



MARIN COUNTY FARM BUREAU

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

March 12, 2013

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

Re: **Clarification on Remaining Issues;**
Corrected Link to California Farm Bureau Federation's 3/4/10 Letter

Dear President Arnold and Honorable Supervisors,

Thank you for being so receptive to the agriculture community's concerns at your February 26, 2013 hearing. We particularly appreciate your board's inclination to revise permit requirements for veterinary clinics and cottage industries and, with County Counsel's and Staff's input, to modify the Potential Takings Economic Evaluation in acknowledgment of the Constitutional right to privacy.

There remain just a few issues where some clarification might help everyone, and which we hope you will consider in advance of the April 16 hearing.

Categorical Exclusion Orders

We are very grateful that you understand the potentially devastating impacts to agriculture of disallowing "Agricultural Exclusions" on all lands directly adjacent to the coast, recognizing that the disparity is discriminatory and makes no sense. You offered to do what you can to broaden the Categorical Exclusion Areas for Agriculturally Related Development to include all the farms and ranches in the Coastal Zone, by bringing up the matter during the Coastal Commission's May Agricultural Workshop and to bring it to the attention of the California State Association of Counties, in addition to looking into legislative remedies involving amending the Coastal Act itself.

We believe we may have discovered language in the Coastal Act that will allow you to legally and simply correct this inequity yourselves, through the LCP amendment process:

Please see Coastal Act Section 30610.5, where you can find the geographical description pertaining to conditions for exclusions from permit provisions,

"Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and

waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610."

Note that this geographical description applies to "Urban" land areas. We don't find anything in this or any other Coastal Act section that applies these geographical parameters to deny exclusions on rural or agricultural lands.

Because the Coastal Act limits the area in which development can be Categorical Excluded in Urban land areas, there is nothing we can see that precludes you from expanding the Excludable Areas for Agricultural Exclusions to encompass *all* of Marin's rural, agriculturally-zoned parcels in the Coastal Zone.

Given the Coastal Act's mechanisms for requesting Categorical Exclusions and for amending local LCPs, we think you could right this disparity now, through this process, and remain compliant with the entirety of Section 30610 of the Coastal Act dealing with coastal resource protection.

The "Constitutionality (or similar) Clause" and References to it

We appreciate the intent of the new proposed section, Interpretation of the Land Use Plan (INT), and the proposed policy **C-INT-1 Consistency with Other Law**. However, we believe that at the last hearing there was some confusion and a misunderstanding regarding the part of our request, and that of our attorney, Doug Ferguson, to reference such a clause in all relevant policies and codes. We are not arguing for redundancy and repetition of a constitutionality or consistency clause in every relevant policy or code, but rather a simple reference to it, i.e. "Consistent with Policy C-INT-1..." in all the applicable codes and policies where there may be a potential takings implications. Some of these are listed in Attachment #1 of our February 19, 2013 letter [2/19/2013](#).

By incorporating this brief reference, you would also provide internal consistency in the LCP language. Please see the difference between the language in C-AG-7.B.3: "*Consistent with state and federal laws*, a permanent agricultural conservation easement... shall be required..." and C-PA-2: "*Where a nexus exists between impacts of proposed development and provision of [an easement]...*" as one example.

In any case, with respect to the actual language of the clause, we continue to believe that without specific incorporation of the nexus and proportionality requirements, the LCP will not provide the clarity and transparency necessary for creating a fair and legal permitting process, and will result in undue legal costs for both applicants and the County. Mr. Ferguson has offered his pro bono assistance to work with County Counsel to come up with compromise language, as would PLF's Paul Beard. Unless the Board and Staff can provide a sound and valid reason why this should not be done, then it should be included.

Internally Inconsistent Language in C-AG-7.A Development Standards for the Agricultural Production Zone (C-APZ) Lands

Regarding the development standards for Non-Agricultural Uses, we understand that our proposal dealing with specifying a portion of the property is not feasible. Rather, we suggest that you follow the recommendation made near the end of the last hearing referring you to Coastal Act Section 30242 regarding conversion, which uses the word "or" rather than the word "and." If the LCP similarly uses the word "or" when listing the required findings, this will resolve the policy's inconsistency and address the intent of the Coastal Act.

Bed and breakfast inns, Table 5-1-d

As we have maintained in our earlier letters during this process, even though we did not include it as an unresolved issue in our last letter, we concur with our membership that bed and breakfast inns, three or fewer guest rooms, should be changed back to a Principally Permitted Use, as it currently is allowed in Development Code Section 22.57.030i., and was designated as such in the original LCPA public review draft. Any allowance for additional income for farmers and ranchers will help them to be economically viable and enable them to continue in agriculture production.

Support for California Cattlemen's Association's Positions

In its February 26, 2013 letter [2/26/2013](#), CCA's Margo Parks, Director of Government Relations, made compelling arguments to recommend changes in the LCPA that would be vital to agriculture's viability. Marin County Farm Bureau strongly supports these positions, including:

- adding brush clearing and vegetation management as a Principally Permitted Use,
- requiring scientific determination and open public comment to determine ESHA,
- determining buffer zones through specific site review and not on a one-size-fits-all basis.

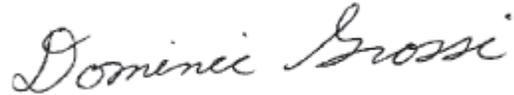
Please incorporate these considerations in your adopted amendments.

Corrected Link

A letter from California Farm Bureau Federation was incorrectly linked as a reference in our February 19, 2013 "Outstanding Issues" letter. The correct letter containing CFBF's relevant positions was submitted to the County on March 4, 2010 and can be found at this link [3/4/2010](#). We apologize for the error.

Thank you for your consideration, and thanks once again for recognizing that the Coastal Act gives you the authority over, and the autonomy from, the Coastal Commission, when determining the precise content of our LCP. Thank you for continuing to support this in the future as the LCPA goes through the Coastal Commission certification process.

Respectfully submitted,



Dominic Grossi
President
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PACIFIC LEGAL FOUNDATION

March 18, 2013

President Judy Arnold, and
The Marin County Board of Supervisors
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

VIA EMAIL: c/o Kristin Drumm:
kdrumm@marincounty.org

Re: Marin County's LCP Update, Categorical Exclusions & Constitutionality Clause

Dear President Arnold and Honorable Supervisors:

At the request of concerned farmers and ranchers, and on behalf of Pacific Legal Foundation and California Cattlemen's Association, I submit this legal opinion on two outstanding issues that the Board must address as it updates the County's LCP.

Categorical Exclusion for Agricultural Properties

The Coastal Act authorizes the County to seek certification of a categorical exclusion even for *coastal* agricultural properties.

Section 30610(e) recognizes that development "within a specifically defined geographic area" may be exempted from Coastal Act permitting requirements. In essence, the proponent of such an exclusion—for example, a municipality like Marin County—need only show that such an exclusion would present "no potential for any significant adverse effect, either individually or cumulatively on coastal resources or on public access to, or along, the coast." Pub. Res. Code. § 30610(e). Of course, the decision to certify a categorical exclusion for a particular geographic area lies with the Coastal Commission. *Id.* But there is nothing in the Coastal Act preventing the County from making a request for a categorical exclusion for an area within its jurisdiction. And there is nothing in the Coastal Act that disallows an exclusion for agricultural areas along the coast.

Existing Marin County policies suggest that the Coastal Act forbids *coastal* agricultural lands from being categorically excluded. This may be based on a misapplication of Section 30610.5(b) to agricultural properties. That section provides that no categorical exclusion for "urban land" is allowed where such land constitutes "[t]ide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust." But Section 30610.5(b) speaks only to

urban—not agricultural—land. Nowhere in the Coastal Act does it say that coastal agricultural properties are deprived of the benefit of categorical exclusion.

It is telling that the Coastal Act imposes special requirements for urban land exclusions that are not imposed for agricultural exclusions. This is consistent with many other provisions of the Coastal Act that acknowledge agriculture as a uniquely valuable resource, and perhaps more importantly, recognize that putting land to agricultural use advances the Act's policies. Indeed, the Coastal Act already exempts many agricultural activities from its permitting requirements. Pub. Res. Code § 30106 (exempting from the term "development," and therefore the requirement of obtaining a Coastal Development Permit, "the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations"); *see also id.* § 30212(a) (requiring vertical public access in new development projects, "except where . . . agriculture would be adversely affected"); *id.* § 30222 ("The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry."); *id.* § 30241 (pro-agriculture provision intended to "assure the protection of the areas' agricultural economy").

In sum, there is nothing in the Coastal Act to suggest that a request by the County to exclude coastal agricultural properties would be opposed by the Commission. If anything, the Coastal Act would authorize such an exclusion, and would look favorably upon policies and actions benefitting agriculture.

Constitutionality Clause

The Farm Bureau recently submitted proposed language (underlined below) to be added to C-INT-1 of the County's Interpretation Policies:

C-INT-1, Consistency with Other Law. The policies of the Local Coastal Program are bound by all applicable local, state and federal laws, and none of the provisions of the LCP will be interpreted by the County in a manner which violates those laws. In particular, as required by the Coastal Act, Public Resources Code section 30010, Marin County shall not grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation therefore. 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

President Judy Arnold, and
The Marin County Board of Supervisors
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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. This policy is not intended to increase or decrease the rights of any property owner under the Constitutions of the State of California or the United States.

The proposal is consistent with the takings jurisprudence of the United States Supreme Court. It clearly articulates that the burden is on the government to demonstrate that a permit condition bears an essential nexus and rough proportionality to a proposed project. And it puts applicants and County employees alike on notice of their respective rights and obligations. Such transparency can only inure to the County's benefit.

Sincerely,



PAUL J. BEARD II
Principal Attorney
Pacific Legal Foundation

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April 12, 2013

Marin County Board of Supervisors

Via Email: bos@marincounty.org

Re: Local Coastal Program Amendments (LCPA) Sixth Board Public Hearing - Remaining carryover topics including those related to Agriculture, Appeal of Second Units and Potential Takings Economic Evaluation; and resolution of LCPA submittal.

Dear Marin County Board of Supervisors,

West Marin Sonoma Coastal Advocates (WMSCA) wishes to thank the Board of Supervisors for their courage and foresight to remove all references to Wind Energy Conversion Systems (WECS) from the LCPA and not permit WECS as an allowed land use in the Marin County Coastal Zone (LCPA Staff Report, April 16, 2013, BOS Exhibit 2, BOS Approved Revisions, Energy, WECS [Coastal], page 5):

ENERGY

Wind Energy Conversion Systems (WECS) (Coastal)

Approved by Board

At the February 26, 2013 hearing, the Board directed staff to remove the Wind Energy Conversion Systems (WECS) component from the LCPA. All references to WECS will be removed from the LCPA, and they will not be an allowed land use in the Marin County Coastal Zone unless further action is taken by the Board at a later date, through a separate amendment process. The Board will consider revisiting the issue at a future date yet to be determined, once Coastal Commission staff has finished drafting their own policy addressing wind energy development. Accordingly, staff recommends that the following sections be deleted in their entirety from the LCPA Development Code. Please refer to Exhibit #3 to review the full text proposed for deletion.

- **Section 22.32.190 – Wind Energy Conversion Systems (WECS) (Coastal)**
 - o *This section would have established specific land use standards for WECS in the Coastal Zone. See LCPA Dev. Code, p. 10.*
- **All references to WECS listed in Tables 5-1-d, 5-2-b, and 5-3-a of Chapter 22.62 (Coastal Zoning Districts and Allowable Uses)**
 - o *These references would have reflected the zoning districts where the different types of WECS would have been allowed and the permit requirements for each.*
- **Section 22.64.045 – Coastal Wind Energy (-WE) Combining District**
 - o *This section would have established the new combining district necessary to implement the PC-approved WECS standards of Section 22.32.190. See LCPA Dev. Code, p. 56.*
- **Section 22.130.030 – Definitions**
 - o **Definition of “Wind Energy Conversion Systems (WECS) (land use) (coastal)”:** *The coastal WECS definition differed from the WECS definition for the non-coastal area of the County, and would have been necessary to implement Section 22.32.190. See LCPA Dev. Code, p. 177.*

We also wish to thank LCPA staff for their tireless work in preparing this document.

WMSCA appreciates the pressures on local agencies to enable the installation of renewable technologies. However, all renewable energy proposals may not be appropriate for all locations.

We again commend the Board and LCPA staff for continuing the protection and preservation of Marin County's unique coastal environment.

Respectfully submitted on behalf of WMSCA,

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April 12, 2013

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

Re: **1) Agricultural Exclusions: Extending Categorical Exclusion Orders to all agricultural lands in the Coastal Zone;**
2) Error in, and modifications needed, of Maps 27g and 27j
3) Allow Cottage Industries along with Cottage Food Operations
4) Land Uses that should be Permitted

Dear President Arnold and Honorable Supervisors,

We appreciate the positive direction in which your board moved at the February 26, 2013 hearing, and offer the following four suggestions to get you where we think you intend to go to help keep agriculture sustainable in the Coastal Zone.

Item #1 Agricultural Exclusions: Extending Categorical Exclusion Orders to all agricultural lands in the Coastal Zone

Regarding the Categorical Exclusion areas, where agricultural activities and projects shall not be subjected to Coastal Permit requirements, Staff's recommendations (Exhibit #1 Staff Recommendations, page 5) do not incorporate for you the pertinent additional information contained in the two letters submitted subsequent to the February 26 hearing. These letters provide further support for the County's legal ability, through the LCP Amendment process, to expand the areas covered by Agricultural Categorical Exclusions to include *all* the agricultural lands in the Coastal Zone.

You will note that Staff's discussion cites *Coastal Act Section 30610.5 Urban land areas; exclusion from permit provisions; conditions...* without pointing out that this section applies to *Urban* land areas, and further proposes that the only option is legislative change.

We understand that the staff reports likely only reflect information up through and including the last hearing date. Please consider all new and relevant information contained in our letter [3/12/2013](#) and the latest one from Pacific Legal Foundation and California Cattlemen's Association [3/18/2013](#), which point out that Marin County's existing Categorical Exclusion

Orders may be based on a misapplication of Coastal Act Section 30610.5(b). We are hopeful that the arguments in these letters will empower you, through this LCP Amendment process, to expand Agricultural Exclusions to all the agricultural lands in the Coastal Zone.

* * *

Item #2 Error in, and modifications needed, of Maps 27g and 27j

There remains at least one error in Revised MAPs 27G and 27J, which show East Shore/Marshall and Northwest Marin respectively, in that the Legends indicate that the Excludable Areas (Agriculturally Related Development) relate to Categorical Exclusion Order E-81-2, which applies to LCP Unit I, having a program boundary of *Southern* Marin. This error may also reflect a misapplication of the Coastal Act as above. These maps should be revised once again to correct this error as well as to reflect the expanded Agricultural Exclusions Areas, should your board decide to use its legal authority to expand them now.

* * *

Item #3 Allow Cottage Industries along with Cottage Food Operations

The inclusion of "Cottage Food Operations (CFO), Coastal" in the Home Occupations definition (Exhibit #1 Staff Recommendations, page 4) is welcomed. Staff also recommends,

"In addition, since a home occupation with no employees is an intrinsic part of the underlying residential use, staff recommends that "home occupations" without employees be designated as a "principal permitted" use wherever the residence itself (or "farmhouse" in agricultural zones) is principally permitted. This would also serve to support the position that a home occupation with no employees is considered a customary and incidental part of the residential use and does not represent an increased intensity of use on a given property. Accordingly, the establishment of a home occupation with no employees within an existing dwelling unit is not considered to be "development" subject to Coastal Permit review. Since home occupations with an outside employee are conditionally permitted, they would continue to require Coastal Permit approval."

We argue that a "Cottage Industry" (sewing, weaving, photography, jewelry making, other handcrafts, etc., etc.) in a farmhouse should also be a Principally Permitted Use in the C-APZ, just like a "Home Occupation" such as a CFO.

We know there are a lot of farmers and ranchers who adamantly believe that they should be permitted to undertake in-home enterprises to supplement their farm income, including all those listed in the definition of Cottage Industries, in addition to baking and food preparation. Please modify Table 5-1-b to allow Cottage Industries as a Principally Permitted Use when the primary use of the property is for agriculture.

* * *

Item #4 Land Uses that should be Permitted

Although it is not addressed in the latest Staff Report, we remain dismayed that a number of Land Uses listed in the Tables 5-1 are not considered Permitted Uses in the C-APZ, but rather require Use Permits. Those that would help provide flexibility and sustainability for farmers and ranchers include:

- Equestrian facilities for animals used in agriculture activities
- Horses, donkeys, mules, ponies used in agricultural activities
- Water conservation dams and ponds

Would you kindly consider making each of these Permitted Uses in the C-APZ prior to adopting the Amendments?

* * *

Thank you once again for your careful consideration of issues that will impact coastal agriculture in Marin County, and will have precedent-setting effects for other coastal counties.

Respectfully submitted,

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April 16, 2013

Marin County Board of Supervisors
Via Hand Delivery

Dear Supervisors,

For the past four years the Environmental Action Committee of West Marin (EAC) has participated in every public workshop and public hearing throughout the LCP Amendment process. We have spent hundreds of hours driving to and from hearings, sitting through hearings, and reviewing and commenting on the approximately 5,000 pages of draft policy and code language. EAC estimates that during this period the County has spent nearly \$1 million on the process. Unfortunately, the document before you today rolls back many environmental and agricultural protections that have been in place for over thirty years and that have achieved a high degree of protection for coastal resources. Therefore, despite the fact that it improves resource protections in some dimensions, EAC does not support the proposed LCP Amendment before you, and we strongly urge you to not to approve this document.

EAC has documented our concerns in detail both to your Board and the Planning Commission, yet many of our questions have gone unanswered. We have repeatedly requested that you and your staff respond to the numerous, detailed comments from the Coastal Commission staff, yet in many instances the public has been afforded no response. Last fall, EAC came to the table in a spirit of compromise regarding certain agricultural provisions, but in the end the county would not relax its position on revising the definition of "agriculture" despite five letters from the Coastal Commission stating such a position was untenable. EAC believes that there is a balance to be found to maintain a high level of marine and coastal resource protections while affording family farms the flexibility they need. However, this document does not achieve that balance.

We were not expecting to love every aspect of the LCP Amendment, but we also expected that our steady engagement would have yielded substantive consideration for more than a very small fraction of our concerns. Some of the many reasons that EAC does not support the LCP Amendment before you include that:

1. The certified LCP clearly lists a hierarchy of protection, beginning with Environmentally Sensitive Habitat Areas (ESHA), then agricultural lands, and then scenic resources. This hierarchy language has been removed.

2. Important biological information and informative text are eliminated completely from the LCP Amendment, leaving the public with a sterile, uninformed policy document lacking any context, and giving review authorities scant basis for assessing county-issued coastal permits.
3. Protections for ESHA and stream buffers would be opened up to discretionary reductions and modifications with insufficient standards to guide agency discretion, and would allow non-Principal Permitted Uses to receive buffer reductions. The effect of this change is that buffer widths would be *cut in half* of what is currently required.
4. Protections for visual and scenic resources are weakened.
5. Despite at least six letters from the Coastal Commission staff stating that the County's proposal is untenable, the LCP Amendment would expand the definition of "agriculture" to include inter-generational housing for family members that are not engaged in agricultural operations. This is non-agricultural development, not agriculture.
6. Clustering requirements on agricultural protection zone lands are weakened from mandatory clustering and would allow "one or more groups" of development without any standards to guide approval or siting of a new cluster.
7. Agricultural processing facilities up to 5,000 square feet would be a Principal Permitted Use when currently this is a Conditional Use. The 300-foot setback from property lines and the design review requirement are removed.
8. The existing master plan requirement to consider all contiguous properties under common ownership in the agricultural zone is removed and would only be a discretionary consideration in developing agricultural land.
9. Viticulture was arbitrarily placed back under the Principal Permitted Use category after both the Planning Commission and your Board had approved its designation as a Permitted Use. The LCPA lacks sufficient standards to protect coastal resources when grazing land is converted to viticulture; the county's weak viticulture ordinance is a poor model and should not be applied to the Coastal Zone.
10. Contrary to Coastal Act requirements, the LCPA largely excludes from the definition of development activities that constitute changes in the intensity of use of land and water, for example in the conversion of grazing land to row cropping, viticulture, or orchards.

If we must choose between the LCP Amendment before you and the existing certified LCP, there is no question that EAC would choose to keep Marin's certified LCP. We thank the staff for their hard work, but in our view the direction given to them has resulted in this impasse.

Thank you very much for your consideration of our comments.

Respectfully submitted,



Amy Trainer, Executive Director