University of California
Agriculture and Natural Resources

Cooperative Extension, Marin County

1682 Novato Blvd., Suite 150B
Novato, California 94947
(415) 473-4204 office
(415) 473-4209 fax
http://cemarin.ucdavis.edu

September 26, 2012

The Marin County Board of Supervisors
Via e-mail c/o Kristin Drumm: 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 RECCOMMENDATIONS

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

VALLEY FORD YOUNG FARMERS ASSOCIATION

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,

Anna Erickson
President,
Valley Ford Young Farmers Association
www.valleyfordyoungfarmers.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 characteristic, 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

Re: Local Coastal Program Amendments: October 2nd 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 hamstrings a farmer who may need to obtain financing and is forced to encumber his entire property, rather than a portion of it. We are not advocating for non-agricultural development or subdivisions, only that the development potential be justly compensated as guaranteed by our Constitution. In the LUP's Introduction, which references Coastal Act Section 30010, the County acknowledges that it cannot "grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation." The draft policy language of C-AG-7.B.3, violates Coastal Act Section 30010 and our Constitution

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

Also, in deliberations during the public processes, many people advocated for using the word "may" instead of the word "shall," including 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 s~~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 neginning with " A wetland buffer…"

C-BIO-25 Stream and Riparian Buffer Adjustments ~~and Exceptions~~. Consider granting adjustments ~~and exceptions~~ to the ~~coasta~~l 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 is a farmer owns two contiguous ranches, they would only be allowed 1 farmhouse and two intergenerational homes total, essentially eliminating all potential form 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** ~~P~~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

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 ~~strikethrough~~.

Policy XX & Development Code Section XX - Constitutionality of Conditions

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

Recommended Revisions to Applicable Development Code Sections and Analysis

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

Conservation Easement and other land exactions and takings

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

D. Building location:

> 1. Clustering requirement. Structures shall be clustered in a geologically stable, accessible location on the site where their visual prominence is minimized, consistent with needs for privacy. Clustering is especially important on open grassy hillsides; however, a greater scattering of buildings may be preferable on wooded hillsides to save trees. The prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography.
>
> In the C-APZ and C-ARP agricultural zones, non-agricultural development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use. **Consistent with Policy/Section XX**, non-agricultural development, including division of agricultural lands, shall only be allowed upon demonstration that long-term productivity of agricultural lands would be maintained and enhanced as a result of such development. **Consistent with Policy/Section XX**, non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, and shall not require new road construction or improvements resulting in significant impacts on agriculture, significant vegetation, significant scenic resources, or natural topography of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. Any new parcels created shall have building envelopes outside any designated scenic protection area.

Analysis and Discussion

The imposition of an affirmative agricultural easement is subject to the requirements of *Nollan* and *Dolan* as outlined in Policy/Section XX. Recently, a trial court struck down a similar requirement because there

was no nexus or proportionality between the easement requirement and the impact of the proposed development. *See Sterling v. California Coastal Commission*, No. CIV 482448 (Cal. Sup. Ct., Jul. 22, 2011).

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

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

G. Open space areas:

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

3. Open space uses. Uses in open space areas shall be in compliance with policies of the Marin County Open Space District. Generally, uses shall have no or minimal impact on the natural environment. **Consistent with Policy/Section XX,** Pedestrian and equestrian access shall be provided where possible, and reasonable. The intent is to serve the people in adjacent communities, but not attract large numbers of visitors from other areas.

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

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

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

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

1. Standards for agricultural uses:

a. **Consistent with Policy/Section XX,** permitted development shall protect and maintain

continued agricultural use, and contribute to agricultural viability.

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

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

2. Standards for Non-Agricultural Uses

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

a. Conservation easements. Consistent with state and federal laws **and Policy/Section XX,** the approval of nonagricultural uses, a subdivision, or construction of two or more dwelling units, excluding agricultural worker and intergenerational housing, shall include measures for the long-term preservation of lands proposed or required to remain undeveloped. Preservation shall be accomplished by permanent conservation easements or other encumbrances acceptable to the County. Only agricultural uses shall be allowed under these encumbrances. In addition, the County shall require the execution of a covenant prohibiting further subdivision of parcels created in compliance with this Section and Article VI (Subdivisions), so that each is retained as a single unit.

See analysis following D1.

Public Access

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

A. Application requirements.

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

Analysis and Discussion

While the County may consider evidence of historic public use, it is improper to ask a permit applicant to produce that evidence. The burden falls on the County to establish a prescriptive right; it may not coerce

a permit applicant into assisting in that process. Moreover, only a court may declare prescriptive rights in favor of the public. *See LT-WR, LLC v. Cal. Coastal Comm'n*, 152 Cal. App. 4th 770 (2007).

B. Public Coastal Access standards.

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

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

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

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~~
~~X~~ = Deleted original symbol for Use not allowed (–)
! = New column added at left to indicate where proposed changes made
(No changes recommended for Table 5-1.e)

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

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	AGRICULTURE, MARICULTURE				
	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 **and second)**	PP	--	--	22.32.024
!	Agricultural Intergenerational Home **(third and up to maximum zoning density allowance)** ~~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	~~U~~ **P**	U	--	22.32.026
!	Agricultural production~~, except viticulture~~	PP, E **(11)**	PP, E	P	22.32.030
!	Agricultural product sales ≤500 sqft	PP	PP	U	22.32.027
!	Agricultural product sales > 500 sqft	~~U~~ **P**	U	U	22.32.027
!	Agricultural worker housing	PP, **E**	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	~~U~~ **P**	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(**3*,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"	~~U~~ **P**U	--	22.32.030	
!	Viticulture	PP, **E (11)** ~~P~~	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 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	MANUFACTURING AND PROCESSING USES				
!	Cottage industries	**PP** ~~X~~	U	--	22.32.060
!	Recycling **Facilities**- Scrap and dismantling yards	--	U	--	
	RECREATION, EDUCATION, AND PUBLIC ASSEMBLY USES				
	Campgrounds	U	U	U	
	Educational Tours (for profit)	U	U	P	22.32.115
!	Equestrian facilities **(Stables used for animals used in agricultural activities are exempt)**	**P** ~~U~~	P (9)	U	22.32.030
	Golf courses/country clubs	--	--	U	
!	Horses, donkeys, mules, ponies **(Animals used in agricultural activities are exempt)**	**P**/U(5)	P/U(5)	U(5)	22.32.030
!	Hunting and fishing facilities (Private)	**P** ~~U~~	P	U	
	Hunting and fishing facilities (Public)	U	U	U	
	Libraries and museums	--	U	U	
	Off-road vehicle courses	--	U	--	
!	Private residential recreational facilities	**P** ~~U~~	U	U	
	Public Parks and playgrounds	U	U	P	
	Religious places of worship	--	U	U	
!	Rural recreation	**U** ~~X~~	U	U	
!	Schools **(excluding home schools)**	--	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 Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	RESIDENTIAL USES				
!	Affordable housing	**P** ~~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	**P(6,10)** ~~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	**P(6, 10)** ~~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**, private**	**P** ~~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.

FARM BUREAU RECOMMENDS:

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

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	**C-ARP** Agricultural Residential Planned	**C-OA** Open Area	
	RESOURCE, OPEN SPACE USES				
	Mineral resource extraction	U	U	--	Chapter 23.06
	Nature preserves	U	P	P	
!	Water conservation dams and ponds	**P(10)** ~~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
	RETAIL TRADE USES				
	Building materials stores	--	U	--	
	Commercial storage and sale of garden supply products	U	U	--	
!	~~Sales of agricultural products~~	~~P(8,10)~~	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	**U** ~~X~~	U	--	
	Waste disposal sites	U	U	--	

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.

(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 11th-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 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.

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

October 1, 2012

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

SUBJECT: LOCAL COASTAL PROGRAM AMENDMENTS (LCPA) – **Agriculture and Biological Resources**

Dear President Kinsey and Supervisors:

The following comments on the Draft LCPA are submitted on behalf of "Community Marin," a consensus document written by major environmental non-profit organizations in 1991, and currently completing its 3rd update. Because "Community Marin" is broad in its coverage, and not intended to address specific policies in the LCPA, our comments are necessarily limited to recommendations that can be supported by the document. Participating organizations may also submit individual comments on the subject LCPA.

We wish to commend CDA staff for their efforts over the past several years to reach out to all interested parties and their thorough analysis of outstanding issues and points of view. Staff has presented for your consideration a number of suggested alternatives to the Planning Commission-approved Draft LCPA. To facilitate your review of public comments, our recommendations are arranged to "track" with the **October 2, 2012, Staff Report, Attachment # 2,** with limited reference to **Attachment #4**.

I. **Agricultural Operations**

The issue concerns whether "grading, intensification and structures associated with on-going agricultural operations" should require a coastal permit. That is, under what circumstances would such activities be of a scale or character that meets the definition of "development," such as grading and terracing of land and installation of irrigation facilities? The Planning Commission separated viticulture from the list of routine agricultural activities and designated it as a permitted use, requiring a coastal permit as well as a separate permit under County Viticulture ordinance. The draft LCPA does not consider <u>other</u> conversions of agricultural operations to more intense use as "development," however, and therefore such conversions would not require a coastal permit. On the other hand, CCC staff has suggested that grading and intensification of agricultural operations might require coastal permits.

This subject is revisited in Staff Report, Section *VI.* ***Uses in ESHA and Site Assessments*** (page 28), again questioning whether crop conversion requiring grading, intensification, and structures . . .associated with ongoing agricultural operations qualifies as "development."

Response:
Community Marin has long held that changes in intensity of agricultural use and new agricultural uses, such as change from livestock grazing to row crops, should be subject to review, in this case to a coastal permit. (Note that this requirement would not apply to conversion from one type of row crop to another

unless such conversion involved significant new grading or intensity in use of water.) Community Marin's argument is based in part on the definition of "Development" (Article VIII, Chapter 22.130 – Definitions), which includes ". . .grading. . .; and, change in the intensity of use of water or of access thereto. . ." Staff argues that due to the pervasive lack of water in the coastal agricultural zone, requests for conversion to viticulture, for example, are rare. We contend that any conversion of agriculture that requires new grading, cultivation, and/or irrigation can affect surface and/or groundwater resources as well as alter sediment regimes in water courses, and therefore, should be subject to Coastal Permit.

Recommendations (double underline):

Policy C-AG-2: Viticulture is a permitted use. Other conversions of agriculture to a more intensive use, such as grazing to row crops requiring significant grading, terracing, and/or installation of irrigation facilities, are permitted uses (not principally permitted uses) requiring a Coastal Permit.

22.68.030 – Coastal Permit Required Development is defined in Article VIII of this Development Code and is interpreted to include . . .significant alteration of landforms . . and change in the intensity of use of water, or of access thereto. Ongoing agricultural operations including cultivation, crop and animal management and grazing are not considered to be . . .~~a significant alteration of land forms~~ development. Conversion of grazing land to cultivated land, requiring significant grading, terracing, and/or installation of irrigation facilities is considered "development," and therefore requires a Coastal Permit.

II. Diversified Agriculture

III. Intergenerational Housing

Community Marin makes no recommendations specific to intergenerational housing, but in general terms recommends that *". . .any residential development be secondary and subordinate to the primary agricultural use of sites*." Several other recommendations in the document limit the number of additional homes and total square footage for residences and call for clustering of non-agricultural buildings on agricultural sites. Community Marin participants also have raised doubts concerning the enforceability of restrictive covenants on intergenerational homes.

Our comments address two main concerns:

(1) the level of review for a "first" intergenerational home, compared to that for a second intergenerational home; and

(2) the enforceability of a covenant that restricts intergenerational homes to "immediate family".

Regarding level of review, **C-AG-2 (CPZ)** in the LCPA lists accessory structures or uses, such as one intergenerational home, agricultural product sales and processing, and homestay facilities,. . . as "necessary to the operation of agricultural uses" and, therefore, in the C-APZ as principal permitted uses. CCC staff does not agree and would like to see intergenerational homes and homestays categorized as residential, visitor-serving. . .uses as appropriate. . .and that such uses be required to adhere to strict development standards.

In Section III. *Intergenerational Housing*, the CDA staff report states that "all intergenerational homes would be subject to a Coastal Permit approval. The second intergenerational home . . . would also require a Use Permit approval. Accordingly, the siting and design of such homes would be subject to all LCP policies as well as the standards for intergenerational homes contained in (various sections cited in

the Code)". It appears that the first intergenerational home would receive a lesser level of review than a second intergenerational home.

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

Response:
The "first" intergenerational home should not be included as a principally permitted use under the definition of "agriculture." Rather, it should be subject to strict development standards, as recommended by CCC staff. This would mean that the "first" intergenerational home would be a permitted use, subject to both a Coastal Permit and a Use Permit, and the second intergenerational home would be a conditional use, subject to full environmental review.

Although Staff argues that restrictive covenants are commonly used by the County, such covenants are placed typically on physical conditions such as parking, public access, open space, etc., that can be easily monitored and enforced. A covenant that restricts occupancy of intergenerational homes to "immediate family" would be intrusive and difficult to monitor, and would raise numerous issues especially for future generations as families expand and become more complex. In our view, it could not be practically enforced by the County.

Recommendation:

C-AG-9 In the C-APZ zone, the principally permitted use shall be agriculture . . . as follows:
6. delete "~~one intergenerational home~~" (as a principally permitted use)

22.62.060 – Coastal Agricultural and Resource-Related District
1. C-APZ – Delete from principally permitted use of lands in the C-APZ "~~one intergenerational home~~

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

IV. Conservation Easements No comments

V. Types of ESHA and ESHA Definition

The Staff Report acknowledges the importance of terrestrial habitats and the species they support by designating them ESHAs (in addition to wetlands, streams, lakes, etc.). The Staff Report also cites several sensitive terrestrial habitats that are identified in the California Natural Diversity Data Base (CNDDB) and listed in the current LCP. The Alternative **C-BIO-1 2.** revises the list of terrestrial habitats that qualify as ESHA to include ". . . non-aquatic habitats that support rare and endangered species, coastal dunes as referenced in C-BIO-7 (Coastal Dunes), and roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats). The ESHA policies of C-BIO-2 (ESHA Protection) and C-BIO-3

(ESHA Buffers) apply to all categories of ESHA, except where modified by the more specific policies of the LCP." *Note that C-BIO-3 was deleted from the LCPA on 12/1/11, so is no longer relevant.*

The staff-recommended Alternative Definition in Code Section 22.130.30 differs somewhat from C-BIO-1 1., instead listing ". . .special-status species of plants and animals (i.e., listed under federal or California Endangered Species Acts or CNPS 1b or 2 categories". Missing from both list and definition are central dune scrub, coastal terrace prairie, serpentine bunchgrass, and Northern maritime chaparral, as found in the current LCP.

Response:
Community Marin does not use the term ESHA but contains numerous recommendations for protection of both wetland and upland habitats and sensitive species. Therefore, we find it a serious omission not to include other sensitive terrestrial habitats in the ESHA definition, whether or not they support listed rare and endangered species. These include coastal dunes, and roosting and nesting habitats, as listed in the alternative C-BIO-1, and habitats listed by the CNDDB (and cited in the current LCP) that are critical to maintaining overall biological diversity of agricultural lands. These latter include coastal dune scrub, terrace prairie, serpentine bunchgrass, and Northern maritime chaparral.

Recommendation:

To be consistent, both **C-BIO-1** and Code Section **22.130.030** should be revised to include as ESHAs: federal and State-listed listed rare and endangered species; CNPS-listed 1b and 2 plant species; coastal dunes, roosting and nesting habitats; as well as coastal dune scrub, terrace prairie, serpentine bunchgrass, and Northern maritime chaparral.

VI. **Uses in ESHA and Site Assessments**

The staff analysis lays out the objectives for C-BIO-1 and C-BIO-2 as they relate to allowable uses in ESHAs. These are to: reflect the language of the Coastal Act; carry forward policies from LCP Units I and II regarding habitat protection; fully protect ESHAs while avoiding "takings"; and establish standards and procedures for reviewing such proposals through site assessment.

Basically, the intent of staff in presenting an Alternative for Board consideration is to give highest priority to avoidance of ESHAs; maintain ESHAs in natural condition with exceptions in the Coastal Act for resource-dependent uses; and clarify development standards and the purpose of site assessments in evaluating and protecting ESHAs.

Response:
As stated above under V. *Types of ESHA and ESHA Definition,* Community Marin contains general recommendations aimed at protecting a variety of sensitive habitats and species, although it does not specifically reference the term ESHA. Accordingly, in most respects, the Alternative for Board Consideration, for both C-BIO-2, and Section 22.64.050 – Biological Resources, is a significant improvement over the PC-approved version of the LCPA. The reorganization of material and new language do a better job of protecting ESHAs and clarify procedures for determining the presence of ESHA and the parameters for avoidance and mitigation.

We have five questions or concerns:

- In C-BIO-2, ESHA Protection, 1. what is meant by "Prioritize avoidance of land use and development impacts to ESHA"? What criteria will be used to "prioritize"? Will these be developed in the first screening by staff to determine the presence of an ESHA? In a subsequent site assessment? Will such a "prioritization" determine the level of mitigation if disturbance to an ESHA cannot be avoided?
- In (Altenative) C-BIO-2 2. we agree with Marin Audubon Society that public access in ESHA should be controlled to avoid (not minimize) disturbance. This is best accomplished by locating any pathways away from ESHA and ESHA buffers. We do not agree that recreational trails in an ESHA are resource-dependent, as suggested in staff analysis on page 29.
- Under Alternative Section 22.64.050.A 1.b we agree that a "site assessment shall be prepared by a qualified biologist hired by the county and paid by the applicant." All such assessments must be prepared under County guidance, not by the applicant.
- Under the same Section, A. 1. c. 1) 6), the determination of ESHA buffer requirements deletes an important factor, which is behavior and movement of habitat dependent wildlife. These are important indicators of wildlife response to disturbance, going well beyond "migratory patterns of affected species", added by staff to 1) in the list of considerations for buffer requirements.
- Under the same section, A. 1. D, we are concerned that habitat mitigation ratios might be adjusted as determined through the site assessment.

VII. **ESHA Buffers**

The Staff Report attempts to satisfy the need to be consistent with provisions of the Coastal Act that protect ESHAs but do not specify a standard buffer width, and at the same time, establish workable and relatively stable standards. Notably, non-aquatic ESHAs present a greater problem than wetlands or streams, for which specific buffer widths have been set. The Staff Report suggests that, given the diversity and abundance of sensitive resources in the Coastal Zone, the LCP should avoid establishing arbitrary standards for individual species or habitats. CCC staff, quoted on page 35 of the Staff report, recommends otherwise: "*Regarding other terrestrial ESHA buffers, policies requiring buffer widths less than 50 feet should be reviewed and in most cases increased to 50 feet. In some cases, 100 feet or wider will be warranted."*

Response:

Community Marin does not recommend a specific width for buffers for terrestrial ESHAs as it does for streams and wetlands (See below). On the basis of general protection of sensitive habitats and species, however, a buffer of 50 feet would be considered an absolute minimum, subject only to upward adjustments based on biological site assessment. We note that an important factor for determining buffer needs as well as sensitivity to disturbance, that is ". . . the behavior and movement of habitat-dependent wildlife. . ." , has been deleted from C-BIO-3 3. a. as a factor to be considered in a biological site assessment.

Recommendation:

Add the following to C-BIO-3 3. ". . .Generally buffers for terrestrial ESHA shall be 50 feet, a distance that may be adjusted upward to 100 feet or more by the County as appropriate to protect the habitat. . ."

Add the following to C-BIO-3 3.: ". . .adjustments shall be made on the basis of a biological site assessment supported by evidence that includes but is not limited to: b. Habitat requirements of the ESHA, including behavior and movement of habitat dependent wildlife and migratory patterns of affected species and tendency to return each season to the same nest or breeding colony. . .

VIII. **Wetlands,** and **VI. Grazing in Wetlands (Attachment #4)**

The analysis of C-BIO-14 is presented in two separate sections of the Staff Report. This policy has undergone much discussion and several revisions. The first issue (in Attachment #4, Page 20 ff.) relates to a policy carried over from the existing LCP Unit II that caused confusion in Planning Commission hearings as to the meaning of prohibiting grazing "except in those areas presently used for such activities." After several discussions concerning the pros and cons of managed grazing in wetlands, and unsuccessful attempts to locate where grazing or other agricultural uses occurred in Marin prior to 1981 certification of the LCP that would be excepted from this policy, the staff now recommends returning to language in Unit II with a slight shift in words to clarify the date on which the first LCP was certified.

The second issue relates to ranchers' concern that wetlands may be formed in the course of agricultural activities and would thus become subject to regulation as such and create the requirement for buffers.

Response:

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

We are also aware of research that shows that wetlands can benefit from grazing but they can also be damaged, depending on a host of variables. Only site by site investigation could enable an informed response.

The second issue raises several questions as to underlying conditions that might cause a wetland to develop during agricultural activities. We refer the Board to the comments of Marin Audubon Society on this subject. As that letter points out, artificial ponds are often placed in locations where pre-existing conditions (springs, natural ponds, diked formerly tidal areas, etc.) provide the "natural" conditions for formation of an "artificial" impoundment or other wetland feature. Further, ditches are often dug in order to drain pre-existing wetlands. If they remain in place, they can convert wetland vegetation to non-native species (e.g., Lawson's Landing).

Recommendation:

As a general rule, Community Marin supports the recommended wording in C-BIO-14 3. (Page 22, Attachment #4).

We accept the staff recommended addition of C-BIO-14 4., with the understanding, however, that if an "artificial" water feature has replaced historic wetlands in the course of agricultural activities, the replacement should be considered "wetland" regardless of perceived origin.

IX. **Streams**

The staff analysis in this section attempts to clarify two issues: the difference between a riparian area and a stream buffer, and how the buffer for each should be measured; and what level of watercourse (stream) qualifies for regulatory protection. The report concludes that the stream buffer includes the riparian area, whereas the buffer for the riparian area extends landward of the resource itself. To resolve the problem, the LCPA establishes a two-part buffer calculation of 50 feet landward from the

outer edge of riparian vegetation, and a buffer of no less than 100 feet from the top of stream bank, including riparian vegetation.

The analysis of jurisdictional boundary for streams concludes that, although ephemeral streams receive protection in the 2007 Countywide Plan (if they are vegetated or support listed special status species), they should not receive jurisdictional protection in the Coastal Zone.

Response:
Community Marin contains numerous recommendations for protecting streams and their buffers (i.e., Stream Conservation Areas). It calls for strengthening protection policies to protect all ephemeral, intermittent, and perennial streams, whether solid or dashed blue line streams on USGS Quad maps. Recommendations also call for minimum 50 to 100-foot buffers from top of bank, even where little or no riparian vegetation currently exists. This level of protection acknowledges the importance of watershed-based planning and management of water resources. Ephemeral streams, even where not vegetated, play an important role in filtering water and controlling the rate, volume, and quality of runoff into perennial streams and downstream waters such as Tomales Bay.

The calculation of buffers, represented in C-BIO-24.3 of the LCPA adequately incorporates protection for both stream and the riparian area, but we do not support the provisions that allow for stream alterations (C-BIO-24.1), including dams, channelizations, or other substantial alterations to coastal stream for "necessary water supply projects." No criteria are offered to define "necessary water supply." We are also concerned that the Alternative for Board consideration weakens current stream and watershed protections by entirely eliminating ephemeral streams from the definition of streams (Coastal) in Code Section 22.130.30. As noted above, ephemeral streams play a critical role in a healthy watershed.

Recommendation:
The Alternative definition of Stream (coastal) in Code Section 22.130.030 should reinstate the deleted language: "In addition, those ephemeral streams that are not mapped by the U.S.G.S. if the stream (a.) supports riparian vegetation for a length of 100 feet or more, etc. . ."

X. **Buffer Adjustments**

The staff analysis concludes that occasions may arise when conditions of a site or nature of development merit consideration of adjustments to standard buffers for wetlands, stream, and riparian areas. The suggested Alternative considers granting adjustments in certain limited circumstances . . . for projects that are "undertaken in the least environmentally damaging manner, contingent on demonstration by the applicant that the 100-foot buffer is unnecessary to protect the resource.

Response:
The proposed language in C-BIO-20 and 25 would greatly weaken the protections that have been set up in policies like C-BIO-19 (Wetland buffers) or C-BIO-24 (Stream buffers). The language proposed is unacceptable on two counts: (1) it appears to rely on the applicant to demonstrate that the prescribed buffer is unnecessary; and (2) it deletes a clear set of exceptions (e.g., there is no feasible less environmentally damaging alternative, etc.) and substitutes ill-defined bases for adjustment. In both cases, the reduction from a standard of 100 feet to 50 feet is arbitrary and would not afford adequate protection.

Recommendation:
Language in C-BIO-20 1. and C-BIO-25 1. that would allow a wetland buffer to be adjusted to a minimum of 50 feet should be stricken from both policies. As stated by Marin Audubon Society (September 27, 2012), a 100-foot buffer to protect wetlands and streams (adjusted in the eastern urban corridor) has been standard in Marin County through the last two countywide plans and should not be weakened for wetlands in the Coastal Zone. Further, under no circumstances should it be up to the applicant to demonstrate whether a 100-foot buffer is unnecessary to protect the resource. . .

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

Sincerely,

Nona Dennis
for Community Marin

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

INVERNESS ASSOCIATION

Incorporated 1930

Post Office Box 382
Inverness, California 94937

October 1, 2012

Marin County Board of Supervisors

Via email: BOS@marincounty.org

Re: Agricultural production and retail sales (LCP Hearing 10/2/12, Issue II, Attachment #2)

Dear members of the Board:

The Inverness Association acts to protect and advance the rights and interests of property owners and residents of the Inverness area and to collect and expend funds for the construction and maintenance of trails, bridges, parks and beaches and for the protection, preservation and promotion of the Inverness area, the Inverness community, Tomales Bay and its watershed.

We have participated in nearly all of the LCP workshops and Planning Commission hearings in the last four years. We offer the following comments for the Board's consideration at the your October 2, 2012 LCP public hearing.

We commented at Planning Commission hearings on the advisability of maintaining agricultural processing and retail sales as conditional uses that require a Use Permit, particularly on the east shore of Tomales Bay, where weekend traffic can frequently result in congestion and impair the tranquility of the rural landscape.[1] Maintaining a case-by-case investigation of coastal development permits that could potentially increase traffic and impact local communities is, in our view, essential to preserving the coastal experience for visitors and residents alike.

Although the LCPA, as drafted, does not require all retail sales and agricultural processing to be conditionally approved, it at least limits the size of such ancillary activities that can be conducted without a User Permit. **We strongly recommend that the Board take no action that would increase the scale of agricultural production and retail sales operations that could be conducted without Use Permit review and approval.**

We hope that you will approve the provisions regarding retail sales and agricultural processing in the staff report without amendment.

Sincerely yours,

Nick Whitney, President

[1] http://www.co.marin.ca.us/depts/CD/main/pdf/planning/coastal/Letters/Inverness_Assoc-EAC_10-9-11.pdf

PACIFIC LEGAL FOUNDATION

October 1, 2012

Marin County Board of Supervisors
c/o Ms. Kristin Drumm
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

VIA EMAIL: MarinLCP@marincounty.org

Re: Comments for October 2, 2012 Public Hearing on LCPA Agriculture & Biological Resources re: Section 22.70.180 "Potential Takings Economic Evaluation"

Dear Supervisors:

For the past several years, Pacific Legal Foundation attorneys have been following with great interest Marin County's Local Coastal Plan Amendment process. As the nation's leading watchdog for private property rights, the Foundation has already commented on various provisions of the Draft LCP that raise serious constitutional concerns. *See* Pacific Legal Foundation's Letters to the Planning Commission: 11/3/2008, 6/19/2009, 6/22/2009, 7/22/2009 and 11/19/2009. In regards to the Planning Commission's most recent recommendations to the Board, we offer the following comments on Section 22.70.180 "Potential Takings Economic Evaluation."

While Section 20.70.180 is designed to further the worthy goal of ensuring that Environmentally Sensitive Habitat Area designations do not take private property without just compensation, it does so in a manner that unduly burdens Marin County residents and infringes on their constitutional rights to privacy. Under subsection (A), permit applicants whose property falls within ESHA are required to provide to the County numerous pieces of information that are either redundant of public records or are confidential. In either case, the County's demand for this information is irrelevant to a constitutional takings analysis.

Both our state and federal constitutions prohibit government from taking private property without just compensation. U.S. Const. amend. V; Cal. Const. art. I, § 7(a). Regulations of private property that "go too far . . . will be recognized as a taking." *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005) (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)). For regulations that neither involve a physical invasion of private property nor completely destroy its economic value, courts determine whether a taking has occurred by employing a case-by-case inquiry. They balance the "character of the governmental action" against the "economic impact of the regulation" along with the "extent to which the regulation has interfered with [the owner's] distinct investment-backed expectations." *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978); *see also Lingle*, 544 U.S. at 538-39.

HEADQUARTERS: 930 G Street | Sacramento, CA 95814 | (916) 419-7111 | FAX (916) 419-7747
ALASKA: 121 West Fireweed Lane, Suite 250 | Anchorage, AK 99503 | (907) 278-1731 | FAX (907) 276-3887
ATLANTIC: 1002 SE Monterey Commons Blvd., Suite 102 | Stuart, FL 34996 | (772) 781-7787 | FAX (772) 781-7785
HAWAII: P.O. Box 3619 | Honolulu, HI 96811 | (808) 733-3373 | FAX (808) 733-3374 OREGON: (503) 241-8179
WASHINGTON: 10940 NE 33rd Place, Suite 210 | Bellevue, WA 98004 | (425) 576-0484 | FAX (425) 576-9565
E-MAIL: plf@pacificlegal.org
WEB SITE: www.pacificlegal.org

It is unclear how the extensive information sought in subsection (A) is relevant to this balancing test analysis. For example, the "applicant's costs associated with the ownership of the property," (A)(10) and the amount of "any income generated by the use of all or a portion of the property over the last five (5) calendar years" (A)(11) do not illuminate the extent of the economic impact which an ESHA designation will visit on a particular property owner. The point of a *Penn Central* takings analysis is not to determine the smallest possible amount of economic value which a County must ensure to a property owner in order to avoid takings liability. Rather, the extent to which a regulation impacts a parcel of property may, in conjunction with the nature of that regulation and the property owner's distinct, investment-backed expectations, effectuate a regulatory taking *even if* the economic impact is not very large. That analysis, furthermore, does not involve pouring over a property owner's personal financial records or other proprietary information. The question simply is, prior to the regulation's enactment—or in this case, the ESHA designation—what were the permissible uses of the property and how has the regulation narrowed the scope of those uses.

In addition, asking property owners to turn over information that is proprietary and confidential in exchange for the right to develop property may constitute an unconstitutional exaction. As the U.S. Supreme Court articulated in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), a permit condition is permissible only where there is an "essential nexus" between the condition and the impact of the proposed development, such that the condition directly mitigates for the alleged impact. Moreover, the scope of that condition must be "roughly proportional" to the impact of that development. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Here, there is neither an essential nexus nor rough proportionality between the right to develop property and the requirement of turning over personal, confidential, and/or financial information to the County. Moreover, Section 22.70.180 fails to account for property owners' constitutional right to privacy as guaranteed by the state and federal constitutions. Cal. Const. art. I, § 1; *see NASA v. Nelson*, 131 S. Ct. 746, 751 (2011) (affirming the assumption that the Federal Constitution protects the privacy of personal information). As such, this requirement is likely unconstitutional and should be stricken from the LCP.

Sincerely,

PAUL J. BEARD II
JENNIFER M. FRY
Attorneys

Drumm, Kristin

From: IConlan@aol.com
Sent: Monday, October 01, 2012 11:55 PM
To: Drumm, Kristin
Cc: conlanranches@live.com
Subject: Ltr BOS for Oct 2, hearing.

Kristin, Will appreciate your submittal of this letter of protest to our Marin County Board of Supervisors, prior to the hearing October 2, 2012. Thank you for your courtesy and attention, as always. Ione

IONE CONLAN CONLAN RANCHES CALIFORNIA PO BOX 412 VALLE Y FORD, CA 94972

October 1, 2012

The Marin County Board of Supervisors

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

Re: Local Coastal Program: October 2nd hearing

Dear President Kinsey and members of the Board of Supervisors:

Let us begin with the premise, that we all have spent enormous time and effort in good faith, without malice toward anyone's point of view, in compiling a group of well meaning regulations to preserve our beloved Marin County Coastline, protect our waters, our lands, and your own constituencies.

Staff has been most accommodating and collegial, and greatly appreciated.

We all understand that these well meaning proposed regulations will irreparably affect the lives of many of your constituents for their lifetimes, as well as their successors in interest.

The issue here today, as I see it, at this October 2, 2012 hearing, is that agriculture in Marin County will ultimately become non-existent, because these regulations concerning farm and ranch lands, have been formulated in good faith by individuals, who however, have no

knowledge or experience in farming and ranching. Thus we have regulations that will destroy our family farms in West Marin County.

What is disquieting, is that those of us who have been on the land for many years, born and reared in California, on farms/ranches which have been in our families, with great personal sacrifice, continually in agriculture for over 145 years are ignored and dismissed in favor of newcomers who would impose their notions of values on our existing communities.

We *"Native sons & daughters of the Golden West"……* suddenly find ourselves controlled and dictated to, mandated on how we should live and manage our lives and farms/ranches by those who have been attracted to Marin County by the beauty of the lands *we have preserved, for which they now take credit.*

These newcomers to Marin County and California, have acquired the power of political status and are eager to push us around and usurp our ability to make a living and deny us the Constitutional right to continue our lawful way of life, which harms neither the environment nor others.

It is we who have continued to preserve our lands and conserved water for future generations…all of these LCP proposals well meaning of course, are designed and **formulated without a scintilla of knowledge of farming and ranching operations.**

Yet these proposals, claim *"superior knowledge…know best"* and with political position imposes upon us, the farmers and ranchers, who have been working the land, preserving it in agriculture for years***…….find these well meaning good folks, have the power to destroy farms and ranches in Marin County based on their uninformed intelligence.***

Worthy of repeating, as one of your well meaning appointed Planning Commissioner stated, *"farmers don't have to live on the land…I know many who don't"……. (Commissioner Greenberg)*

We know of some too. (All public record) They live in NYC, Malibu, Piedmont, Tiburon, Palm Springs, Palm Beach, and many other areas, and collect mail box income, including government farm subsidies, financed by taxpayers.

The West Marin farming and ranching community does not fall into that category.

We must be physically present daily 24/7, to put up the chickens, ducks, turkeys for the night, so that they are not ravaged and painfully torn to shreds, killed by predators; water our livestock twice a day; daily ride the farm/ranch to check on livestock to help pull a birthing calf, rotate our cattle to preserve pastures, check fences and nightly lock our gates and be physically present on our lands for security to deter pilfering and cattle disappearance-- we are busy sunup to sundown. We barely can take the time to represent ourselves today, before our Board of Supervisors, while our farm/ranch chores await us.

We do not have the luxury of cell phone service, because towers are not permitted or allowed in our areas, so if power or telephone land lines are out of service by pole or wire disturbance, we have no ability to call for emergency health and safety services.

There is something terribly wrong with this picture. And we ask our Supervisors to correct this health, welfare, and safety issue.

Your appointed Planning Commissioners, did not consult with farmers and ranchers, and ignored many complaints and suggestions of farmers/ranchers, which are frequently dismissed with a wave of the hand, "*those farmers (out in West Marin) didn't ask for generational housing for thirty years, so why do they need them now" (Commissioner Holland)*

I ask this Board to place this communication on file as my public documented notice, that I, a West Marin farmer/rancher object to the regulations which have been incorporated in the presented LCP without adequate consultation by stakeholder farmers/ranchers providing input to the Marin County Planning Commissioners, who have ignored reasonable suggestions.

OBJECTIONS:

1 C-BIO-2 ESHA Protection Page 6, Oct 2, 2012 BOS Attachment #1 Executive Summary of Key Issues

> *"3. Avoid fences, roads, structures that significantly inhibit wildlife movement, especially access to water"*

This kind of language is more appropriate for open space and state and federal park systems, not farm/ranch agriculture. Fencing on private farms and ranches are built and designed at great expense to keep our livestock and especially our bulls within our farm/ranch perimeters for public safety reasons, so as not to allow livestock to enter into the county roads and harm the public. (And for which each farmer/rancher is held *strictly liable* in the event of an accident to passing vehicles, pedestrians and bike riders.)

2. Ongoing Agricultural Activities should not require a permit.

This includes, but is not limited to, brush clearing; crop rotation; pasture rotation; pond & reservoir cleanout maintenance, plowing, no-till, aerating, ring rolling, disking, seeding, grading, fertilizing; fence post digging; fence remove and replace; tree (ever green, apple & stone fruit) planting; crop, vine (vineyard); orchard planting; harvesting; irrigation, mainline and surface pipelines, risers, remove and replace pumps & water systems, installation of filter units, tanks and drip tape; ranch road repairs and maintenance; culvert replacements; road grading (blacktop and bedrock placement); type and number of livestock and small domestic farm animals, tree trimming; fire hazard foliage & cleanup; repairs and

maintenance of corrals, farm shops, tack sheds, large and small animal and poultry shelters; and all similar and customary farm/ranch activities.

Formal Objection *"permits required for development"* should not include any of the above usual and customary farming/ranching maintenance activities as well as a landowner's management and financial decisions to change increase or decrease farm animals, crops, convert to orchard or evergreen forest planting.

Nor should farmer be required to obtain a permit to plant berries, grapevines, pumpkins, apples or any other agricultural commodity

That is akin to requiring an architect or lawyer to obtain an additional extra specific county permit for designing a church or writing a real estate deed, respectively. (Obviously inherent in their licensed profession)

Formal Objection I expressly object to the Planning Commission's permitted status removal of the Bed and Breakfast which was allowed since the mid 1980's by the CCC

I expressly object to merging of parcels, clustering of farm/ranch buildings, restrictions on cumulative square feet of total structures, extracting easements as a condition of permit, trails through farm/ranch lands, tours restricted to non-profits, size of farm stands, and processing facilities, denial of cottage industries.

And the most outrageous restriction of all, if after expensive permits and delays, the farmer/rancher is allowed to build a home, it is required that such home building must not be placed in the view shed of a passing vehicle on a county road so as not to offend the view of a person passing by, en route to point B from point A. What kind of nonsense if this? May I object to the placement of your home on your lot, in your community which may impair my view of the church steeple?

What have we allowed ourselves to become here? Whose tail is wagging the dog? Is this our *out of state rule maker* designing our lives to their values? Has a farmhouse on a private farm become offensive?

Formal Objection to the *conclusion* stated on page 3, Oct 2, 2012 BOS Attachment #1 Executive Summary of Key Issues:

"The LCPA adds size limits on the farmhouse and the intergenerational housing which will help protect Marin's agricultural land from the pressure to convert to large rural estate developments"

(Emphasis mine)

This is an offensive outrageous conclusion. Unreasonable farm housing size limitations may destroy agriculture, because it discourages generational living and additional housing.

Formal Objection to personal views of authors of regulations and proponents that would preclude *"large rural developments" (whatever that means to them)*

What has taken place in our fine Marin County, that we have allowed out of state imports, & *appointed* Planning Commissioners to decide the size of our farm kitchens and bedrooms *"size limits on farmhouse"*

Please note, we have preserved our farms and ranches (some for 150 years) long before these out of state imports came into Marin County. Have they been successful in blowing George Lucas of Skywalker Ranch out of the County, and now seek to destroy family farms, which have been in existence long before they even thought about relocating to California and Marin County?

What's going on here? What is the problem with intergeneration families living in one large home? Why can not the home be large enough to accommodate grandmother and grandfather, son or daughter, and their young children?

That has been traditional living on farms for many generations, and has been common in Europe for centuries. Why shouldn't family members working outside the farm live in the family farm complex?

Who are these governmental employees and appointed & elected officials who are attempting to "socially engineer" how we should live, solely by restricting the size of our homes, who should live with us, and their occupations?

Note presently, the intergenerational housing plan may only be provided to a family member who is actively engaged in the farming operation, so that if son is a fireman, or works at the local bank not allowed!

Oh, and add to that the unconstitutional taking of requiring a conservation easement as a condition of "land division" and permitting.

What is going on here?

Commissioner Greenberg stated, *"I don't want Marin County to become another Napa*". Are we to stand idly by, while an appointed Planning Commissioner ***unilaterally*** determines how a County may develop in the future?

I ask this Board to consider carefully the awful and unreasonable restrictions which have been placed upon our family farms/ranches, in this LCP

The farmers/ranchers in West Marin are not factory farms. We are small individual family farms, most generational farms, such as ours. We are Certified Organic, Grass Fed, Animal

Welfare Approved, and we have preserved land and water over the generations for over 145 years.

We object to pompous ill informed third parties (many out of state imports) who claim a greater concern than we for our own lands.

We urge this Board to review the agricultural restrictions, form a committee of qualified farmers & ranchers for consultation, and remove the objectionable portions of this document relating to agriculture.

We farmers/ranchers have the same goals as the myriad of "Environmental" Organizations who protest our right to farm, only we are hands on and have already preserved the lands.

We are not weekend invasive species weed pullers and bird watchers, we perform such daily, we are passing by stewards of our lands, with the goal of leaving our lands even more beautiful than when we assumed stewardship.

We do this, all the while preserving land and water for future generations and we will not allow our right to make a living, to be so flippantly dismissed by well meaning third parties who have no knowledge of what they speak.

Ione Conlan

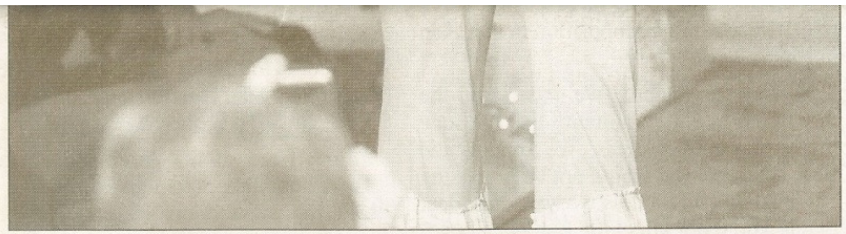
PS I support and agree with the protests and proposals of the **Marin County Farm Bureau**, on which I serve as a Director with my fellow family farmers. I am also a Director on the Board of the **California Beef Cattle Improvement Association**, CBCIA, the education arm of the California Cattlemen's Association, as well as memberships in many other organizations, including a **Lifetime Membership in the Sierra Club**, since the 1980's.

Conlan Ranches California
www.conlanranchescalifornia.com
Marin T (707) 876-1992 & 876-1893 F (707) 876-1894
PO Box 412 Valley Ford, CA 94972

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

Local Coastal Program Amendments (LCPA)
Agriculture and Biological Resources
Attention Kristin Drumm Kdrumm@marincounty.org
Dear Chairman Steve Kinsey and Supervisors,
You state that you want to "Strengthen the viability of the local agriculture economy and community." Marin county farmers want this also. Farmers and ranchers in Marin County do not want more county development restrictions placed on then in order to maintain their agricultural heritage. Our family wishes that you take into consideration the letters from Marin County Farm Bureau and University of California Agriculture and Natural Resources regarding agriculture and biological resources for the LCPA. These organizations have put a lot of time and thought into the update process of the LCP. They represent the farmers and ranchers of Marin County that also helped in implementing written policies to continue to protect both agriculture and the environment of Marin.
With longstanding stewardship practices of ranchers, Marin County residents have enjoyed the beautiful landscapes and wonderful bounty from farmers for generations. Marin County produces large amounts of milk and beef. These last few years proved to be an extreme challenge to be profitable. Historical prices on corn due to the drought across the states along with over 40% of the crop going to ethanol made income plunge for the farmer. (See West Marin Citizen 9/20/12-"Dairy task force set to begin" By Lynn Axelrod) In over 60 years farmers have made significant progress reducing their carbon footprint mainly do to technology. Farmers have gotten more efficient using fewer acres and less water to produce food for us. Farmers have to utilize the land that they farm to be twice as productive to make a profit in today's world of demand with out harming the environment. On average California loses approximately 55,000 acres of farmland per year or about one square mile every four days. Between 1984 and 2008, more than 1.3 million acres of farm and grazing lands were lost in California.
Marin County Farm Bureau has proposed policies to promote flexibility and long-term viability of family farms and ranches. Mandatory conservation easements as conditions of permit approval and other takings without compensating the landowner 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 infrastructure, public access or other public good. All farmers have a stake in following regulations and best management practices to protect the health of people, their farm and the environment. Caring for the land, air and water is a responsibility farmers share with the local community. Farmers work with government agencies and university experts to develop new technologies aimed at conserving natural resources and the environment.
Our family would like to take this opportunity to thank you for your support of agriculture in Marin County as well as in the Point Reyes National Seashore.
Sincerely, The Spalettas 22000 S.F.D. blvd., Pt.Reyes, Ca 94956

Nicholas Spaletta 10/2/12



Jade Ismail and **Nick Whitney were two of over a dozen locals that strutted on the runway for *'Funk and Flash'*** – a fundraiser for the 25th Anniversary of the West Marin Community Services and its thrift store – that played to a packed house last Saturday night at the Dance Palace. *Photos by Matt Gallagher*

In the Land of Milk and Money

Dairy task force set to begin

By Lynn Axelrod

When California Food and Agriculture Secretary Karen Ross began organizing a 32-member California Dairy Future Task Force she may have been thinking about the kind of distress that dairyman Dominic Grossi described to the *Citizen* last week:

"Imagine waking up and working all day long seven days a week as dairymen do and not only do you not get paid, you then have to borrow money to stay in business and feed your family."

Grossi, who heads the Marin Farm Bureau and runs his family's dairy in Novato, was summing up the anguish of many farmers who are coping with one of the bleakest economic periods in living memory.

Secretary Ross said the task force was needed to change an outdated system and to create new markets. The group will have its first meeting in Modesto on October 23 and 24. Their charge is to produce recommendations by the end of the year.

THE COST IN LIVES

The need for change was driven home by this summer's drought – the worst in more than 60 years, with officially declared disaster areas in 32 states. It drove up feed prices at the same time dairies continued coping with losses sustained by the national economic collapse of 2008 to 2009.

Milk production costs had soared by 28 percent from 2006 to 2009. Feed costs alone increased 33 percent in 2007 and went up another 12 percent in 2008, according to a study issued by McKinsey and Company in 2010. The reasons included the conversion of corn, a dairy feed staple, to produce ethanol; crop shortfalls from bad weather around the world; and speculation on anticipated poor grain harvests.

Most dairy producers' margins of profit "went negative" by the spring of 2009 and large chunks of equity were lost. That year 100 California dairies closed and several farmers committed suicide.

Ross asked members to read an earlier re-

See • Dairy *page 3*

ISSN 1946-9217

Volume 6
Number 13
September 20, 2012
PO Box 158,
Point Reyes Station, CA
94956
415-663-8232
editor@westmarincitizen.com

Locals push for more time on Tomales Bay vessel plan

By Summer Brennan

At a public hearing for the new Draft Tomales Bay Vessel Management Plan held Tuesday at the Dance Palace, West Marin residents and boaters voiced concern over the new plan's recommendations, asking for more time to consider options and for public comment.

Together with the California State Lands Commission, the Gulf of the Farallones National Marine Sanctuary last month published a draft of the new plan that aims to streamline the permitting process for moorings and reduce environmental harm. But despite the involvement of a 2007 working group representing boating associations, shellfish growers, commercial fishermen, shore-side property owners and others, many feel the plan is flawed and that more public input is needed.

After a hurried presentation by Sanctuary superintendent Maria Brown, speakers were given two minutes each to publicly voice their comments about the plan. Many expressed distress over what they saw as poor science on eelgrass habitat in Tomales Bay, flawed recommendations for mooring technology, and a lack of communication with stakeholders.

"My main concern is that we still don't have enough input from locals," Marshall resident George Clyde, who served on the original working group, said during the public comment period. "We should reopen the working group process." He encouraged the Sanctuary to establish a new working group to help address the issues being raised by the public before publishing another draft, let alone before issuing a final one. "As one who cares about the credibility and the reputation of the Sanctuary, I

See • Locals *page 12*

In this Citizen:

Measure A Endorsement
Page 2
Shoreline Parcel Tax
Page 3
Burning Man First-Hand
Page 5
Road Hazards
Page 6
Heirloom Produce
Page 8
Michael Whitt Poetry
Page 15

port by McKinsey that was issued in two parts in 2006 and 2007. It examined how to create a "Consumer-Driven Dairy Growth Strategy." "The Secretary believes it is a foundation upon which to begin building a future for the dairy industry," Steve Lyle, the department's public affairs director, told the Citizen.

The study made five core recommendations: minimize environmental costs; continue investing in promotion, marketing and product innovation; increase investments in production efficiencies; reform laws and regulations; and refinance the state's quota system. Quota is an entitlement system that dairies must qualify for. It allows a dairy to receive a minimum share of the revenue that is pooled from all California dairies.

MARIN COSTS SKYROCKET

Milk is the "long-standing premier commodity for Marin," county Agricultural Commissioner Stacy Carlsen wrote in his 2011 crop report. It produced 44.7 percent of the total agricultural value.

Marin has 27 cow dairies according to Ellie Rilla, the Community Development Advisor at U.C. Cooperative Extension. Of these, 17 are what she terms "non-organic," with three to four transitioning to organic production. Rilla was the U.C.C.E. Marin director for 21 years until 2009.

Marin's conventional dairies today receive $16 to $18 for every hundred pounds of milk, according to Farm Bureau president Grossi. The return to dairies is based on a highly complicated state formula. He told the *Citizen*, "This is actually a pretty high price by historical standards and is looking like it may go up another dollar in the near months, but unfortunately our cost of production has continued to skyrocket.

"I can't speak for other dairymen but I can tell you that our cost per CWT [every 100 lbs.] is about $19 right now. This is the highest it has ever been."

So the bottom line is that costs are greater than return by about $1. This may not seem much by itself but if an average conventional Marin dairy milks about 400 cows that produce about 26,000 lbs. of milk per day, the daily loss is $260 per day, or $95,000 per year. The number of cows in Central Valley dairies, Rilla said, run between 5,000 and 10,000.

Ethanol production has dramatically impacted what Grossi pays for corn feed. Before 2006 he never paid more than $145 per ton, and often $120. Last year the cost was between $270 and $300. Recently he was quoted $374. Alfalfa, another feed staple, is also "at all time highs."

Local organic milk producers in Marin and Sonoma are not immune from price fluctuations. In 2011 they were asked by their processor Clover Stornetta to accept a steep cut in milk prices and to cut production. A number of them broke their long ties to Clover and switched to another processor, Organic Valley, because of a soured relationship.

GLOBAL FORCES IMPACT DAIRIES

The impact of globalism also hit U.S. dairies hard during the so-called Great Recession, according to the 2010 McKinsey report. Exports shrank from 11 percent in 2008 to five percent the next year.

There were several reasons. A strong U.S. dollar reduced buying by traditional importers such as Japan and India. Aggressive cost-cutting in New Zealand and the European Union outstripped sales by domestic producers who did not do the same. They lost 15 percent of global market share. Other burdens included drying up of credit, less eating away from home, and a continuing trend of decreased domestic demand.

India and China are developing their own dairy industries, which foretells ever-shrinking markets for U.S. exports.

Since 1996 the dairy industry has endured five increasingly severe boom-and-bust cycles. The export market is unpredictable. The federal dairy price support program ("buyer of last resort") is increasingly less useful in stabilizing prices because of domestic and global politics. The U.S. milk pricing system lags in signaling consumers' behavior, leaving producers unclear on when to reduce production.

Despite the series of crises and individual tragedies, California is ranked first in the nation in production of total milk, butter, ice cream, yogurt, nonfat dry milk, and whey protein concentrate, and is second in producing cheese, according to the California Food and Ag Dept.

Dairy farms produced $7.6 billion in annual sales in 2011 from 41.4 billion pounds of milk, more than one-fifth the nation's total production. To keep its place amid natural challenges and global politics, the state appears to be rebooting for the 21st century.

west marin environmental action committee

ESTABLISHED 1971

October 2, 2012

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

Dear Supervisors:

The Environmental Action Committee of West Marin (EAC) has been intimately involved in the Marin Local Coastal Program amendment process since it began in late 2008. EAC has attended every workshop, public meeting, and all public hearings at the Planning Commission in 2011 and 2012. We are invested and committed to ensuring that a strong, balanced, and fair Amendment results from this multi-year process.

EAC would like to thank the County staff for their tireless work. In the past 15 months, they have produced over 4,000 pages of planning and code documentation, amendments, errata and other explanatory documents. We greatly appreciate their dedication and very hard work!

EAC strongly believes that the proposed LCP amendments must be measured against the existing Certified LCP, not the Countywide Plan or any other document except the Coastal Act. The Marin Planning Commission's approved draft would, in some cases, weaken coastal resources protections. Even with staff proposed amendments, changes are still needed.

EAC has approached the following comments in a spirit of compromise. We have provided text additions to the main issues raised by staff and offer language that we think would be acceptable to the Coastal Commission. Our goal is to allow family farmers to continue to thrive while providing the maximum protections for our sensitive environmental resources. To that end, EAC supports provisions that allow traditional agricultural families to continue operations while balancing requirements that discourage subdivision, impacts to environmentally sensitive habitat areas (ESHAs), and scattered development patterns.

Thank you for your consideration of our concerns.

Amy Trainer
Executive Director

Bridger Mitchell
President, EAC Board of Directors

Topic: **Grading permit requirements**

Staff Item: Attach. #2, I, pages 2-3

Concern: Threshold for when a grading permit is required [150 cubic yards] is too high [equivalent to approximately 15 dump truck loads].

Discussion: Recent certified LCPs have included Coastal Development Permit (CDP) requirement for 20 cubic yard or more of earthen material. Unless some kind of county permit is required, 15 dump truck loads can be excavated, filled, or moved without requirement of mitigation measures for water quality.

Recommendation: Add language to the LCPA that creates an expedited CDP process for grading that involves 20 cubic yards or greater of earthen material:

> "Grading" within the coastal zone means any excavation, stripping, cutting, filling, stock-piling, or any combination thereof which alters twenty (20) cubic yards or more of land or vegetation. Where such grading is not part of a CDP involving other development, a CDP shall be required. This CDP will require that the permit recipient implement and carry out best management practices to protect stream, creek, and bay water quality.

Topic: **PPU (Principal Permitted Use)**

Staff Item: Attach #1 (p. 3), #2 (p. 9) – Issue II

Concern: Coastal Commission requires that residential use on agricultural parcel be appealable

Discussion:

1. LCPA identifies intergenerational houses as PPU, and consequently not subject to appeal to the Coastal Commission.
2. Coastal Commission has consistently held that the Coastal Act requires that residential uses on agricultural parcels are appealable:
   - In two appeals of Marin County coastal permits the staff found that residential development is not a principal permitted use in the agricultural production zone.1
   - For Mendocino County's LCP amendments the Commission found that only forest production uses are the principally permitted use in the timberland production district and rejected that county's inclusion of residential uses for purposes of appeal.[2]

Recommendation: **Revise the draft LCP Amendments to designate agricultural production as the one Principal Permitted Use on C-APZ parcels.**

C-AG-2
… the principal permitted use shall be …
6. accessory structures or uses … ~~one intergenerational home,~~ …

[1] Hansen-Brubaker (2/14/03), Brader-Magee (9/2/10).
[2] Mendocino County LCP Amendment No. MEN-MAJ-1-08 (4/28/11).

Requirement of a Single PPU
Three Excerpts from Coastal Commission documents

Coastal Commission appeals under the Marin LCP where Coastal Commission staff report said residence is not the PPU in C-APZ.

1. Coastal Commission staff report[3] on **Hansen-Brubaker appeal** (2/14/03):

4.0 Appeal Process
4.3 Appeals under the Coastal Act
…
"

Under Coastal Act Section 30603 only one use can be the designated "principally permitted use" for purposes of appeal. Since Zoning Code Section 22.57.032 allows for the designation of more than one principally permitted use, the approved residential development cannot be considered as the principally permitted use of the agriculturally zoned site. Moreover, even if, residential development may be considered a principally permitted use if it is the subject of an approved master plan, no master plan was prepared for the approved development. Thus, the approved residential development cannot here be considered a principally permitted use. Therefore, the approved development is appealable under Section 30603(a)(4) of the Coastal Act.

2. Coastal Commission staff report[4] on **Brader-Magee appeal** (9/2/10):

"Pursuant to Coastal Act Section 30603(a)(4), this approval is appealable to the Commission because the approved project involves development approved by a coastal county (i.e., the proposed single family residence) that is not designated as the principal permitted use in the Coastal, Agricultural Production Zone (C-APZ-60) in the certified zoning ordinance."

> The Commission did not adopt its staff's recommendation that the appeal itself did not present a substantial issue. Rather, nine commissioners voted to find substantial issue; the substantive appeal hearing has not been scheduled.

3. Certified Mendocino County LCP Amendment

Coastal Commission staff report[5] (4/28/11)

[3] Hansen-Brubaker, Th-9a, Appeal No. A-2-MAR-02-024, page 6.
[4] Brader-Magee, W10a, 9/2/10, Appeal No. A-2-MAR-10-022, page 2.
[5] Mendocino County LCP Amendment No. MEN-MAJ-1-08
Th6a, 4/28/11

"…
The Commission found that the zoning district standards of the County's IP do not clearly establish which of the identified uses allowed in the zoning districts would or would not be appealable to the Commission consistent with Section 30603(a) of the Coastal Act. Section 30603(a) directs, in applicable part, that "*After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:…(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map…*" (emphasis added). However, rather than designate one principally permitted use for purposes of appeal, the recognized permissible land uses within the zoning district standards of the County's IP list numerous types of development and activities for the TP zoning district which are not functionally related to one another so as to be viewed as multiple examples of effectively one use type or group, such as a main use together with customarily accompanying accessory and ancillary uses (e.g., single family residence, attached or detached garage, fences, and storage sheds). Thus, to more clearly establish which of the identified uses would or would not be appealable to the Commission for the subject property, the Commission adopted Suggested Modification No. 1 as follows (text deletions and additions suggested by the Commission are formatted in ~~strikethrough~~ and bold double-underlined text …

Sec. 20.364.010 Principal Permitted Uses for TP Districts.
The following use types are permitted in the Timberland Production District:
(A) Coastal Residential Use Types.
Family Residential: Single-family;
Vacation Home Rental.
(B) Coastal Agricultural Use Types.
Forest Production and Processing: Limited;
Tree Crops
(C) Coastal Open Space Use Types.
Passive Recreation.

For purposes of appeals to the California Coastal Commission, pursuant toSection 20.544.020(B)(4) of the Coastal Zoning Code and Section 3060 3(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) for APNs 126-180-10 & 126-180-11 is "Coastal Agricultural Use Types: Forest Production and Processing: Limited." Although this PPU is not appealable to the Coastal Commission pursuant to Section 20.544.020(B)(4) of the Coastal Zoning Code or Section 30603(a)(4) of the Coastal Act, development on APNs 126-180-10 & 126-180-11 may be appealed to the California Coastal Commission pursuant to other applicable provisions of Section 20.544 of the Coastal Zoning Code and Section 30603 of the Coastal Act. All development other than this PPU is appealable to the California Coastal Commission pursuant to Section 20.544.020(B)(4) of the Coastal Zoning Code and Coastal Act 30603(a)(4), as well as any other applicable provisions of Section 20.544 of the Coastal Zoning Code and Section 30603 of the Coastal Act.

”

Mendocino County adopted the modified LCP Amendment by ordinance March 22, 2011. The Coastal Commission then certified the LCP amendment 5/12/11.

Topic: **Intergenerational Housing** – C-AG-5

Staff Item: Attach. # 2, III, pages 11-15

Concern: This is a new use and opens up the potential construction of new residential homes in the agricultural protection zone.

Discussion: EAC supports intergenerational housing that will allow family farms to continue in West Marin. EAC supports this new residential use on C-APZ lands without a requirement to subdivide or dedicate a conservation easement.

However, EAC believes that because this is housing in the most productive and protected agricultural lands, it should be subject to full environmental review and appeal. In addition,
-- the first IG house should be a permitted use, *not a PPU.*
-- how will the county monitor/enforce a covenant that immediate family live in these houses when "immediate family" isn't defined?
-- A restrictive covenant is needed to prevent IG housing from being subdivided from the farmhouse.

Recommendation: Include and add the following underlined language in the adopted LCPA:

Section 22.32.024 – Agricultural Intergenerational Homes (Coastal)

…

A. Permitted use, zoning districts. Up to two intergenerational homes in addition to the Farmhouse may be permitted in the C-APZ for members of the farm operator's or owner's immediate family. An equivalent density of 60 acres per unit shall be required for each home, including any existing homes (i.e., a minimum of 120 acres for a Farmhouse plus one intergenerational unit and a minimum of 180 acres for a Farmhouse plus two intergenerational homes). Intergenerational family farm homes shall not be subdivided from the primary agricultural legal lot.

…

D. One Intergenerational Home: One intergenerational home on a qualifying lot is a ~~principal~~ permitted use in the C-APZ.

E. Second Intergenerational Home: A second intergenerational home occupying a lot is a conditional use, subject to Use Permit approval in compliance with Chapter 22.48 (Use Permits). Intergenerational homes shall not be subject to the requirements for a Master Plan, Agricultural Production and Stewardship Plan, or permanent agricultural conservation easement.

Section 22.1302.030 – Definitions

F. Restrictive Covenant. Intergenerational housing requires the preparation and dedication of a restrictive covenant running with the land for the benefit of the County ensuring that intergenerational housing will continuously be occupied by the owner or operator's immediate family. The covenant must include, at a minimum, the following:

1. A detailed description of the intergenerational home or homes.

2. Assurance that any change in use will be in conformance with applicable agricultural protection zoning, building and other ordinances and noting that all appropriate permits must be issued and completed prior to any change in use.

3. Assurance that the intergenerational housing will not be subdivided from the primary agricultural lot and farmhouse.

Topic:	**Conservation Easements** C-AG-7
Staff item:	Attach. # 2, IV, pages 16-20
Concern:	Support retaining the dedication/sale of a conservation easement when property is subdivided.
Discussion:	EAC supports the staff recommendation that no conservation easement should be required for up to two inter-generational houses, a farmhouse, or agricultural worker housing *provided that* the County makes it clear that residential development within the C-APZ zoning district is subject to appeal to the Coastal Commission.
Recommendation:	Adopt staff's recommendation with respect to conservation easements if and only if a sentence is added to the Principal Permitted Use definition of "agriculture" that residential development [farmworker housing, 1st inter-generational housing, farmhouse] is subject to appeal.

Topic: **Development Proposal Requirements in ESHAs – C-BIO-2**

Staff Item: Attach. # 2, VI, pages 26-33

Concern: ESHA impacts are allowed if avoidance is not "feasible."

Discussion: The language in C-BIO-2 raises many questions. ESHA impacts are allowed if elimination is not "feasible." Mitigation measures must eliminate adverse impacts "when possible." C-BIO-2.1 requires us to "protect ESHA against disruption of habitat values", but in C-BIO-2.4 this is watered down to a statement that disruption of habitat values should be "avoided."

Among the issues raised by this vague and contradictory language are:

a. Is an alternative that is less environmentally damaging <u>infeasible</u> if it requires a smaller footprint or costs more than another project?
b. If an effort is made not to disrupt habitat values, but disruption nonetheless occurs, has it been <u>avoided</u>?
c. On what basis will it be determined that mitigation measures which would eliminate adverse environmental effects are not <u>possible</u>?

Recommendation:

BIO-2.4

a. There is no ~~feasible~~ less environmentally damaging alternative
b. Mitigation measures are provided that will eliminate adverse environmental effects ~~when possible or when elimination is not possible, will minimize and reduce adverse environmental effects to less than significant levels~~.
c. <u>There is no disruption</u> of the habitat values. ~~is avoided.~~

Topic: **Terrestrial ESHA Buffers** – C-BIO-3

Staff Item: Attach. # 2, VII, pages 34-36

Concern: Need to establish minimum 50-foot buffer; current language is fuzzy

Discussion: The staff report states under C-BIO-3 that, "Generally, buffers for terrestrial ESHA shall be 50 feet" but that the buffer "may be adjusted by the County."

Recommendation: Modify the quoted language above in C-BIO-3 to read:

C-BIO-3

3. Establish buffers for terrestrial ESHA to provide separation from development impacts. Maintain such buffers in a natural condition, allowing only those uses that will not ~~significantly~~ disrupt the habitat. ~~Generally~~ Buffers for terrestrial ESHA shall be a minimum of 50 feet, a distance that may be increased by the County as appropriate to protect the habitat value of the resource.

Topic: **Wetlands** – C-BIO-20

Staff Item: Attach. # 2, VIII, pages 37-39; LCPA LUP page 27

Concern: Row crops and development should not encroach into wetlands and wetlands buffers. Ditches that drain wetlands should be regulated.

Discussion: EAC is willing to compromise that wetlands historically grazed prior to April, 1981 will continue to be allowed to be grazed. However, staff also proposes to allow exceptions for agriculture that exclude the "narrow drainage ditches" – presumably that are draining wetlands - from regulation. The county must first clarify that these ditches are not in fact draining wetlands that should and would otherwise be regulated by the Coastal Act.

We do not object to an adjustment of wetland buffers to a minimum of 50 feet in the case of certain artificial wetlands such as urban drains, detention ponds, flood control facilities, or for certain uses allowed by the Coastal Act.

Recommendation:

Do not consider "feasibility" relating to maintenance of 100-foot buffers.

Do maintain current 100-foot buffer standard, which could be greater based on a biological site assessment.

Topic: **Streams and Stream Buffer Exceptions** – C-BIO-24 and 25

Staff Item: Attach 2, IX, pages 40-41

Concern: Adjustments to the Stream Buffer should be allowed only in certain, clearly identified circumstances, not broadened out as is proposed. Language in the existing LCP has been weakened by relaxing the standards for exemptions to buffer standards and expanding causes for exceptions.

The new minimum buffer size is set at "50 feet from the top of the stream bank," which allows incursion into riparian vegetation, which is ESHA.

Discussion:
We agree with the proposal to establish a minimum buffer size for certain clearly identified uses: for access and utility crossings, when a lot is located entirely within the stream buffer, and for necessary water supply and flood control projects.

In addition, C-BIO-25.2 provides a broad exception for any case in which development outside a stream buffer would be more environmentally damaging than development within the buffer.

However C-BIO-25.1 goes too far in allowing adjustments in any case where a consultant can argue that it is justified. *It is a catch-all clause that will encourage virtually every applicant to claim that a smaller buffer is appropriate*. This is a recipe for gridlock in the Planning Department as staffers try to sort through competing scientific claims. C-BIO-25.1 should be eliminated.

The proposed LCPA (BIO-25.4) would allow exemptions to stream buffer standards whenever a parcel "is located substantially within a stream buffer." In the current LCP and Coastal Development Code, this exemption applies only "when a parcel is located entirely within a stream buffer area."

The current LCP allows an exemption from stream buffer standards in cases where "development outside a stream buffer would be more environmentally damaging than development within the buffer." But the proposed LCPA would also allow exemptions for cases in which development outside a stream buffer is "infeasible."

The use of the word ***infeasible*** **concerns us because it is vague and undefined**. Does a higher cost to build outside the stream buffer make a project "infeasible"? Would a project be "infeasible" if building outside the stream buffers meant the footprint would have to be reduced? What evidence will be required to demonstrate infeasibility?

A buffer limit of 50-foot from the top of the stream bank fails to account for riparian vegetation. **The minimum buffer for streams should be 50 feet from all ESHA**, as it is for wetlands and terrestrial ESHA.

Recommendation: Adopt more narrowly tailored language that includes an absolute minimum buffer standard:

BIO-25.1 ~~The County has determined that the applicant has demonstrated that a 100/50 foot~~ ~~stream buffer 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 all ESHA ~~from the top of the steam 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."

BIO-25.2 "Where a finding based upon factual evidence is made that development outside a stream buffer area ~~either is infeasible or~~ would be more environmentally damaging…"

BIO-25.4--Return to existing language: "When a legal lot of record is located entirely ~~substantially~~ within a stream buffer area…"

Topic: ESHA Buffer Adjustments – C-BIO-20

Staff Item: Attach. 2, X, pages 45-49

Concern: Language goes to far to reduce wetlands buffers.

Discussion: **C-BIO-20.1 is too broad and invites widespread exemptions to wetland buffers**. It should be eliminated as is and revised.

Recommendation:

C-BIO-20.1

~~The County determined 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.~~

Where a finding based upon factual biological evidence is made the development outside a wetland buffer would be more environmentally damaging to the wetland resources than development within the wetland buffer, limited development of principal permitted uses may occur with such area subject to appropriate mitigation measures to protect water quality and habitat values. ~~An adjustment to the wetland buffer may be granted only where~~ A wetland buffer may be adjusted to a distance of not less than 50 feet if

a. There is no feasible less environmentally damaging alternative:

...

Topic: **Clustering** – C-AG-2

Staff Item: Attach. # 4, II, pages 5-9

Concern: - Requirement to cluster is loosened from current LCP.
- Assessment of clustering should occur with first proposed development as proposed under Constraints Map and Ranch Plan For Development below.

Discussion: The existing LCP requires that "all development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Development, including all land converted from agricultural use such as roads and residential support facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space."

The proposed LCPA loosens this requirement by allowing development on agricultural lands to be clustered "in one or more groups, to the extent feasible." Unless this language is supported by a requirement for the applicant to submit a Constraints Map or a Ranch Plan For Development then it is an unguided and unacceptable standard.

Recommendation:

See Master Plan topic discussion below with specific proposed new language.

Adopt:

1. The requirement for a Ranch Plan For Development for all new development proposed in C-APZ zone.
2. The requirement for a Constraints Map for all new development in other coastal zoning districts.

Topic: **Master Plan -> Coastal Development Permit** C-AG-7

Staff Item: Attach. #3 (p. 6), #4 (pp.14-17) - Issue IV

Concern: Coastal Permit should effectively replace Master Plan on agricultural parcels.

Discussion: A *master plan* encompasses the entire property, including multiple parcels, and makes conceptual plans for all significant future development. It identifies ESHAs and necessary buffers, establishes building envelopes, and provides conceptual direction for roads, utilities, and other development that will be further refined in individual permit applications.

A *coastal permit* generally address one building and its associated developments (road, utilities, landscaping, etc.). Under the LCPA, the first coastal permit on a C-APZ parcel might approve a farmhouse and ancillary structures; at a later date, the owner could apply for a second coastal permit for an intergenerational house.

The planning staff has recommended two important changes in the draft LCPA that ensure that (a) the area covered by a coastal permit includes contiguous properties under the same ownership, and (b) in instances when a master plan is issued it will be consistent with any coastal plan requirements.

In order to include all of the current master plan standards and conditions *three additional changes are needed in the LCPA*:

(1) Include corporate, as well as private, ownership in the standard for "same ownership" of agricultural parcels.
(2) Require submission of Constraint Map/Ranch Plan for Development necessary to obtain a comprehensive view of the coastal resources in the entire C-APZ parcel or parcels under an owner's control. (Submission of a Constraints Map is currently discretionary).
(3) Require a finding that ensures that all C-APZ structures that could potentially be developed are included in the Constraints Map and are sited to protect coastal resources.

EAC-RECOMMEND ALTERNATIVE LANGUAGE (with staff-recommended changes shown in underlined text and EAC-recommended additional changes in double-underlined text):

22.44.030 – Application Filing, Processing, and Review

…

B. Project review procedure. Each application shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of this Chapter and with the Countywide Plan and Community or Specific Plans. Where a Coastal Permit is also issued for the project, the standards and conditions of the Master Plan shall be consistent with the requirements of the Coastal Permit in accordance with Section 22.60.020.

22.60.020 – Applicability

The requirements of this Article apply to all proposed development and new land uses within the Coastal Zone. These requirements apply in addition to all other applicable provisions of this Development Code. In the event of any perceived conflict between the requirements of this Article and any other provisions of this Development Code, this Article shall control.

22.70.030 – Coastal Permit Filing, Initial Processing

A. Application and filing.

…

1. Project plans and supporting materials sufficient to determine whether the project complies with all relevant policies of the Local Coastal Program. A comprehensive Constraints Map shall be required for any proposed development in any ESHA or ESHA buffer, in any area subject to or contributing to environmental hazards, or any development that would obstruct significant views. The Constraints Map shall identify locations that would avoid coastal resources, and would be consistent with the policies and standards of the LCP and §22.70.070. For all development proposals in the C-APZ district a Ranch Plan for Development shall be required, which includes components of the Constraints Map as well as the requirements of §22.70.070.N.

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 and Constraints Map shall include at least all contiguous properties held under common private and/or corporate ownership, and may at the Agency's direction include properties held under multiple ownerships.

…

22.70.070 – Required Findings

The applicable review authority shall approve a Coastal Permit only when it first makes the findings below in addition to any findings required by this Article. Findings of fact

establishing that the project conforms to the requirements and objectives of the Marin County Local Coastal Program shall be made as enumerated below. The findings shall reference applicable policies of the Marin County Local Coastal Program where necessary or appropriate.

…

N. In the C-APZ district all development proposals shall prepare a Ranch Plan For Development that identifies and includes the requirements of the Constraints Map of section 22.70.030 and identifies all significant structures that could eventually be permitted on the owner's parcels in the C-APZ. No building shall be constructed, maintained or used other than for the purpose specified on the Constraints Map and plans as approved. The County will pay for the cost to prepare the Ranch Plan For Development, which shall be kept on file to inform future development proposals for the property.

22.130.030 Definitions.

Constraints Map. A map or equivalent exhibit depicting ESHAs, ESHA buffers, building envelopes for structures, natural resources and views, and conceptual directions for roads, utilities and other development.

Ranch Plan For Development. A Contraints Map that is based on a biological site screening and potentially a site assessment on C-APZ zoned lands that is prepared for and included with the Coastal Development Permit application and filing. The Ranch Plan will depict all potential and anticipated development, including a farmhouse, inter-generational housing, farmworker housing, all necessary utilities, roads and other infrastructure for such residential development, and agricultural accessory structures. The County pays the expense of preparing the Ranch Plan.

Topic: **Grazing In wetlands** – C-BIO-14

Staff Item: Attach. # 4, VI, pages 20-22

Discussion: EAC supports the statement of Marin Audubon Society on September 27, 2012 with respect to the ongoing practice of grazing in wetlands where it has existed prior to April, 1981.

Topic: **Background text/materials**

Staff Item: Attach. # 5, page 11

Concern: Staff proposes to delete significant amounts of substantive information that has already been certified by the LCP.

Discussion: EAC has repeatedly requested that a substantial amount of background information in the existing LCP be retained. The proposed introductory language in the Amendment is very high-level generalities, does not include any fact-based, specific information, and does not provide the context for many of the policies that the Certified LCP language does.

We recognize that it would be a daunting task for staff to update all of this information. However, this information has already been certified by the Coastal Commission, who has made clear to the staff that they will have to submit it or justify why it is omitted and relegated to the non-certified, non-submitted appendix.

Recommendation: We have provided the staff with a list of the specific information and provisions that should be retained and reincorporated into the proposed Amendment. Some of this material includes:

- Mention of the dependence of the Black Brant and Pacific herring upon eelgrass for food in Tomales Bay,
- Discussion of the resources and threats to Estero Americano and Estero de San Antonio,
- Discussion of the ecological role of riparian habitats, and
- Discussion of the importance of freshwater flows into Tomales Bay.

CALIFORNIA CATTLEMEN'S ASSOCIATION
1221 H STREET • SACRAMENTO, CALIFORNIA • 95814-1910
SERVING THE CATTLE INDUSTRY SINCE 1917
PHONE: (916) 444-0845
FAX: (916) 444-2194
www.calcattlemen.org

October 2, 2012

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

Via email c/o Kristin Drumm: Kdrumm@marincounty.org

Re: Local Coastal Program Amendments

Dear Chairman Kinsey and Supervisors,

The California Cattlemen's Association (CCA) respectfully submits our comments on the Local Coastal Program Amendments (LCPA). Our letter references the staff's report and shall include references herein. CCA represents 2,000 ranchers, including many who have been ranching in coastal communities for generations. As century long stewards of the land, California's ranchers' reliance on the land inherently demands respect and support of the natural resources. It is these natural resources along the coast that the Coastal Act and local governments seek to protect, and while we are encouraged that others see the value in the land our membership has been working on and caring for for centuries, it is imperative that the CCC and the agricultural community at large work together to ensure that California can continue to have open space for generations to come.

CCA appreciates the opportunity to comment on this document and acknowledges the work that has been done on it thus far. In order to produce the best document possible, CCA encourages staff to seriously consider suggestions made in this document.

I. Development

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

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."

The wording in this section needs to be clarified. While the language states that non-agricultural development must be done to ensure long-term productivity, this language inherently restricts the ability of land owners to ensure that they are able to rely on the structures necessary to continue in their agricultural practices. It would behoove members to define what is intended by the words "enhance" and " productivity". While the construction of a barn may be necessary for the continued operation of ranch, it may not necessarily increase or improve productivity. Members should consider that a land owner is unlikely to build a structure that does not support the continuation of his agricultural operation, as this would be both time and cost prohibitive.

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

While this language was likely mistakenly written in its current form, CCA would like to call the members' attention to the fact that this policy encourages agricultural facilities to be built in a location which avoids agricultural lands. Clearly, it is impossible to avoid agricultural land on a parcel that is zoned as such. CCA recommends that this language be changed to reflect a more coherent policy. CCA also would like to remind the Board that as most of this land is private property, should a landowner

wish to disturb his productive land and forego some of his profit for the building of an agriculturally related structure, he should be allowed to do so.

It seems to be a common notion amongst many of the staff that the farm or ranch owner will not do what is best for the continued production of his land. If it is more efficient and effective to build an agricultural structure near the area on which agricultural production occurs, the landowner should have the ability to do so. The alternatives to this policy may be that a rancher builds a barn five miles from his most frequently used pasture, and as a result of policy restriction, is forced to drive hay back and forth from the barn to the pasture as opposed to having built the structure in a location which was most beneficial for his use.

Additionally, it is inappropriate to rule that intergenerational homes and agricultural 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…" Five percent is an arbitrary number, and in the case of smaller parcels, could mean that the barn gets placed next door to the family home; a generally undesirable location.

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 nonagricultural 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.~~

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

be ultimately diminished by the landowner's inability to continue farming and ranching and providing coveted open space.

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.

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

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

II. ESHA

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)*

While CCA agrees that it is important to protect the environment and habitat from harmful actions, we must question the logic behind the above section. Of prime concern is that fences are often used to do exactly what this provision aims to do; protect sensitive habitat. Ranchers will often fence areas to either include or exclude livestock. It should also be pointed out that it is highly unlikely that the type of fence used in most agricultural productions would significantly inhibit wildlife movement. It is important here, to distinguish the difference between a wall and a fence. Secondly, the roads on agricultural properties are generally not public access roads, and consequently, have little traffic, thus, do not pose a threat to wildlife movement. This policy is more appropriately changed to target commercial

development and public access properties, not private agricultural lands. Fences and agricultural roads should be categorically excluded as agricultural activities.

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).~~

The site assessment section of this document gives reason for pause, and sets forth two policy precedents which CCA believes to be inappropriate and misguided. First, how is one to determine the "potential presence" of an EHSA? It would seem clear that given the current definitions, either the area does or does not meet the requirements of ESHA. To allow for the "potential presence" opens the door to a wide range of interpretation. It could be argued that any piece of land could have the "potential" for ESHA, given certain adjustments in weather, management, and planting. CCA encourages the Board to refine this language to ensure that decisions are being made on the habitat that actually exists and can be documented, not the flora, fauna and animals that could hypothetically exist.

Of equal concern is the requirement that the landowner pay for the biological assessment on his property. This requirement cuts to the core of a discussion on the role of representative government. Through the above policy, should it be adopted, the Board will determine that it values certain habitats over all other uses. As a representative body, the Board is therefore making that determination as a reflection of the values of its constituents. If, in fact, it is the people of Marin County who value specific habitats over all other uses, then it should be the residents of Marin County who pay for this biological assessment. This is the same concept of a "user –pays" fee, and should be adopted in order to ensure

that the people of Marin County support parity between the use of tax payer dollars and the value of those services.

III Wetlands

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).

CCA supports the changes made in section four, but would encourage that stock ponds be added to the list of agricultural activities that might result in a manmade wetlands. It would also help to clarify that the wetlands, from which grazing and agricultural uses are prohibited, are natural wetlands, and not seasonal wetlands created by commercial or agricultural activities.

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~~

CCA appreciates the acknowledgement that a 100-foot buffer might be unnecessary in all cases, but if the Board is to adopt this policy and flexibility, it should be found to be equally unnecessary to prescribe a 50 foot buffer. If the staff and Board believe that adequate analysis can be made to determine the appropriate buffer, then they should allow that decision to be made without restrictions.

IV Agricultural Processing

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~~.

While CCA appreciates that agricultural processing is a principal permitted use, this language seems to put both unverifiable and unfounded restrictions on those agricultural producers who are trying to bring economic support to the region. The first concern posed by this language, is that the standards to be met to qualify for " principal" use are nearly impossible to measure. The language demands that at least 75% by dollar volume of the processor's sales of the processed product must be grown in Marin County. To establish a percentage of the sales that must be derived from Marin -grown products is absurd. There is no way to verify this dollar amount, as producers do not record their sales based upon county of origin.

It seems additionally restrictive and arbitrary to determine that a conditional use permit shall be required if a processing facility is open to public visitation more than 24 times per year. The number of visitations does not detract from the agricultural operations that take place on the property, and it seems that the Board would want to encourage public tours so that visitors and residents alike can gain greater appreciation for the open space provide by farming and ranching.

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

CCA sees that there are several incongruent policies contained within the various provisions of this section. First and foremost, this year, the legislature passed, and the Governor signed a bill that encourages cottage industries and sets certain regulations to standardize these operations. The above language seeks to limit the viability of these industries and discourage local farmers and ranchers from participating in ever-growing local food movements.

To determine that the building from which these local products are sold must be a structure which does not exceed 500 square feet and does not exceed 15 feet in height, seems to be without reason, and seriously limits a landowner's ability to sell from existing structures. Should a farmer or rancher wish to sell a product out of his barn, he would likely be unable, as barns traditionally exceed the aforementioned height restrictions. It is equally unreasonable to assume that such products could be adequately sold from a " card table, umbrella, or a tailgate." If the language is intended to mean that producers may set up a table with shade provided by an umbrella, then this clarification is patronizing, at best, and reads as though instructions are being given on the proper setup of a childhood lemonade stand, not the formal retail sale of agricultural products. These restrictions prohibit any type of refrigeration, or the sale of any product that might exceed the size of a card table. The Board should reject this proposal for being both ridiculous and completely untenable.

This language is further restrictive as it only permits the sale of produce; excluding all meat and cheese products and producers. If the Board wishes to exclude these members of the agricultural community, then a reason for this delineation should be made.

Despite the strict regulations put forward under this section, it seems incongruent that there should also be a concern for adequate parking, as expressed in number 5. If producers must comply with the preceding measures, then having to accommodate sufficient parking is unlikely to be a problem, as landowners are unlikely to pursue any of these activities that might otherwise bring support to the local agricultural community and dollars to the County.

There have certainly been positive changes made to the LCPA, and CCA would like to reiterate our thanks to the staff and members of the agricultural community who have contributed so much time to the improvement of this document. While we fully recognize and appreciate the difficult task of putting together such a document and working with all affected parties, CCA would encourage the Board to look seriously at the sections mentioned in this letter.

While working in the micro world of regulations, it is often forgotten that a macro perspective is also necessary to ensure that proposed rules and regulations make sense in a larger context. CCA would

encourage the Board to take a macro perspective while reviewing these changes, and keep in mind that famers and ranchers are in the business of protecting their agricultural ground and ensuring its continued productivity. In so doing, they are likely to make decisions that promote both the health of the land, and the sustainability of their businesses. When considered from this perspective, the County and the agricultural community both are desirous of the same end goal and share the same values of open space and continued agricultural production. Although both the County and the agricultural community share a very similar vision, many of the aforementioned regulations prohibit farmers and ranchers from continuing to manage the land and provide the habitat, open space, and agricultural products that we all love. CCA suggests that the Board of Supervisors consider the ramifications of these micro regulations on agriculture and the larger goal of open space maintenance, and perhaps put a bit of faith in these land stewards who want nothing more than to see their land thrive and their grandchildren take over the family ranch when the current generation is no longer able.

Thank you for your consideration of these matters.

Sincerely,

Margo Parks
Associate Director of Government Relations

Marin County BOS October 2, 2012

Mr Chairman, members of the Board,
We, The West Marin Sonoma Coastal Advocates, are confused by some of the changed wording relative to "agricultural accessory structures".

For example on page 5 of Attachment #5, Sec. 22.130.030, Definitions, Agriculture(coastal) describes land use as"agricultural production and facilities that are "accessory and incidental to, in support of, and compatible with the properties agricultural production, including accessory structures and activities". In previous permutations of the agricultural section of the LCPA, wind turbines are included as " agricultural accessories". But in this report, reference is made only to "utility facilities" and as a Principal Permitted Use. Please clarify exactly what uses are included in the term "utility facility". On page 6, Amendment #2, D CCC Issues, last paragraph, CCC staff question the adequacy of the proposed provisions to "insure that the agricultural accessory structures and uses do not adversely affect long-term agricultural productivity".

Please comply with the CCC staff request to see additional requirements that specificly address the number, size and location of such facilities, bearing in mind that "utility facilities" are considered "accessory agricultural structures"(see BOS Attachment 6, policies, C-AG-2, second line).

Again we reiterate our request that the term "utility facility" be clearly defined throughout the document. Clarity is very important in public documents and there fore it is imperative that such documents be understandable in order to be applied to the public review of development proposals and/or permit applications within Marin's coastal Zone.

Respectfully,

Beverly Childs McIntosh

Beverly Childs McIntosh

West Marin Sonoma Coastal Advocates