have been constructed to protect the ESHA by keeping livestock out yet are conducive to wildlife connectivity. This is a problem for agriculture. The same is true for agricultural roads. Agricultural roads have little traffic, are generally not located in environmentally-sensitive areas, and are closed to the public and pose no real threat to an ESHA.

Please Categorically Exclude agricultural activities, delete “fences” and add “paved public” before roads.

...

### ***Section 22.64.050 – Biological Resources (excerpt)***

#### **A. Submittal Requirements**

##### **1. Biological studies.**

- a. **Initial Site Assessment Screening** The Marin County Community Development Agency (CDA) shall conduct an initial site assessment screening of all development proposals to determine the potential presence of Environmentally Sensitive Habitat Area (ESHA). The initial site assessment screening shall include a review of reports, resource maps, aerial photographs, site inspection and additional resources as necessary to determine the presence of ESHA.
- b. **Site Assessment.** A site assessment shall be submitted for those Coastal Permit applications where the initial site assessment screening may be required to provide a site assessment based on a review of the best available scientific and geographic information reveals the potential presence of an Environmentally Sensitive Habitat Area (ESHA) within 100 feet of the proposed development. The permit will be and subject to a level of review that is commensurate with the nature and scope of the project and the potential existence of an Environmentally Sensitive Habitat Area (ESHA). A site assessment shall be prepared by a qualified biologist hired by the County and paid for by the applicant, and shall confirm the extent of the ESHA, document any site constraints and the presence of other sensitive resources, recommend buffers, development timing, mitigation measures or precise required setbacks and provide other information, analysis and potential modifications necessary to protect the resource, demonstrate compliance with the LCP. Where habitat restoration or creation is required to eliminate or offset potential impacts to an ESHA, a detailed Restoration and Monitoring Plan shall be required, as provided in this section. The Restoration and Monitoring Plan shall be consistent with the guidance provided in the California Coastal Commission LCP Guide for Local Governments, *Protecting Sensitive Habitats and Other Natural Resources* (undated).

### **Discussion**

Farm Bureau understands the need for a site assessment, but we believe the County should pay for it. If the County wants the assessment to see exactly where the boundaries of an ESHA may be, then they should be paying for that assessment.

**C-BIO-9 Stinson Beach Dune and Beach Areas.** Prohibit development that would adversely impact the natural sand dune formation, sandy beach habitat and potential prescriptive rights in the areas west of the paper street Mira Vista and the dry sand areas west of the Patios. Prohibit development west of Mira Vista, including erection of fences, signs, or other structures, to preserve the natural dune habitat values, vegetation and contours, as well as the natural sandy beach habitat, and to protect potential public prescriptive rights over the area.

#### Discussion:

Although this policy specifies particular non-agricultural lands, the concept could be applied to any private property, and is not legal. Landowners have a right to protect their properties from illegal trespassing. If the government prohibits landowners from being able to protect their properties by not allowing fences or signage the government is de facto taking the property without just compensation. We are shocked to see policy language that encourages future trespassing on *any* private property. Please remove the language about potential prescriptive rights.

#### **C-BIO-14 Wetlands**

3. Prohibit grazing or other agricultural uses in a wetland, except in those ~~reclaimed~~ areas presently (~~prior to the certification of this amended policy on [ DATE ]~~) used for such activities (i.e., grazing was established prior to April 1, 1981, the date on which Marin's first LCP was certified), ~~or in new areas where a Ranch Water Quality Plan has been approved by the California Regional Water Quality Control Board, or where the landowner demonstrates to the CDA's satisfaction that he/she has developed and implemented management measures in partnership with Marin Resource Conservation District, Natural Resource Conservation Service, or comparable agency to prevent adverse impacts to wetland functions and resources.~~

4. Where there is evidence that a wetland emerged primarily from agricultural activities (e.g., livestock management, tire ruts, row cropping) and does not provide habitat for any species that meet the definition of ESHA, such wetland may be used and maintained for agricultural purposes and shall not be subject to the buffer requirements of C-BIO-19 (Wetland Buffers).

#### Discussion

Just to make sure we understand this. In "3" above, if grazing exists prior to the certification of this new LCP in an area it will be allowed to continue. Please confirm this.

Farm Bureau strongly supports and appreciates the addition of "4" above.

**C-BIO-20 Wetland Buffer Adjustments and Exceptions.** 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 undertaken in the least environmentally damaging manner. An adjustment may be granted in any of the following circumstances:

1. The County determines that the applicant has demonstrated that a 100-foot buffer is unnecessary to protect the resource because any significant disruption of the habitat values of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. A wetland buffer may be adjusted to a distance of not less than 50 feet if such reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with incorporated siting and design measures, will prevent impacts which



would significantly degrade those areas, and will be compatible with the continuance of those habitat areas. An adjustment to the wetland buffer may be granted only where

### **Discussion**

While we appreciate the language that allows for setbacks to be under 100 feet, the new language would force us to have at least a 50 foot buffer. If the site assessment shows that only 25 feet is necessary we should be allowed to use that land to within 25 feet of the wetland. This minimum of 50 feet will eliminate a great deal of productive agricultural land. Please remove this new language beginning with “ A wetland buffer...”

**C-BIO-25 Stream and Riparian Buffer Adjustments and Exceptions.** Consider granting adjustments ~~and exceptions~~ to the ~~coastal~~ stream buffer standards in policy C-BIO-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:

1. The County determines that the applicant has demonstrated that a ~~100/50-foot~~ stream buffer (see Policy C-BIO-24.3) is unnecessary to protect the resource because any significant disruption of the habitat value of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. A stream buffer may be adjusted to a distance of not less than 50 feet from the top of the stream bank if such a reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with incorporated siting and design measures, will prevent impacts which would significantly degrade those areas, and will be compatible with the continuance of those habitat areas. An adjustment to the stream buffer may be granted only where:

### **Discussion**

The same argument applies here to the stream buffers as it did in C-Bio-20. Please remove the new language starting with “A stream buffer...”

## **22.32.026 – Agricultural Processing Uses**

### **A. Limitations on use:**

1. Processing of agricultural product is a Principal Permitted Use only if conducted in a facility not exceeding 5,000 square feet that is located at least 300 feet from any street or separate-ownership property line (and not within an Environmentally Sensitive Habitat Area [ESHA]) or its buffer.
2. To qualify as a Principal Permitted Use, the agricultural product that is processed must be grown principally in Marin County or at a site outside Marin County that is operated by the operator of the processing facility (“principally” shall mean at least 75% by dollar volume of the processor’s sales of the processed product). The operator of the processing facility must be directly involved in the agricultural production on the property on which the production facility is located.
3. “Agricultural product that is processed” does not apply to additives or ingredients that are incidental to the processing.
4. A Conditional Use Permit shall be required if the processing facility is open routinely to public visitation or if public tours are conducted of the processing facility more than 24 times per year.
5. Under these criteria, up to 25% by dollar sales volume of the agricultural product that is

processed could be grown outside Marin County (on sites not operated by the operator of the processing facility).

~~6. Any agricultural processing in a C-ARP zoning district is a Conditional Use requiring a Use Permit.~~

#### **Discussion**

Farm Bureau has concerns about the “75% by dollar volume”. The county has no way to enforce this without seeing every dollar made by the farmer, that is not the county’s business, the IRS doesn’t even ask us to separate out which goods sold are from where. We understand and support the notion that our products sold should be principally from Marin, but the definition given for “principally” is not an acceptable one. Please remove the definition in parentheses in number 2 above and remove number 5 in its entirety.

In addition we have a concern about number 4 above. The need for a conditional use permit for educational tours of our facility if it is “open routinely to public visitation or if public tours are conducted of the processing facility more than 24 times per year” makes no sense to us. We should be commended for opening our doors and educating the public about where their food comes from. This could prevent us from being able to have a tour for you the Supervisors because we scheduled 24 school visits already, do you want us to turn the children away! Please remove number 4.

### **22.32.027 – Agricultural Retail Sales and Facilities (Coastal)**

#### **A. Limitations on use:**

1. Retail sales must be conducted:

(a) Without a structure (e.g. using a card table, umbrella, tailgate, etc.); or

(b) From a structure or part of a structure that does not exceed 500 square feet in size and does not exceed 15 feet in height.

2. Items sold must be principally unprocessed produce grown in Marin County or at a site outside Marin County that is operated by the operator owner or lessee of the sales facility. For purposes of this section, “principally” shall mean at least 75% by dollar volume of sales. The operator of the sales facility must be directly involved in the agricultural production on the property on which the sales facility is located.

3. Sales of consigned produce grown in Marin County (or grown at a site outside of Marin County that is operated by a consignor whose principal agricultural activities are within Marin County) shall be allowed as part of the principal permitted use, provided that all produce being sold satisfies the criteria for the principal permitted use findings.

4. A Use Permit is required for picnic or recreational facilities. A Use Permit is also required for onsite consumption other than informal tastings at no charge of product offered for sale.

5. Sufficient parking is provided

#### **Discussion**

1b. Existing buildings should not have to be under 15 feet, most barns that may be used for sales are taller than 15 feet, this is extremely low.

2. Our same concern exists here about the 75% by dollar volume. Please at the very least remove the definition of “principally”. In addition, why must the product being sold be “unprocessed”. This would disallow all of our cheese makers from being able to sell their cheese. On farm sales should be categorically excluded consistent with the agricultural sales use for the A zoning district in the Marin County Development Code.

## 22.70.030 – Coastal Permit Filing, Initial Processing

### A. Application and filing.

2. Documentation of the applicant's legal interest in all the property upon which work is proposed to be performed. The area of the subject Coastal Permit shall include at least all contiguous properties under the same ownership. The area covered by a proposed project may also include multiple ownerships;

### Discussion

The new language proposed here is of some concern. It appears to us that a coastal permit on any property would be as if the proposed development was occurring on all contiguous parcels under same ownership. Does this mean that if a farmer owns two contiguous ranches, they would only be allowed 1 farmhouse and two intergenerational homes total, essentially eliminating all potential from one ranch completely? If this is the case, Farm Bureau strongly opposes this new language.

There are some definitions in the development code that we would also like to make some suggestions for. Bold and underlined will be new language and strikethroughs would be suggested deletions.

Agricultural Accessory Activity (land use) (coastal). This land use consists of accessory activities customarily incidental to agricultural operations, and which involve agricultural products produced only on site or elsewhere in Marin County, including but not limited to:

Agricultural Accessory Structures (land use) (coastal). This land use consists of an uninhabited structure for the storage of farm animals, implements, supplies or products, that contains no residential use, is not accessory to a residential use, and is not open to the public, including but not limited to:

Agricultural Production (land use) (coastal). This land use consists of the raising of animals used in farming or the growing and/or producing of agricultural commodities for commercial purposes, including **but not limited to** the following and substantially similar uses of an equivalent nature and intensity:

1. Livestock and poultry - cattle, sheep, **hogs**, poultry, goats, rabbits, **llamas**, and horses provided that horses are accessory and incidental to, in support of, and compatible with the property's agricultural production.
2. Livestock and poultry products (such as milk, wool, eggs).
3. Field, fruit, nut, and vegetable crops - hay grain, silage, pasture, fruits, nuts, seeds, and vegetables.
4. Nursery products - nursery crops, cut plants.
5. Aquaculture and mariculture
6. Viticulture
7. Vermiculture
8. Forestry

9. Commercial gardening
10. Beekeeping
- 11. Greenhouses**

Certificate of Compliance. A Certificate of Compliance is a document recorded by the County Recorder, which acknowledges that the subject parcel, which was typically created prior to current subdivision map requirements, **was determined** ~~is considered~~ by the County **to comply with the requirements of the State Subdivision Map Act Section 66499.35(a)** to be a legal lot of record. A Conditional Certificate of Compliance is issued ~~used instead of a Certificate of Compliance~~ to validate a **parcel that does not comply with the provisions of this division of the State Subdivision Map Act Section 66499.35(b)** ~~was not legally subdivided~~. Procedures for Certificates of Compliance may be found in Chapter 22.96 (Certificates of Compliance) of this Development Code.

Proposed new definition:

**Conservation easement (land use). A legally drafted and recorded agreement between a landowner and the County, land trust, or other qualified organization in which the owner agrees to place certain restrictions over all or portions of his/her land in perpetuity to retain it in a predominantly natural, scenic, agriculture or other open space condition. Except for the specific restrictions contained in the easement document, the owner retains all other rights in the property. The easement stays with the land and is therefore legally binding on present and future owners.**

Development. On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511 of the Public Resources Code). **Some activities involving a change in the density or intensity of use of land, or a change in the intensity of use of water, for agricultural production purposes, are Categorically Excluded.**

Historic Public Use ~~(coastal)~~. **Potential** use of private land as if it were public land in a manner that is substantial (rather than minimal) and continual, although not necessarily continuous, over a long period of time. **Potential historic use does not equate to prescriptive rights, which shall only be determined by a judge in a court of law. See Prescriptive Rights.**

Livestock Operations, Sales/Feed Lots, Stockyards (land use). This land use consists of specialized and intensive commercial animal facilities including animal sales yards, stockyards,

and cattle feedlots. Feedlots are any site where cattle are held or maintained for the purposes of feeding/fattening, for market ~~or milking~~, and where at least 60 percent of the feed is imported or purchased. Does not include slaughterhouses or rendering plants; see "Slaughterhouses and Rendering Plants." See also, "Dairy Operations."

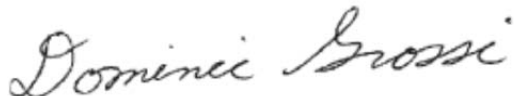
Discussion:

Dairy operations are a distinct Land Use category in Table 5-1-a, so milking should not be included in this definition. This is an easy change and **very** important.

Prescriptive Rights (~~coastal~~). **A decision by a Judge in a Court of law, that** ~~Public rights have been~~ **that are acquired over private lands, through use as defined by California law. Preventing the creation or ripening of public prescriptive rights is achieved by posting signs containing the language set forth in Civil Code Section 1008, "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code", and renewing the same, if they are removed, at least once a year; or by annually publishing such language in a newspaper of general circulation in the county in which the land is located. As another method to prevent the creation of public rights by implied dedication, the landowner may record in the office of the recorder of the county in which the land is situated a notice of consent to public use as provided in Civil Code Section 813. Landowners should refer directly to the statutes for details.**

In addition to our above comments, we would like to offer suggested revisions to the development code tables as attachment 2. There are many suggestions that stem from discussion previously mentioned in this comment letter. Please note though, that we are asking for cottage industries to be a principally permitted use. Governor Brown just signed into law AB 1616 into law that expressly allows the sale of cottage industry products for farmers.

Thank you for your time and considerations,



Dominic Grossi,  
President Marin County Farm Bureau



# MARIN COUNTY FARM BUREAU

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

October 2, 2012

Attachment # 3

## **Re: Recommended new "Constitutionality of Conditions" Clauses in LUP and Development Code**

### **Recommended Revisions to Applicable Development Code Sections and Analysis**

**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 ~~strike through~~.

### **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**.
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.



# MARIN COUNTY FARM BUREAU

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

## Attachment #2

### Recommendations

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

### Key to MCFB's Recommendations:

Only the C-APZ-60 column has been edited

Added text = **bold and underlined**

Deleted from original = ~~Strikethrough~~

✕ = 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	
	<b>AGRICULTURE, MARICULTURE</b>				
	Agricultural accessory activities	PP, E	PP, E	PP, E	22.32.021
	Agricultural accessory structures	PP, E	PP, E	PP, E	22.32.022
	Agricultural homestays, 3 or fewer guest rooms	PP(10)	PP(10)	--	22.32.023 22.32.115
	Agricultural homestays, 4 or 5 guest rooms	U(10)	U(10)	--	22.32.023 22.32.115
!	Agricultural Intergenerational Home (first <b>and second</b> )	PP	--	--	22.32.024
!	Agricultural Intergenerational Home ( <b>third and up to maximum zoning density allowance</b> )-second	U	--	--	22.32.024
	Farmhouse	PP (8)	PP	--	22. 32.025
!	Agricultural processing uses ≤5,000 sqft	PP	U	--	22.32.026
!	Agricultural processing uses >5,000 sqft	<del>U</del> <b>P</b>	U	--	22.32.026
!	Agricultural production, <del>except viticulture</del>	PP, E ( <b>11</b> )	PP, E	P	22.32.030
!	Agricultural product sales ≤500 sqft	PP	PP	U	22.32.027
!	Agricultural product sales > 500 sqft	<del>U</del> <b>P</b>	U	U	22.32.027
!	Agricultural worker housing	PP, <del>E</del>	U	22.32.028	
	Commercial gardening	PP, E	P	P	
	Dairy operations	PP, E	P	P(4)	22.32.030
	Educational tours (non-profit or owner/operator)	PP	PP	PP	22.32.062 22.32.115
!	Fish hatcheries and game reserves	<del>U</del> <b>P</b>	P	P	
	Livestock operations, grazing	PP, E(5)	P(5)	P	22.32.030
	Livestock operations, large animals	PP, E(5)	P(5)	--	22.32.030
!	Livestock operations, sales/feed lots, stockyards	P( <del>3</del> ,5)	P(3,5)	--	22.32.030
	Livestock operations, small animals	PP, E(5)	P(5)	--	22.32.030
	Mariculture/aquaculture	PP	PP	--	22.32.105
	Plant nurseries	PP	PP	--	
!	Raising of other food and fiber producing animals not listed under "agricultural production"	<del>U</del> <b>PU</b>	--	22.32.030	
!	Viticulture	PP, <del>E</del> ( <b>11</b> ) <b>P</b>	P	--	

**KEY TO PERMIT REQUIREMENTS**

Symbol	Permit Requirements
E	Certain uses may be exempt or Categorically Excluded from permit requirements.
PP	Principal permitted use. (2)
P	Permitted use. (2)
U	Conditional use, Use Permit required. (2)
--	Use not allowed. (See 22.02.020.E regarding uses not listed.)

**Notes:**

- (1) Listed land uses must be consistent with definitions in Article VIII (Development Code Definitions).
- (2) See Chapter 22.42 (Design Review) for separate, non-coastal permit Design Review requirements for all uses.
- (3) \* **Footnote missing**
- (4) Dairy operations allowed only on a site of 50 acres or larger.
- (5) Permit requirements are determined by Section 22.32.030 (Animal Keeping).
- (8) ~~Only one single-family dwelling per legal lot allowed.~~ **One Farmhouse per legal lot as a Principal Permitted Use (PP).** Does not include intergenerational homes or agricultural worker housing. **Additional 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.** To create additional parcels and additional single-family homes, see also 22.86 (Subdivisions).
- (10) Only allowed when the primary use of the property is for agriculture; see Section 22.32.115 (Non-Agricultural Uses). The non-agricultural standards contained in Section 22.32.115 do not apply to C-ARP zoned properties with an assigned density of one unit per 1-5 acres.
- (11) Viticultural operations must comply with the Marin County Grading Ordinance.**

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal Permit Requirements).

**Discussion:**

- Please note that we have added -60 to the C-APZ zoning designation in all the tables.
- During the Planning Commission hearings, the commissioners convened a working group of experts to discuss reasonable size requirements and limitations for agricultural processing and sales facilities, whose recommendations were summarily dismissed. For example, it was pointed out that manufacturers of cheeses would need ample storage space for aging their products, and storage needs were likely to increase when producers wanted to diversify their cheese varieties to meet market and economic demands. Additional permitting requirements and regulatory burdens threaten producers' economic viability.
- 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?

**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 Agricultura 1 Production	C-ARP Agricultura 1 Residential Planned	C-OA Open Area	
<b>MANUFACTURING AND PROCESSING USES</b>					
!	Cottage industries	<b>PP</b> ✕	U	--	22.32.060
!	Recycling <b>Facilities</b> - Scrap and dismantling yards	--	U	--	
<b>RECREATION, EDUCATION, AND PUBLIC ASSEMBLY USES</b>					
	Campgrounds	U	U	U	
	Educational Tours (for profit)	U	U	P	22.32.115
!	Equestrian facilities ( <b>Stables used for animals used in agricultural activities are exempt</b> )	<b>P</b> ⊕	P (9)	U	22.32.030
	Golf courses/country clubs	--	--	U	
!	Horses, donkeys, mules, ponies ( <b>Animals used in agricultural activities are exempt</b> )	<b>P</b> /U(5)	P/U(5)	U(5)	22.32.030
!	Hunting and fishing facilities (Private)	<b>P</b> ⊕	P	U	
	Hunting and fishing facilities (Public)	U	U	U	
	Libraries and museums	--	U	U	
	Off-road vehicle courses	--	U	--	
!	Private residential recreational facilities	<b>P</b> ⊕	U	U	
	Public Parks and playgrounds	U	U	P	
	Religious places of worship	--	U	U	
!	Rural recreation	<b>U</b> ✕	U	U	
!	Schools ( <b>excluding home schools</b> )	--	U	U	

**KEY TO PERMIT REQUIREMENTS**

Symbol	Permit Requirements
E	Certain uses may be exempt or Categorically Excluded from permit requirements.
PP	Principal permitted use. (2)
P	Permitted use. (2)
U	Conditional use, Use Permit required. (2)
--	Use not allowed. (See 22.02.020.E regarding uses not listed.)

**Notes:**

- (1) Listed land uses must be consistent with definitions in Article VIII (Development Code Definitions).
- (2) See Chapter 22.42 (Design Review) for separate, non-coastal permit Design Review requirements for all uses.
- (4) Dairy operations allowed only on a site of 50 acres or larger.
- (5) Permit requirements are determined by Section 22.32.030 (Animal Keeping).
- (9) Equestrian employee housing is permitted with Use Permit approval (See Chapter 22.48 Use Permits)

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal Permit Requirements).

**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. Many agricultural families must take off-farm jobs 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 1 Production	C-ARP Agricultural 1 Residential Planned	C-OA Open Area	
	<b>RESIDENTIAL USES</b>				
!	Affordable housing	<u>P</u> U	P	U	Chapter 22.22
	Group homes, 6 or fewer residents	P	P	--	22.32.080
	Group homes, 7 or more residents	U	U	--	22.32.080
!	Guest houses	<u>P(6,10)</u> X	P(6)	P(6)	22.32.090
	Home occupations	P(10)	P(10)	P(6)	22.32.100 22.32.115
	Religious residential retreats	--	U	--	
	Residential accessory uses and structures	P(6)	P(6)	P(6)	22.32.130
	Residential care facility, 6 or fewer individuals	P	P	--	22.32.080
	Residential care facility, 7 or more individuals	U	U	--	22.32.080
!	Residential second units	<u>P(6, 10)</u> X	P(10)	--	22.32.140 22.32.115
	Room rentals	P	P	--	
	Single-family dwellings, attached or detached	U(8)	U	U(7)	22.62.060 Chapter 22.65
!	Tennis and other recreational uses, <u>private</u>	<u>P</u> U	U	U	22.32.130

**KEY TO PERMIT REQUIREMENTS**

Symbol	Permit Requirements	Procedure is in Section:
E	Certain uses may be exempt or Categorically Excluded from permit requirements.	Chapter 22.68
PP	Principal permitted use. (2)	
P	Permitted use. (2)	
U	Conditional use, Use Permit required. (2)	Chapter 22.48
--	Use not allowed. (See 22.02.020.E regarding uses not listed.)	

**Notes:**

- (1) Listed land uses must be consistent with definitions in Article VIII (Development Code Definitions).
- (2) See Chapter 22.42 (Design Review) for separate, non-coastal permit Design Review requirements for all uses.
- (6) Only allowed where a single-family dwelling is first approved.
- (7) Only dwellings for teachers or custodial staff, or dwellings clearly accessory to the primary use of the site for agricultural purposes allowed.



- (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).
- (10) Only allowed when the primary use of the property is for agriculture; see Chapter 22.32.115 (Non-Agricultural Uses). The non-agricultural standards contained in Section 22.32.115 do not apply to C-ARP zoned properties with an assigned density of one unit per 1 – 5 acres.

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal Permit Requirements).

#### **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.
- Please see our discussion of Footnote (8) in Table 5-1-a.
- 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](http://www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf).

**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	
<b>RESOURCE, OPEN SPACE USES</b>					
	Mineral resource extraction	U	U	--	Chapter 23.06
	Nature preserves	U	P	P	
!	Water conservation dams and ponds	<del>P(10)</del> -U	P	P	
	Timber and tree production	U	U	--	23.04
	Wind energy conversion systems (WECS), Small Roof-mounted	PP	PP	PP	22.32.190
	Wind energy conversion systems (WECS), Small Freestanding, and Medium (coastal)	P	P	P	22.32.190
	Wind energy conversion systems (WECS), Large (coastal)	--	--	--	22.32.190
	Water wells or septic systems to serve development on adjoining land	U	U	U	
	Solar energy systems (coastal), roof-mounted	PP	PP	PP	22.32.161 22.42.055(2)
	Solar energy systems (coastal), free-standing	P	P	P	22.32.161
<b>RETAIL TRADE USES</b>					
	Building materials stores	--	U	--	
	Commercial storage and sale of garden supply products	U	U	--	
!	<del>Sales of agricultural products</del>	<del>P(8,10)</del>	P(8,10)	U	22.32.027
	Bed and breakfast inns, 3 or fewer guest rooms	P(10)	P(10)	--	22.32.040 22.32.115
	Bed and breakfast inns, 4 or 5 guest rooms	U(10)	U(10)	--	22.32.040 22.32.115
	Child day-care centers	U	U	--	22.32.050
	Child day-care - Large family day-care homes	U	U	--	22.32.050
	Child day-care - Small family day-care homes	P	P	--	22.32.050
	Cemeteries, columbariums, mausoleums	--	U	U	
	Kennels and animal boarding	U	U	--	
	Public safety/service facilities	U	U	U	
	Public utility facilities	U	U	U	
	Storage, accessory	P	P	P	
!	Veterinary clinics and animal hospitals	<del>U</del> X	U	--	
	Waste disposal sites	U	U	--	

**KEY TO PERMIT REQUIREMENTS**

Symbol	Permit Requirements	Procedure is in Section:
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E	Certain uses may be exempt or Categorically Excluded from permit requirements.	Chapter 22.68
PP	Principal permitted use (2)	
P	Permitted use. (2)	
U	Conditional use, Use Permit required. (2)	Chapter 22.48
--	Use not allowed. (See 22.02.020.E regarding uses not listed.)	

**Notes:**

- (1) Listed land uses must be consistent with definitions in Article VIII (Development Code Definitions)
- (2) See Chapter 22.42 (Design Review) for separate, non-coastal permit Design Review requirements for all uses.
- (4) Dairy operations allowed only on a site of 50 acres or larger.
- (5) Permit requirements are determined by Section 22.32.030 (Animal Keeping).
- ~~(8) Only one single family dwelling per legal lot allowed (does not include intergenerational homes or agricultural worker housing). To create additional parcels and additional single family homes, see also 22.86 (Subdivisions).~~
- (10) Only allowed when the primary use of the property is for agriculture; see Chapter 22.32.115 (Non-Agricultural Uses). The non-agricultural standards contained in Section 22.32.115 do not apply to C-ARP zoned properties with an assigned density of one unit per 1 – 5 acres.

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal) Permit Requirements.

**Discussion:**

- Water conservation dams and ponds for agricultural use should be Permitted Uses (P).
- Retail sales facilities for the sale of agricultural products are either a PP or a P in Table 5-1-a, depending on their size. Sales of agricultural products should also be a PP. This is redundant to Table 5-1-a; the entire line should be removed here.
- What better place for veterinary clinic or animal hospital than within an agricultural zone? It should be allowed with the proper use permit.
- Footnote (8) is irrelevant to this table.

**East Shore Planning Group  
P. O. Box 827  
Marshall, CA 94940  
(415) 663-8184**

September 29, 2012

Marin County Board of Supervisors  
3501 Civic Center Drive, Room #329  
San Rafael, CA 94903

For the October 2, 2012 BOS meeting on the Local Coastal Program

**STATEMENT BY THE EAST SHORE PLANNING GROUP REGARDING  
RETAIL AGRICULTURAL SALES AND PROCESSING FACILITIES AND  
COMMUNITY-SPECIFIC POLICIES REGARDING RETAIL SALES**

Dear Members of 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 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.

A major concern for ESPG regarding the original draft Local Coastal Program was the proposal to elimination of most permitting requirements for modest sized agricultural retail sales and processing facilities in our area. The conditional use permitting process has worked well in our area for many decades to ensure a balance between the commercial needs of agriculture (which ESPG strongly supports) and preservation of the extraordinary beauty and tranquility of the area for visitors and residents alike.

A recent example of how well the current process works is the Brader-Magee development, which the ESPG did not oppose in light of agreed conditions that limited the hours, numbers of visitors and manner of operations at the proposed brandy retail sales and processing facility. Hog Island Oyster Company also operates under a conditional use permit that limits hours, activities and the number of patrons that is generally satisfactory to the immediate neighbors and the community. Reasonable conditions like these are essential to appropriate commercialization in our area.

Since March 2009, ESPG has worked closely with the Planning Commission and Community Development Agency staff to help craft provisions that would balance these needs. The current version of the LCP, as approved by the Planning Commission, does not satisfy all of the ESPG objectives, but its carefully constructed provisions are a reasonable compromise that

serves everyone, and especially local agriculture, quite well. Under these provisions, many low-impact agricultural sales and processing facilities would not require a County use permit, but those with potentially serious impacts would require permitting, as they do now.

Now, as evidenced by a recent letter from David Lewis and Lisa Bush of the University of California Agricultural Extension (9/26/12), there is an 11<sup>th</sup>-hour effort to erase the three years of hard work on these issues and to open up Highway One and other areas in the Coastal Zone to permit-free commercial exploitation. Eliminating or changing the carefully crafted provisions approved by the Planning Commission will likely create even more traffic and behavioral problems on Highway One than we have already even with a permitting process: a driver arrested for DUI recently had just visited a local retail oyster sales facility before rolling his car, and the traffic and parking problems at oyster sales operations along Highway One continue to increase dramatically.

Also, with the changes proposed by Mr. Lewis and Ms. Bush, new sales and processing operations unrelated to east shore local agriculture will emerge simply to exploit the tourist flow, and they will attract even more traffic as people come for reasons unrelated to the coastal experience, turning Highway One into an attraction similar to Highway 29 in Napa.

We will not engage in a point-by-point debate as that has already occurred over the past three years in the form of testimony by stakeholders at Planning Commission hearings and conferences with individual Planning Commissioners and County staff (who have been very helpful and generous with their time during this process). Some of ESPG's detailed comments as the LCP draft emerged are presented in our letters to the Planning Commission posted at [http://www.co.marin.ca.us/depts/CD/main/pdf/planning/coastal/Letters/LCP\\_Letter\\_TOC.htm](http://www.co.marin.ca.us/depts/CD/main/pdf/planning/coastal/Letters/LCP_Letter_TOC.htm) and <http://www.co.marin.ca.us/depts/CD/main/lcp/Letters.html>.

There is a lot at stake for the future of the east shore of Tomales Bay, and we hope that you will approve the provisions in the staff report without amendment.

Sincerely yours,

*Lori Kyle*

Lori Kyle, President

CC: Brian Crawford  
Jack Liebster  
Kristin Drumm  
ESPG Board of Directors and LCP Committee

*Standard Note: This letter has been authorized by the ESPG Board of Directors, but has not been presented to or approved by our membership.*