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 Categorically 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.

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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.

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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.

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Bed and breakfast inns, Table 5-1-d

As we have maintained an 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.

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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.

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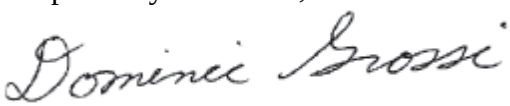
Thank you for your consideration, and thanks once again for recognizing that the Coastal Act gives you the authority over, and the autonomy from, the Coastal Commission, when determining the precise content of our LCP. Thank you for continuing to support this in the future as the LCPA goes through the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

Respectfully submitted,



Dominic Grossi
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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:
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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

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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

> 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,

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Principal Attorney
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