CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

July 1, 2013

Via U.S. Mail and E-mail
(c/o kdrumm@marincounty.org)

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

Re: **Marin County Local Coastal Program Amendments: Agricultural Exclusions**

Dear President Arnold and Honorable Supervisors,

The California Farm Bureau Federation ("Farm Bureau") continues to follow with interest the Marin County Local Coastal Program Amendment (LCPA) process as it relates to agriculture, with the knowledge that regulations that are certified by the Coastal Commission in one county will often set precedent for other coastal counties as well as for California's inland rural areas. By this letter, Farm Bureau respectfully requests that you incorporate in the LCPA specific language that will allow agricultural categorical exclusions to be applied to *all* agriculturally-zoned parcels in Marin County's Coastal Zone.[1]

California Farm Bureau is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 74,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

We understand that at the February 26, 2013 hearing your board discussed whether restricting a large number of productive agriculturally-zoned parcels from agricultural categorical exclusions is sound policy. You agreed to bring the issue to the attention of the California State Association of Counties because other counties are grappling with this inequity

[1] Currently in the Certified Marin County Local Coastal Program, agricultural categorical exclusions from permitting requirements are detailed in the existing Categorical Exclusion Order E-81-6 (see Categorical Exclusion Orders PDF.) but do not include any of the agricultural lands adjacent to the shoreline, or those in the watersheds of the Estero Americano, Estero de San Antonio and Walker Creek. These agriculturally-productive lands can be seen as "Non-Excludable Areas" on Maps 27g and 27j as shown in: http://www.co.marin.ca.us/depts/CD/main/lcp/PDF/20130417_All_LCPA_Maps.pdf .

issue. We understand you chose this course of action based on the Community Development Agency staff's opinion that rectifying the disparity would require legislation to amend the Coastal Act involving Public Resources Code Section 30610.5.[2]

Farm Bureau is pleased that you recognize the need for this change, but we believe that it would *not* require legislative action, and that a local plan can indeed resolve this inequity through the LCP Amendment process while complying with existing Coastal Act law. In advance of your July 30, 2013 hearing, we respectfully ask you to consider that Section 30610.5, by its terms, specifically provides that:

> **Section 30610.5 Exclusion of urban land areas**
>
> Urban land areas shall, pursuant to the provisions of this section, be excluded from the permit provisions of this chapter.
>
> (a) Upon the request of a local government, an urban land area, as specifically identified by such local government, shall, after public hearing, be excluded by the commission from the permit provisions of this chapter where both of the following conditions are met:
> (1) The area to be excluded is either a residential area zoned and developed to a density of four or more dwelling units per acre on or before January 1, 1977, or a commercial or industrial area zoned and developed for such use on or before January 1, 1977.
> (2) The commission finds both of the following:
> (i) Locally permitted development will be infilling or replacement and will be in conformity with the scale, size, and character of the surrounding community.
> (ii) There is no potential for significant adverse effects, either individually or cumulatively, on public access to the coast or on coastal resources from any locally permitted development; provided, however, that no area may be excluded unless more than 50 percent of the lots are built upon, to the same general density or intensity of use.
> (b) Every exclusion granted under subdivision (a) of this section and subdivision (e) of Section 30610 shall be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings under this division, and an order granting an exclusion under subdivision (e) of Section 30610, but not under subdivision (a) of this section may be revoked at any time by the

[2] **04/16/2013:** Staff Report BOS Exhibit #1, Categorical Exclusion Areas, pages 5 and 6

> commission, if the conditions of exclusion are violated. Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610.

Note that this section applies only to "***urban***" land areas. We find nothing in this or any other Coastal Act section that applies to deny exclusions on rural or agricultural lands, and it is our opinion that such denials in Marin's existing Categorical Exclusion Orders were likely a misinterpretation of the Coastal Act. 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. A broader use of categorical exclusions would appear to be entirely consistent with the Coastal Act where Coastal Act values are protected by other agencies, as well as by local government codes, with regulatory functions such as wetland and streamside conservation ordinances, grading ordinances, etc.

Further, we concur with Pacific Legal Foundation's assertion in its March 18, 2013 letter[3] that states, "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—in this case, 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.

Given the Coastal Act's mechanisms for requesting Categorical Exclusions and for amending local LCPs, we believe you can correct this deficiency now, through the LCP Amendment process, and remain compliant with the entirety of Section 30610 of the Coastal Act in dealing with coastal resource protection.

Following the May 8th California Coastal Commission Agricultural Workshop, where it was apparent that the Commission recognized that the Coastal Act acknowledges agriculture as a uniquely valuable resource and that local governments should have flexibility in determining the

[3] Please see letter from Pacific Legal Foundation 3/18/2013

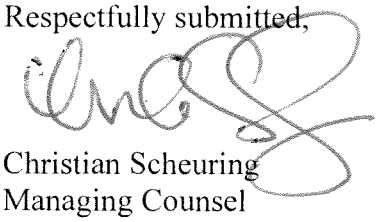
content of their LCPs based on local conditions and priorities, it would seem that the Commission would look favorably on a request by the County to allow, without coastal development permit requirements, agricultural uses and projects essential to agriculture's viability on all of Marin's coastal farms and ranches.

Therefore, we respectfully request that you adopt and submit to the Coastal Commission for certification, along with the Local Coastal Program Amendments, amended Categorical Exclusion Order E-81-6 such that "agricultural projects are categorically excluded when located on agriculturally-zoned property (C-APZ) in the entire Marin County Coastal Zone, where it can be shown 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."

We further request that you adopt corresponding changes to related Development Code sections and to the Coastal Permit Notice of Exclusion *PDF*, along with revisions to the applicable maps (See Categorical Exclusion Areas Map 27 (LCP maps (all) *PDF*), by showing existing "Non-Excludable Areas" as "Excludable Areas (Agriculturally Related Development.)"

Thank you very much for your consideration.

Respectfully submitted,



Christian Scheuring
Managing Counsel
Legal Services Division
California Farm Bureau Federation

CCS:/dkc

cc: Marin County Board of Supervisors BOS@co.marin.ca.us
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Margo Parks, California Cattlemen's Association Margo@calcattlemen.org
Nancy Gates, Coastal Landowners for Ag Sustainability and Security ndgates@pacbell.net

July 10, 2013
5 Ahab Drive
Muir Beach, CA 94965

Jack Liebster
Principal Planner
Community Development Agency
County of Marin
3501 Civic Center Drive, Room 308
San Rafael, CA 94903-4157

Dear Mr. Liebster,

We are writing to comment on the proposed revisions to the visual resource provision and the *de minimis* waiver provision contained in Attachment #2 of the Staff Report on the LCPA. We have a special interest in the visual resource issue due to our participation in *Hyman, et al v. California Coastal Commission*, which interpreted that provision in the LCP for Unit I.

Visual resources C-DES-2

When this was before the Planning Commission, much time was spent in an effort to craft language that would carry out the purpose of Section 30251 of the Coastal Act to protect coastal views. We thought that an agreement had been reached that was satisfactory to all the participants in that debate. Now, at the eleventh hour, the CDA staff has proposed changes to C-DES-2 that are unnecessary and are bound to create mischief in the future application of this provision. The danger lies in how the additional language would be interpreted.

The staff is concerned that a "new mailbox or tool shed along the road would be subject to denial, even if such a structure might very briefly 'obstruct' a view available to passersby on the highway." To address this perceived problem, the staff would create uncertainty in interpretation by inserting the word "substantial" obstruction. A mailbox could not obstruct a significant view. A tool shed may or may not depending upon its size and location. But the essential question is the factual one of whether the structure in question obstructs the view.

This appears to be an attempt by the CDA staff to resurrect the discredited "transitory" or "intermittent view" theory, i.e., that if you can walk around an obstruction, it is not an obstruction. Taken to its logical conclusion, if passersby could walk around a house and catch the view from a different location, the CDA would say that it does not create a "substantial" obstruction of a significant coastal view. The only relevant question under the Coastal Act is whether a structure obstructs a significant view, not whether passersby can enjoy the view from another location.

It is apparent that the Coastal Commission staff rejected the "transitory" theory as shown by the fact that in *Hyman et al v. California Coastal Commission*, the language "[T]he view from this particular location is intermittent at best" was deleted from the original staff report (Superior Court Rulings p. 32) and that on remand, it was not considered. See, Staff Report Application # A-2-MAR-01-010, 2/21/13.The transitory theory is incompatible with the Coastal Act's goal of preserving unobstructed coastal views as seen from public venues

This is more than an exercise in semantics. Adding the qualifier "substantial" to obstruction is a wholly unnecessary addition to the provision that does not accomplish its alleged purpose of "sharpen[ing] the focus." The word "obstruction" does not need a qualifier: the structure either obstructs the view or it does not. The proposed change sews the seeds of confusion by shifting the focus from the structure itself to whether passersby can avoid it.

Three years ago, the CDA staff stated that the Planning Commission had approved the staff's recommendation regarding what was then C-DES-1.2 in order *"to broaden and strengthen the visual resource policies."* CDA Staff Report to the Planning Commission for the workshop on July 29, 2010, Item No.5, Attachment #1, p. 20. Now, three years later, the staff is proposing language that, contrary to its stated goal, would weaken those protections.

In addition, the staff report continues to tinker with the language identifying protection of public, as opposed to private, views. The proposed change is unnecessary because it is perfectly clear that the Coastal Act protects views from public viewing areas, as defined, and not private views. The existing language is perfectly suited to convey this distinction. "The intent of this policy is the protection of significant public views rather than coastal views from private residences where no public views are involved." What could be clearer?

What exactly is the staff's concern? Everyone agrees that if my neighbor's house blocks a coastal view from my house, that would not be covered by the Coastal Act or the LCP unless a view from public venues is somehow involved. The staff's hypothetical conjures up a scenario that I would have a case if I was standing in my yard or driveway instead of sitting in my living room. With all due respect, this is utterly absurd. No reasonable person could see this as a problem.

Eliminating the phrase "where no public vistas are involved" excises the essential point and the addition of the phrase "residential areas" is vague; for example, could it mean residential areas as contrasted with commercial areas? Taken together, the two proposed changes obfuscate what is perfectly clear.

We thought that the language that was hammered out after extensive comment and public hearings was acceptable to all the interested parties. Far from adding clarity to this provision, both of the suggested changes imagine phrasing problems that do not exist and thereby breeds confusion. The suggested changes accomplish no real purpose and should be rejected.

De Minimis Waiver provision Section 22.68.070

The CDA staff concedes that "[Coastal] Commission staff commented initially that provisions for de minimis waivers for use by the County are not allowed by the Coastal Act and therefore should be deleted from the LCPA." Attachment 2 p.7. The CDA staff report does not address the merits of the statutory construction issue raised by my comments submitted on June 10, 2013 and June 21, 2013, although the Coastal Commission staff had undoubtedly reached the same conclusion that I did in my analysis. Instead, CDA staff report refers to a May 1988 "advice to local governments" which said that *de minimis* waivers could be used in some very limited circumstances, and to the Humboldt County LCP, which includes a *de minimis* procedure with regard to minor projects.

At my request, you have provided me with a copy of the May 1988 "Local Assistance Notes" (LAN) issued by the Coastal Commission." The LAN begs the essential question of whether Section 30624.7 of the Coastal Act authorizes local governments to adopt such a procedure. LAN p.5. As contrasted with Public Resources Code Sections 30624.9(b)(waiver of public hearings) and Section 30624 (emergency permits), d*e minimis* waivers of coastal development permits is a procedural device available only to the Coastal Commission. The Coastal Commission lacks statutory authority to delegate that authority to local governments, even if it seems like a good idea.

An "administrative agency must confine itself to reasonable interpretation in adopting regulations for administration of its governing statute: if it goes beyond that the legislative area has been invaded and the regulation counts for nought." *County of Los Angeles v. State Department of Public Health* (1958) 158 Cal.App.2d 425, 437. Thus, a regulation cannot add to or detract from its governing statute. Id. 438. Here, the problem arises not from a regulation but from a mere interpretive guideline. The LAN issued in 1988 was incompatible with the statute and its implementing regulations, California Code of Regulations Secs. 13238.1 and 13238.2.

Ultimately this issue will be resolved by application of the rules of statutory construction and the outcome is not in doubt. There is simply no way to read Public Resource Code Section 30624.7 to authorize local governments to adopt a *de minimis* waiver procedure regarding coastal development permits. The legislative intent could not be more clear.

Respectfully submitted,

Richard S. Kohn

Brenda F. Kohn

cc: Kevin Kahn

Liebster, Jack

From: Liebster, Jack
Sent: Monday, July 15, 2013 8:44 AM
To: 'brendakohn@aol.com'
Subject: RE: comments on LCPA

Mr. Kohn,
Per your request, all the letters will go up on our LCPA website and be included in the packet to the Board.
Thanks
Jack

From: brendakohn@aol.com [mailto:brendakohn@aol.com]
Sent: Saturday, July 13, 2013 12:54 PM
To: Liebster, Jack
Subject: comments on LCPA

Hi Jack,

Thank you for your assistance. As always, you are responsive to my requests. Because I have written a number of letters that concern issues before the BOS on July 30, (some of them addressed to the Coastal Commission and cc'd to you), I thought I would list the letters by subject matter that I hope can be included in the public record.

Community Plans, De Minimis Waiver Procedure, Language Consistency
June 10, 2013 to Kevin Kahn cc to you

De Minimis Waiver Procedure Follow Up
June 21, 2013 to Kevin Kahn cc to you

Visual Resources and De Minimis Waiver Procedure
July 10, 2013 to you

Procedure for Extending CDP Permits
June 12, 2013 to Tom Lai cc to you
June 21, 2013 to Tom Lai (Exh.B to July 10, 2013 letter below)
July 10, 2013 to Kevin Kahn cc to you
July 11, 2013 to Tom Lai cc to you
I think that covers it. I am wondering whether the public comments get sent to the Supervisors prior to the meeting or do they just have the same opportunity to read them online like everybody else?Thanks again for your assistance.

Richard Kohn

"Community Plans, De minimis procedure, language consistency"

June 10, 2013

5 Ahab Drive
Muir Beach, CA 94965

Kevin Kahn
Coastal Planner
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Kevin,

While the matter of the LCP amendments was before the Marin County Planning Commission, I submitted many written comments and appeared at several public hearings in an effort to improve the final product. My letters are all part of the record. A few of my suggestions were accepted by the Planning Commission but many were not. The revisions are now pending before the Board of Supervisors. I see that the June meeting of the Board of Supervisors to consider the LCP revisions has been postponed while staff works with the Coastal Commission to resolve various issues. I would like to take this opportunity to focus on three issues that I raised which have not been accepted by the County.

1. *Retention of the Muir Beach Community Plan and other Community Plans in the LCP*

The County has consistently maintained that the Muir Beach Community Plan was never incorporated into the LCP. As stated in the Introduction to the Land Use Plan dated February 13, 2012, "With the exception of the Dillon Beach and the Bolinas Gridded Mesa Area, existing community plans in Marin's coastal zone were not certified by the Coastal Commission and thus are not a formal part of the LCP." Introduction p. 5. As such, their applicability is limited to Design Review and Use Permits. *Id.* In *Hyman, et al v. California Coastal Commission,* the Superior Court held that the Muir Beach Community Plan had been incorporated into the certified LCP for Unit 1. The Court's conclusion was based upon the extensive discussion of the Community Plan in the LCP and the exclusion of certain of its provisions. See, Rulings on Petitioners' Request for Judicial Notice, Petitioners' Motion to Deem Facts Admitted, Request to Strike Verified Crosby Answer and Augment the Record, and the Petition for Writ of Mandate pp. 4,17-18, 33-34. (hereinafter "Rulings') The Court's reasoning, based upon the text of the LCP, speaks for itself.

The County's erroneous position that the Muir Beach Community Plan was not incorporated into the LCP has led the County to a fundamental error regarding whether the community plan should be included in the amended LCP. In drafting the amended LCP, the County has put the burden of proof on the communities to establish that their community plans should be included. On the contrary, if the plans are already incorporated in the certified LCPs, they should be grandfathered into the amended LCP unless the communities want them deleted. No evidence has been presented that the Muir Beach community is dissatisfied with its Community Plan. Thus, the status quo ante should be maintained.

The County's rationale for its position is set forth in an email from Jack Liebster to me dated July 5, 2011. **Exh. A** Essentially, he contends that the Community Plans had to be separately certified by the Coastal Commission and then re-adopted by the Board of Supervisors. As explained in my letter to Mr. Liebster dated July 7, 2011, the authority he cites supports neither proposition.

There is obviously an answer to the question of whether the Muir Beach Community Plan was incorporated into the certified LCP for Unit 1 in 1980. If the Coastal Commission believes that it is not, then it should be prepared to refute the reasoning of the Superior Court. Rulings, pp. 33-34. In this connection, the Commission (and the County) had a full and fair opportunity to address that issue in *Hyman, et al v. California Coastal Commission* and was unable to persuade the Court.

The same reasoning that applies to the Muir Beach Community Plan should be applied in ascertaining whether the other community plans addressed in the LCP for Unit II were incorporated. These include Stinson Beach, Bolinas, Olema, Point Reyes Station, Inverness Ridge and Tomales.They should be preserved unless, and to the extent that, the communities have requested changes.

This issue was addressed in correspondence between me and Jack Liebster dated March 6, 2011, March 23, 2011, June 29, 2011, July 5, 2011 (email from Liebster), July 7, 2011, July 18, 2011 and January 25, 2011. All my letters are in the record. Because I am not sure that the July 5, 2011 email from Jack Liebster is part of the record, I am including it as an attachment hereto.

If the Muir Beach Community Plan is retained in the new combined LCP, then the statement on page 12 of the Community Plan expressing concern with the destructive effects of new construction and remodeling of homes which are not consistent with the small scale residential character of the old community should be set forth as a Community Specific Policy. See my letter dated January 5, 2012.

II. De Minimis Procedure

The amended LCP includes a procedure by which the Director of the Community Development Agency can determine that a project does not require a Coastal Development Permit. There is no statutory authority for the *de minimis* procedure set forth in section 22.68.070 of the Development Code (Feb. 13, 2012). While Public Resources Code Sec. 30624.9(b) specifically authorizes local governments to adopt rules waiving *public hearings* , Sec. 30624.7 contains no such authorization with respect to *de minimis* waivers of CDPs. Only the Coastal Commission has that power.

It is elementary that "When the legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the legislature intended a difference in meaning. (citations omitted)" *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.,* (2005) 34 Cal.4th 707, 717. The waiver provision and the *de minimis* procedure are contained in the same section of the Public Resources Code (Sec. 30624) but use different language. As the Court said in *In re Jennings* (2004) 17 Cal. Rptr. 3d 645, 658:

> "Because the wording of these statutes shows the Legislature if it wishes knows how to express its intent that knowledge be an element of an offense, the absence of such a requirement in section 25658(c) indicates it intended no such requirement. (citation omitted) 'It is a settled rule of statutory construction that where a statute, with reference to one subject, contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.'"

The only justification for the *de minimis* procedure offered by the County is a statement that "As you know, that (the Coastal Commission) have certified a *de minimis* procedure in the Humboldt County LCP, which means the Commission must have found that consistent with the Coastal Act." Email from Jack Liebster to me dated Nov. 14, 2011. **Exh.B** On the contrary, if no one raised the issue of statutory authority at the time of certification, the Humboldt County LCP cannot be considered a precedent. It may have just slipped through. In any event, the rules of statutory construction are perfectly clear and it is the Humboldt County LCP that needs to be changed regarding this issue.

I have addressed the issue of the legality of the *de minimis* procedure in correspondence dated August 29, 2011, August 31, 2011 (to Ruby Pap,**Exh.C)**, November 3, 2011, November 8, 2011. Also, Jack Liebster sent me an email dated November 14, 2011 addressing this issue. Because I am unsure whether my letter to Ruby Pap and Mr. Liebster's email are part of the record, I am attaching them as exhibits hereto.

Finally, as I pointed out in my letter dated August 29, 2011, a crucial paragraph required by the statute had been omitted and there was no provision for an appeal from the Director's decision. Of course, if the Commission agrees that the *de minimis* procedure is not authorized by the statute, it is unnecessary to address these issues.

III. Consistency of language

Various provisions of the draft LCP use the terms "development", "new development" and "structures" without any apparent consistency. See C-DES-1, C-DES-3, C-Des-4 "New Development" is a defined term in the Public Resources Code and applies only to public access issues. The term "Development" is broader and should probably be used in most applications. I suspect that when the term "new development" is used in the LCP it refers to development that is commenced after the adoption of the amended LCP. In any event, the text should be examined for consistency. Otherwise, someday someone will have to figure out whether something different was intended.

I addressed this issue in my letters dated March 6, 2011 p.2 and July 18, 2011 p.5.

Thank you for your consideration.

Richard S. Kohn

Richard S. Kohn

cc. Jack Liebster (via U.S.mail with exhibits)
Dan Carl (via email without exhibits)
Madeline Cavalieri (via email without exhibits)

From: Liebster, Jack <JLiebster@co.marin.ca.us>
To: brendakohn <brendakohn@aol.com>
Subject: CCC Certification required before LCP elements can go into effect.
Date: Tue, Jul 5, 2011 5:45 pm

Dear Mr. Kohn,
My apologies for not getting back to you sooner on the question posed in your March 23, 2011 letter regarding the requirement for Coastal Commission certification of LCP materials. I was simply overwhelmed by the work needed to complete, release, and distribute the Public Review Draft (PRD) of our Local Coastal Program Amendment (LCPA).

The Public Resources Code, Division 20, codifies the California Coastal Act. Article 2 of that Division extensively describes the "Procedure for Preparation, Approval, and Certification of Local Coastal Programs." You can access the full Article through the Commission's website at http://www.coastal.ca.gov/ccatc.html.

In pertinent part, **Section 30512 Land use plan; submission; certification; modifications** states (emphasis added):

> (a) The land use plan of a proposed local coastal program shall be submitted to the commission. The commission shall, within 90 days after the submittal, after public hearing, either certify or refuse certification, in whole or in part, the land use plan pursuant to the following procedure:..

Similarly **Section 30513 Zoning; approval; grounds for rejection; modifications; resubmission** provides:

> The local government shall submit to the commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions which are required pursuant to this chapter.
>
> If within 60 days after receipt of the zoning ordinances, zoning district maps, and other implementing actions, the commission, after public hearing, has not rejected the zoning ordinances, zoning district maps, or other implementing actions, they shall be deemed approved. The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan...

As a result of the Commission's certification of an LCP (or any amendments thereto), the local government is delegated limited permit approval authority:

Section 30519 Delegation of development review authority; recommendation of amendments to program

> (a) Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.
>
> (b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority…

EXHIBIT A

Or, as the CCC summarizes the situation on their website page "Permanent Responsibilities of the California Coastal Commission" http://www.coastal.ca.gov/perresp.html

LCP, Port Master Plan, University Long-Range Development Plan, and Public Works Plan Amendments:

All amendments to any of these plans must be reviewed and approved by the Commission before they can take effect (Public Resources Code 30514, 30605, and 30716, hereinafter "PRC").

I hope this clears up the matter.
Thanks
Jack Liebster
Principal Planner, Marin Co. Planning Division
3501 Civic Center Dr., Room 308, San Rafael, CA 94903-4157

(415) 473-4331 jliebster@co.marin.ca.us


Please consider the environment before printing this email

EXHIBIT A

From: Liebster, Jack <JLiebster@co.marin.ca.us>
To: brendakohn <brendakohn@aol.com>
Cc: wade <wade@horizoncable.com>; Lai, Thomas <TLai@co.marin.ca.us>; rpap <rpap@coastal.ca.gov>; Steve Scholl <scholl99@sbcglobal.net>
Subject: RE: Dev Code Sec 22.68.070.A- De Minimis
Date: Mon, Nov 14, 2011 1:49 am

Mr. Kohn,
Thank you for your detailed analysis of the question of de minimis actions. I am no lawyer, but our consideration of a de minimis procedure was a practical approach to complying with the Coastal Act concerning activities that are technically "development" under the Coastal Act definition adopted into our LCP, but have no potential for impacts to coastal resources. As you recall, the criteria for considering a "development" de minimis is that it:

- Involves no potential for adverse effects, either individually or cumulatively on coastal resources,
- Is consistent with the certified Marin County Local Coastal Program,
- Is not of a type or in a location where the project, if subject to a Coastal Permit, would be appealable to the Coastal Commission or would be subject to a Coastal Permit issued by the Coastal Commission, and
- Public notice of the proposed De Minimis Waiver of Coastal Permit has been provided in the same manner as required by Section 22.70.050.

We discussed this early on with Coastal Commission staff, who have indicated a possible willingness to accept such a proposal. As you know, they have certified a de minimis procedure in the Humboldt County LCP, which means the Commission must have found that consistent with the Coastal Act.

Our objective here is to provide a means for addressing truly minor activities in the sense of *de minimis non curat lex* (for example, the installation of an interpretive display on a coastal trail, or performing a geotechnical boring to determine site stability) without excessively diverting limited resources and focus from more crucial and effective work in carrying out our LCP and the Coastal Act.

That said, we leave this issue in the hands of the Coastal Commission from here out.

Thank you.
Jack

Jack Liebster
Principal Planner, Marin Co. Planning Division
3501 Civic Center Dr., Room 308, San Rafael, CA 94903-4157

From: brendakohn@aol.com [mailto:brendakohn@aol.com]
Sent: Tuesday, November 08, 2011 6:44 AM
To: Liebster, Jack
Cc: wade@horizoncable.com; Lai, Thomas
Subject: Development Code Section 22.68.070.A

Hi Jack,

I would appreciate it if you would consider the attached comments regarding the de minimis waiver issue and get back to me prior to the next Planning Commission meeting. Thank you.

Richard Kohn

EXHIBIT B

August 31, 2011

5 Ahab Drive
Muir Beach, CA 94965

Ruby Pap
District Supervisor
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Ms. Pap,

As one of the petitioners in *Hyman, et al v. California Coastal Commission,* Marin County Superior Court CIV 094682, I have been keenly interested in the ongoing process to update the Local Coastal Program in Marin County. I have made several suggestions regarding both the LCP and the Development Code which are undergoing revision. Apparently, yesterday the County published your comments dated August 10, 2011 addressed to Jack Liebster concerning the LCP Development Code. In that connection, I thought that you might be interested in the comments I submitted on August 29, 2011.

In particular, I noted your comment on page 7 regarding the *De minimis* waiver of coastal permits procedure. I raised similar questions regarding the legality of including this procedure in the Development Code on page 2 of my comments. It seems obvious that in contrast to Public Resources Code Section 30624.9(b), which specifically authorizes local governments to adopt a procedure for *waiving public hearings*; and Section 30624, which authorizes local officials to issue emergency permits; Section 30624.7 contains no such authorization to local governments regarding the *de minimis* waiver procedure. See, *Macomber v. State Social Welfare Board* (1959) 175 Cal.App.2d 614,616 (Administrative rule which attempts to add or subtract language from a statute is invalid); See also, Government Code Section 11342.2 (APA).

Also, as you will note, even if the *de minimis* procedure was authorized, the agency staff omitted a critical paragraph providing for review of the decision by the Planning Commission.

In addition, in the discussion of the waiver of public hearings provision on page 3 of my comments, please note that under Public Resources Code Section 30624.9(c), the notice required by subsection (b) must contain a statement that failure by a person to

request a public hearing may result in the loss of that person's ability to appeal to the commission. This mandatory language is not contained in the proposed Development Code.

I invite you to give consideration to the other issues I raised in my August 29 comments. In the near future I will send you copies of my extensive correspondence and the County's replies regarding these and other issues relevant to the proposed LUP and the Development Code. I have requested the County to include my letters in the official record of the proceedings.

I hope the Commission will find this correspondence helpful in its consideration of the proposed revisions.

Very truly yours,

Richard S. Kohn

Encl. (1)

EXHIBIT C

"De minimis"

June 21, 2013

5 Ahab Drive
Muir Beach, CA 94965

Kevin Kahn
Coastal Planner
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Kevin,

I am writing to follow up my June 10, 2013 letter to you with respect to my comments on the *de minimis* procedure. Upon further reflection, I realized that I had failed to present an argument that makes the case even stronger that the legislature did not intend to authorize local governments to adopt a *de minimis* procedure for waiving coastal development permits.

In addition to the fact that, in contrast with the language in Public Resources Code Section 30624.9(b), section 30624.7 contains no authorization for local governments to adopt a *de minimis* procedure, Section 30624.7 contains the following provision:

> "A waiver shall not take effect until it has been reported to the commission at the regularly scheduled meeting following its issuance by the executive director. If one-third of the appointed membership of the commission so request, at this meeting, such issuance shall not be effective and, instead, an application for a coastal development permit shall be required and processed in accordance with the provisions of this chapter."

It is a cardinal principle of statutory construction that in seeking to ascertain the legislative intent, the Act must be considered in its entirety. This provision makes crystal clear that the legislature was focused on empowering the *Coastal Commission to* determine that a CDP was not required in certain minor cases. Recognizing the consequences of investing the executive director with sole discretion, the legislature took steps to ensure adequate supervision and review of any such decision by the commissioners themselves. This provision is further evidence that the legislature did not have local governmental procedures in mind when it enacted Public Resources Code Sec. 30624.7.

For some reason, in my earlier comments I failed fully to appreciate the significance of this provision. I hope to rectify that omission here, as you consider the validity of the County's proposed Section 22.68.070 of the Development Code.

Thank you for your consideration.

Richard S. Kohn

cc. Jack Liebster
Dan Carl
Madeline Cavalieri

Visual resources, de minimis waiver

JUL 11 2013 @ 1:50 Pm

July 10, 2013
5 Ahab Drive
Muir Beach, CA 94965

Jack Liebster
Principal Planner
Community Development Agency
County of Marin
3501 Civic Center Drive, Room 308
San Rafael, CA 94903-4157

Dear Mr. Liebster,

We are writing to comment on the proposed revisions to the visual resource provision and the *de minimis* waiver provision contained in Attachment #2 of the Staff Report on the LCPA. We have a special interest in the visual resource issue due to our participation in *Hyman, et al v. California Coastal Commission*, which interpreted that provision in the LCP for Unit I.

Visual resources C-DES-2

When this was before the Planning Commission, much time was spent in an effort to craft language that would carry out the purpose of Section 30251 of the Coastal Act to protect coastal views. We thought that an agreement had been reached that was satisfactory to all the participants in that debate. Now, at the eleventh hour, the CDA staff has proposed changes to C-DES-2 that are unnecessary and are bound to create mischief in the future application of this provision. The danger lies in how the additional language would be interpreted.

The staff is concerned that a "new mailbox or tool shed along the road would be subject to denial, even if such a structure might very briefly 'obstruct' a view available to passersby on the highway." To address this perceived problem, the staff would create uncertainty in interpretation by inserting the word "substantial" obstruction. A mailbox could not obstruct a significant view. A tool shed may or may not depending upon its size and location. But the essential question is the factual one of whether the structure in question obstructs the view.

This appears to be an attempt by the CDA staff to resurrect the discredited "transitory" or "intermittent view" theory, i.e., that if you can walk around an obstruction, it is not an obstruction. Taken to its logical conclusion, if passersby could walk around a house and catch the view from a different location, the CDA would say that it does not create a "substantial" obstruction of a significant coastal view. The only relevant question under the Coastal Act is whether a structure obstructs a significant view, not whether passersby can enjoy the view from another location.

It is apparent that the Coastal Commission staff rejected the "transitory" theory as shown by the fact that in *Hyman et al v. California Coastal Commission*, the language "[T]he view from this particular location is intermittent at best" was deleted from the original staff report (Superior Court Rulings p. 32) and that on remand, it was not considered. See, Staff Report Application # A-2-MAR-01-010, 2/21/13.The transitory theory is incompatible with the Coastal Act's goal of preserving unobstructed coastal views as seen from public venues

This is more than an exercise in semantics. Adding the qualifier "substantial" to obstruction is a wholly unnecessary addition to the provision that does not accomplish its alleged purpose of "sharpen[ing] the focus." The word "obstruction" does not need a qualifier: the structure either obstructs the view or it does not. The proposed change sews the seeds of confusion by shifting the focus from the structure itself to whether passersby can avoid it.

Three years ago, the CDA staff stated that the Planning Commission had approved the staff's recommendation regarding what was then C-DES-1.2 in order *"to broaden and strengthen the visual resource policies."* CDA Staff Report to the Planning Commission for the workshop on July 29, 2010, Item No.5, Attachment #1, p. 20. Now, three years later, the staff is proposing language that, contrary to its stated goal, would weaken those protections.

In addition, the staff report continues to tinker with the language identifying protection of public, as opposed to private, views. The proposed change is unnecessary because it is perfectly clear that the Coastal Act protects views from public viewing areas, as defined, and not private views. The existing language is perfectly suited to convey this distinction. "The intent of this policy is the protection of significant public views rather than coastal views from private residences where no public views are involved." What could be clearer?

What exactly is the staff's concern? Everyone agrees that if my neighbor's house blocks a coastal view from my house, that would not be covered by the Coastal Act or the LCP unless a view from public venues is somehow involved. The staff's hypothetical conjures up a scenario that I would have a case if I was standing in my yard or driveway instead of sitting in my living room. With all due respect, this is utterly absurd. No reasonable person could see this as a problem.

Eliminating the phrase "where no public vistas are involved" excises the essential point and the addition of the phrase "residential areas" is vague; for example, could it mean residential areas as contrasted with commercial areas? Taken together, the two proposed changes obfuscate what is perfectly clear.

We thought that the language that was hammered out after extensive comment and public hearings was acceptable to all the interested parties. Far from adding clarity to this provision, both of the suggested changes imagine phrasing problems that do not exist and thereby breeds confusion. The suggested changes accomplish no real purpose and should be rejected.

De Minimis Waiver provision Section 22.68.070

The CDA staff concedes that "[Coastal] Commission staff commented initially that provisions for de minimis waivers for use by the County are not allowed by the Coastal Act and therefore should be deleted from the LCPA." Attachment 2 p.7. The CDA staff report does not address the merits of the statutory construction issue raised by my comments submitted on June 10, 2013 and June 21, 2013, although the Coastal Commission staff had undoubtedly reached the same conclusion that I did in my analysis. Instead, CDA staff report refers to a May 1988 "advice to local governments" which said that *de minimis* waivers could be used in some very limited circumstances, and to the Humboldt County LCP, which includes a *de minimis* procedure with regard to minor projects.

At my request, you have provided me with a copy of the May 1988 "Local Assistance Notes" (LAN) issued by the Coastal Commission." The LAN begs the essential question of whether Section 30624.7 of the Coastal Act authorizes local governments to adopt such a procedure. LAN p.5. As contrasted with Public Resources Code Sections 30624.9(b)(waiver of public hearings) and Section 30624 (emergency permits), *de minimis* waivers of coastal development permits is a procedural device available only to the Coastal Commission. The Coastal Commission lacks statutory authority to delegate that authority to local governments, even if it seems like a good idea.

An "administrative agency must confine itself to reasonable interpretation in adopting regulations for administration of its governing statute: if it goes beyond that the legislative area has been invaded and the regulation counts for nought." *County of Los Angeles v. State Department of Public Health* (1958) 158 Cal.App.2d 425, 437. Thus, a regulation cannot add to or detract from its governing statute. Id. 438. Here, the problem arises not from a regulation but from a mere interpretive guideline. The LAN issued in 1988 was incompatible with the statute and its implementing regulations, California Code of Regulations Secs. 13238.1 and 13238.2.

Ultimately this issue will be resolved by application of the rules of statutory construction and the outcome is not in doubt. There is simply no way to read Public Resource Code Section 30624.7 to authorize local governments to adopt a *de minimis* waiver procedure regarding coastal development permits. The legislative intent could not be more clear.

Respectfully submitted,

Richard S. Kohn

Brenda F. Kohn

cc: Kevin Kahn

"Procedure for extending CDPs"

June 12, 2013

5 Ahab Drive
Muir Beach, CA 94965

Tom Lai
Deputy Director
Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903-4157

Re: 36 Starbuck Drive, Muir Beach, Assessor's parcel 199-272-04

Dear Tom,

I am writing concerning the process by which a construction project located at 36 Starbuck Drive came to be approved.

The development entails a 3274 sq.ft residence, plus a 500 sq.ft garage, plus a swimming pool. Construction began in January 2013 when bulldozers and other equipment suddenly appeared. The last opportunity for public comment regarding this project was in *February 2008.* A process whereby a developer can obtain a permit and then obtain extensions for five or six years from the CDA without any public notice or comment during the intervening years is fundamentally flawed. During that time the original residents may leave and new residents who might object to the project may move in. This makes a farce of public notice and comment procedures.

Furthermore, the elliptical public record of this permit approval raises disturbing questions. The record shows the following: Planning approved a coastal permit on 2/27/08 and Planning signed off on a building permit application on 2/29/08. Public notice was given in February 2008 and three letters from the public were submitted. This was the only opportunity given to the public to comment.

The building permit was extended from 2/29/09 to 2/29/10. The building and planning permits were extended again from 2/29/10 to 2/29/11 pursuant to BOS Ordinance 3524. The developer then applied for a further one year extension from 2/29/11. This application was rejected by staff (**EXH. A)** but that decision was overruled by you in a memorandum dated January 5, 2012. **EXH.B**. Thus, the last documented approval of the development was on January 5, 2012. Your memorandum to Bridgette Choate and Bill Kelley explains in detail why you thought an extension was warranted and states "I am inclined to support his request *for one final, one year extension* to the Building Permit application, from 2/29/11 to 2/29/12 (emphasis added)." The same day, Bridgette

Choate notified the developer that the permit would be extended for one year upon the payment of a fee. **EXH.C.**

Notwithstanding, a Building Permit dated 2/21/2012 contains a cryptic notation "OK to Extend Application to 2/14/2014." **EXH.D** In sharp contrast to your letter dated January 5, 2012 referenced above, there is no documentation in the record to show who granted this two year extension or why. A note on the same Building Permit states: "tejerian--letter of risk approved." Not only is there no "letter of risk" in the file, but none of the staff whom I spoke with in Room 308 had any idea what a "letter of risk" is. Obviously, decisions that impact the public should be documented and available in the public record for public scrutiny.

I would appreciate it if you would identify the criteria which CDA staff apply in deciding whether to grant extensions: explain the process by which the building permit in this case was extended for two years beyond 2/29/12; provide any documentation in support of the extension to 2/14/2014; and identify the person who approved the extension. I also request that you provide an explanation and a copy of the "letter of risk" referred to in Exhibit D.

As noted above, there is something fundamentally wrong with a process in which five years can pass between public notice of a project and the beginning of construction. During the intervening years residents may leave and others, who might have an objection if they knew about it and were given the opportunity to comment, move into the neighborhood. For example, Steve and Linda Hulley, who opposed the height of the building, no longer live in Muir Beach. Under the present system, new residents have no forum or opportunity to voice any objections which they may have.

Since the Board of Supervisors is in the process of amending the Development Code, it might be appropriate to include a provision that extensions shall be limited to two years after the permit was originally granted. That would prevent a developer from insulating a project from meaningful public scrutiny by waiting several years to commence construction. In addition, the criteria applied by staff for granting extensions should be codified if that is not already the case. No administrator should have unbridled discretion.

Furthermore, decisions granting extensions should be documented and be available in the public file. Administrative decision making requires transparency. The record in this case is deficient in that respect. Proper procedures should be put in place if they do not already exist.

I would be happy to meet with you at your convenience to discuss these issues. Please feel free to contact me at brendakohn@aol.com.

Thank you for your consideration.

Richard S. Kohn

Richard S. Kohn

cc. Brian Crawford
Jeremy Tejerian
Jack Liebster

Bridgette

Choate, Bridgette
Wednesday, January 04, 2012 12:01 PM
'alexwt@mac.com'
'michaeljmamone@yahoo.com'; Kelley, Bill
Subject: Extension of the permit application for 36 Starbuck Dr., Muir Beach

January 4, 2012

Mr. Mamone,

This email is to inform you that Bill Kelley cannot grant you an extension for the single family dwelling at 36 Starbucks Dr., Muir Beach. The design review approval and the coastal permit approval have expired. The permit was never vested.

If you have additional questions or concerns your planner on the project was Jeremy Tejirian of the County of Marin Planning Department.

Bridgette R. Choate
Senior Permit Technician
Marin County
CDA-Building & Safety Division
415 507-2894
bchoate@co.marin.ca.us

A

Choate, Bridgette

From: Lai, Thomas
Sent: Thursday, January 05, 2012 9:10 AM
To: Choate, Bridgette; Kelley, Bill
Cc: Jeremias, Michel; Nicholson, David; Tejirian, Jeremy; Lai, Thomas
Subject: 36 Starbuck Drive, Muir Beach (PIN 500437)

Bridgette and Bill,

Mike Mamome, the owner/applicant for the above-referenced building permit application, contacted me to request an extension to his building permit application.

Based on the facts of the case, I would normally inform him that such an extension would not be possible because his Planning approval has expired. However, in this case, I'd like you to favorably consider granting one final one-year extension of his building permit application (to 2/29/12). Here's why:

1. Planning approved a Coastal Permit on 2/27/08. This approval will expire 2/27/10.
2. Building Permit application submitted 10/1/07, Planning signed off on 2/29/08.
3. Building Permit extended one year from 2/29/09 to 2/29/10.
4. Building Permit extended one additional year from 2/29/10 to 2/29/11, consistent with the automatic extension to the Planning permit by BOS Ordinance 3524.
5. Building and Safety approved plan check on 12/20/10. EHS approved plan check on 12/20/10.

Based on the above, both the Building and Planning approvals would have expired on 2/29/11 and 2/27/11, respectively, since a Building Permit was not issued.

However, Omnis showed that revisions were submitted to DPW on 11/18/10, prior to the expiration, but that those revisions were not approved until 6/17/11, 4 months AFTER the Building and Planning approvals would have expired. Given that the applicant has continued to pursue getting a building permit, and the County continued to process the building permit application after it expired (as evidenced by DPW's approval of the building permit application after the expiration date), I am inclined to support his request for one final, one-year extension to the Building Permit application, from 2/29/11 to 2/29/12.

I would appreciate if you could confirm this and grant the extension.

2/29/12

Thanks,

Thomas Lai, AICP
ASSISTANT DIRECTOR

County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
415 473 6292 T
415 473 7880 F
CRS Dial 711
tlai@marincounty.org

B

Choate, Bridgette

From: Choate, Bridgette
Sent: Thursday, January 05, 2012 3:29 PM
To: michaeljmamone@yahoo.com; alexwt@mac.com
Cc: Lai, Thomas; Tejirian, Jeremy; Kelley, Bill
Subject: Extension of the permit application for 36 Starbuck Dr., Muir Beach

January 5, 2012

Mr. Marmone,

Bill Kelley can grant you an extension for the single family dwelling at 36 Starbuck Dr. Muir Beach until February 29, 2012. The fee for granting this extension is $180.76. Once we receive the fee the permit application will be extended.

Cordially,

Bridgette R. Choate

Senior Permit Technician
Marin County
CDA-Building & Safety Division
415 507-2894
bchoate@co.marin.ca.us

C

BUILDING PERMIT MARIN COUNTY BUILDING AND SAFETY DIVISION	Permit Number **133220** Date **02/21/2012**	APN 199-272-04 Received 10/01/2007	Zone 0 Item# 0	PIN NO. **500437** Ckd By KHF

JOB ADDRESS

36 Starbuck Dr
Number Street

City / Zip Muir Beach

Nearest Cross Street Seacape

Type of Improvement

[X] NEW [ ] ADDITION [ ] REMODEL
[ ] REV. [ ] SEWER [X] SEPTIC

Use Of Structure

(20--1/3) S F D
Ok To Extend Application To 2/14/2014
)
Expired Called Lft Message 8-26-11*

County File #

500 Scale Map #

OWNER

Mamone, Michael Phone 415 235-2975

Mailing Address: 121 Liberty St
San Francisco, Ca 94110

ARCHITECT OR ENGINEER

Thompson Design Associates

Mailing Address: 90 Adams Ave
Mill Valley, Ca 94941

Phone 388-9630

License No. C5746

CONTRACTOR

OWNER/BUILDER

Class

Land Development

Sbmtl Rqst sent 8/20/08, -DN
rev. 11-18-10
apr 06/17/11

Building and Safety

BC
OWNER HAS LETTER OF RISK ON FILE NEEDS TO FOR COASTAL REV. (BEST PROGRAM)
on khf's shelf
MODIFICATION ARE REQ'D.-MARCH 25,2008 BY KHF.
OK to extend application till 2/29/10. --wpk rec
rev. 3-4-10
OK to extend application till 2/29/11. --wpk
MODIFICATION ARE REQ'D.-APRIL 21,2010 BY KHf
rev 6-17-2010 rev (design change?) rcvd 11-18-10 MS
apr.12/20/10

Environ./Health

sent 3/5/08
3/11/08 STOPPED in EHS, letter sent - JS
8/5/08 BLDG PERMIT approved w/HOLD for septic final. JS
APPROVED @ DEC.20, 2010 BY KHF.-BACK TO

Planning Dept.

tejirian--letter of risk approved

"Procedure for extending CDPs"

June 21, 2013

5 Ahab Drive
Muir Beach, CA 94965

Tom Lai
Deputy Director
Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903-4157

Re: 36 Starbuck Drive, Muir Beach, Assessor's parcel 199-272-04

Dear Tom,

Thank you for your email of June 14. With regard to your retroactive approval of the extension on January 5, 2012 for the period 2/29/11 to 2/29/12. I would appreciate it if you could clarify the procedure that you followed. Requests for extensions of coastal project permits were governed (and are still governed) by Interim Zoning Ordinance Sec. 22.56.120I, which states:

> **"22.56.120I Expiration date and time extensions.**
>
> A coastal project permit *shall expire* two years from the effective date of approval. *Prior to expiration* of a coastal project permit approval, the applicant may apply for an extension up to a maximum period of four years from the original date of expiration. *Notice of a permit extension request shall be provided as established in Section 22.56.065I.* For permits originally issued following a public hearing, pursuant to Section 22.56.070I (A), the deputy zoning administrator shall hear and decide the extension request. *Extensions for coastal project permits originally issued pursuant to Section 22.56.070I (B) shall be issued by the planning director.* Coastal project permit extensions may be granted upon findings that the project continues to be in conformance with the requirements and objectives of the certified local coastal program. *Permit extensions may be appealed as established in Section 22.56.080I.* If a building permit or other permit is issued *during the effective life of a coastal project permit*, the expiration date of the coastal project permit shall be automatically extended to concur with the expiration date of the permit." (emphasis added)

Given the mandatory language, it appears that your extension of the building permit to 2/29/12 violated Section 22.56.120I in several respects.

First, the regulation states that a coastal project permit "shall expire" two years from the effective date of approval. It requires that prior to the expiration of a coastal project permit approval, the applicant can apply for an extension. As you point out in your memorandum to Bridgette Choate, the coastal permit expired on 2/27/10. (See also Bridgette Choate email to the applicant dated January 4, 2012, stating that the coastal permit approval had already expired and that "[t]he permit never vested"). The coastal permit had long since expired when the applicant sought an extension.

In order to extend the life of the coastal permit, a building permit must have been issued "*during the effective life of a coastal project permit.*" In such a case, the expiration date of the coastal permit would be automatically extended to concur with the expiration date of the building permit. When CDA extended the building permit from 2/29/09 to 2/29/10 (and again from 2/29/10 to 2/29/11), the coastal permit had already expired. You acknowledge this fact in your January 5 letter when you say, "Based on the above, both the Building and Planning approvals would have expired on 2/29/11 and 2/27/11, respectively, *since a building permit was not issued.*" (emphasis added).

Second, even assuming that the coastal permit had not expired, the regulation requires that notice of a permit extension request be provided as established in Section 22.56.0651. The file that I examined in your office did not contain any documentation that the required public notice was given. (The only documentation of public notice that I saw was of the original application in 2008).

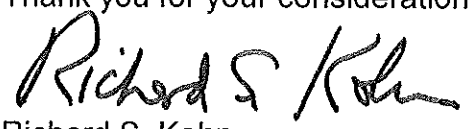
Third, the regulation provides that permit extensions may be appealed to the California Coastal Commission as established in Section 22.56.080I. But if the public was never given notice that the extension was being sought, or notified what your decision was, the right to appeal to the Coastal Commission was meaningless.

Finally, the original permits were granted without a public hearing. Section 22.56.120I provides that extensions for coastal permits originally issued pursuant to Section 22.56.070I (B) (essentially those without a public hearing) had to be issued by the planning director. This appears to be the applicable section. I would appreciate it if you would clarify whether you, or Jeremy Tejerian, served as the planning director on January 5, 2012.

I am looking forward to hearing from Jeremy Tejerian regarding any further extension of the permits beyond 2/29/12 and the other matters that I discussed in my June 12, 2013 letter.

By the way, after putting in the foundation and framing, the developer stopped work on this residence. The heavy equipment and the workmen are gone. Five years and no end in sight.

Thank you for your consideration.



Richard S. Kohn

"Procedure for Extending CDPs"

July 10, 2013

5 Ahab Drive
Muir Beach, CA 94965

Kevin Kahn
Coastal Planner
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Kevin,

I understand that pursuant to the Coastal Commission's Strategic Plan, changes to the implementation plan for the LCP are being considered by the Coastal Commission, which will determine which provisions of the Development Code should be applicable to the coastal zone. See Attachment 2, page 2, CDA July 2, 2013 Memorandum for July 30, 2013 Hearing on Submittal to CCC." (Online)

At present, extensions of coastal development permits (CDPs) that have previously been granted are governed by Interim Zoning Ordinance Section 22.56.120I. The proposed LCP implementation plan, section 22.70.120, significantly waters down the requirements. Furthermore, it fails to cure a defect in the current regulation regarding appeals to the California Coastal Commission. Both the old regulation and the proposed revision provide for public notice of a *request* for an extension. Both old and new provisions provide for an appeal to the Coastal Commission within ten days of the decision allowing an extension. But neither the old nor new sections provide for notice to the public of the *decision*. Without notice, how can members of the public exercise their right to appeal?

Thus, the appeal to the Coastal Commission is illusory. This omission could be cured by the addition of language incorporating Title 22 section 22.70.090 ("Notice of Final Action"), as long as the public notice of the *request* instructs interested persons to request notice of the Director's decision. Section 22.70.090 should be amended to allow email notice if a member of the public requests email notice. Otherwise, the effective date of the decision should be seven days after the decision to allow for U.S. Mail delivery. The effective date should trigger the 10 day period for filing an appeal.

There are other problems with proposed section 22.70.120 which I discuss below. Furthermore, the best drafted regulation is meaningless if the agency ignores it, which appears to be the case with requests for extensions. I discuss that below.

The existing provision states that coastal development permits expire in two years. Prior to the expiration of the CDP, the developer may apply for an extension for up to four years. Proposed section 22.70.120 eliminates these time periods as well as the requirement that a request for an extension be made prior to expiration. Consequently, extensions of coastal development permits would be entirely open-ended; can be applied for at any time (even after the original permit has expired); and for any period of time, e.g., twenty years. Obviously, some constraints on granting extensions are necessary. The existing requirements should be maintained except that CDPs should expire after one year—not two—and requests for extensions beyond the initial year should be limited to an additional year or two—not four. It should not take six years to commence work. No reason has been advanced by the CDA for eliminating any time limitations for permit extensions.

Why is this important? A significant consequence of allowing open-ended extensions by the CDA is that the original decision to grant the permit is frozen in time. Over time, old residents may move away and new residents move in. They may have a different attitude towards a planned project. As drafted, section 22.70.120 means that new residents would be bound by decisions that were made perhaps years ago. Putting a time limit on the duration of extensions ensures that new residents, assuming they are given proper notice, would have an opportunity to be heard if they wish to oppose the project. And if a developer cannot commence work on the project within a reasonable time, s/he can always apply for a new permit.

This is not a hypothetical concern as the case of 36 Starbuck Drive in Muir Beach, which I discuss below, amply demonstrates. In that case, extensions were granted (apparently in violation of Section 22.56.120I) that resulted in a five year hiatus between the approval of the original building and coastal development permits and the commencement of construction.

An additional issue concerns the criteria for granting CDP extensions. Pursuant to the proposed rule, the only criterion for granting an extension is "a finding that the project continues to be in conformance with the requirements and objectives of the Marin County LCP." More guidance should be given and there should be a written decision. In addition to whether the project continues to comply with the LCP, relevant factors might include:

1) Extenuating circumstances that prevented construction from commencing within the original period
2) How many extensions have been granted in the past
3) Will the project be completed in a reasonable time
4) Was there any opposition after notice is given to the public
5) Whether a contractor has been hired and is ready to build
6) Have any changes been made to the plans that were approved

The problem that the foregoing suggestion addresses is that a developer could obtain a coastal development permit but wait years to commence construction. Extensions should not be granted like the medieval practice of selling indulgences for a fee. In fact, the existing regulation recognizes that there should be time limits beyond which extensions will not be granted, even if the project continues to be in compliance with the letter and spirit of the LCP. The CDA has not given any reason for allowing CDPs to be extended *ad infinitum*.

Which brings me to the issue I raised in my introductory paragraph: What do you do if the Agency charged with enforcing the regulations just ignores them? In January 2013, bulldozers and other heavy equipment suddenly appeared at the vacant lot at 36 Starbuck Drive in Muir Beach and started construction of an enormous residential building. Research showed that the building permit and coastal development permit had been granted by the CDA in 2008. Several extensions were granted over the years. Of particular note is a retroactive extension granted in 2012 that appears to be in flagrant violation of Section 22.56.120l (See my letters to Tom Lai dated June 12, 2013 and June 21, 2013 (**Exh. A and B**). In any event, this was supposed to be the final extension. Notwithstanding, as reflected in a cryptic note on a Building Permit form, it appears that the permit was extended to 2014, with no documentation to support it in the public file. These untimely extensions, considered without notice to the public, effectively deprived the Coastal Commission of its appellate jurisdiction.

Since June 12, 2013 I have unsuccessfully sought a written explanation from CDA of how the building permit and the coastal development permit for 36 Starbuck Drive came to be extended. See **Exh. C.** I respectfully request that the Coastal Commission staff follow up with the CDA to ascertain the facts. Meanwhile, I have submitted a request under the California Public Records Act, Sec. 6250 et seq. to obtain a copy of the so-called "letter of risk", referred to in the file.

In this connection, Chapter 22.110.060 currently provides that "Any action by the Agency that is in conflict with any provision of this Development Code shall be void. (Ord. 3380 Exh.B (part), 2003." This provision should be incorporated into the implementation provisions of the LCP applicable in the coastal zone.

Also, consideration should be given to a provision that penalties be assessed if a project is not completed within a reasonable period of time. This would address the problem that arises when a developer does the bare minimum of work to meet permit deadlines and then just lets the project sit there, as may be the case with 36 Starbuck Drive.

Richard S. Kohn

cc:Jack Liebster
Tom Lai

"Procedures for extending CDPs"

JUL 12 2013 at 1:05 Planning

July 11, 2013

5 Ahab Drive
Muir Beach, CA 94965

Tom Lai
Deputy Director
Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903-4157

Re: 36 Starbuck Drive, Muir Beach, Assessor's parcel 199-272-04

Dear Tom,

Thank you for getting back to me. Because the issues that I have raised involve coastal development permits and because the Board of Supervisors is considering relevant changes to the LCP, I think that the Coastal Commission needs to be part of this conversation.

We are in agreement that the coastal development permit (CDP) for 36 Starbuck Drive had expired at the time you requested the Building Department to grant an extension to February 29, 2012. You state that various departments had acted *as though the* building or coastal development permits had not expired and that "Planning staff would not have known that review of the building permit continued to occur after the expiration of the Coastal Permit." However, Bridget Choate clearly knew that the permits had expired when she notified the developer on January 4, 2012 that Bill Kelley could not grant an extension. It was your decision to override that decision, so I do not think it is possible to explain this as a failure of communication between departments. Even your January 5, 2012 memorandum to Bridgette Choate recognizes that the building permit expired on February 29, 2011, otherwise an extension would not have been required.

What is troublesome, indeed unacceptable, is the notion that decisions regarding extensions of CDPs are not made by planning staff who have the responsibility for applying the regulations according to the facts, but by the actions of other departments that are out of the loop. Bridgette Choate and Bill Kelley got it right. Furthermore, you have not clarified whether you were the Planning Director at that time and even authorized to make the decision to override them.

If, as you say, the developer had been instructed to submit a request for an extension of the CDP, then the requirements of section 22.56.120I would have been triggered. An extension could not have been granted because the CDP had already expired. The developer would have had to start the process all over again. Even if that were not the case, public notice of the extension request would have to have been given. Because the proposed development project is clearly out of character with the small scale residential character of Muir Beach, there is a good chance that this project could have been substantially modified or stopped if public notice had been given.

Every time the CDA approves one of these monster homes it creates a precedent for the next person who comes along and wants to build a monster home. The safeguards that are built into section 22.56.120I recognize that there is a public interest involved when these decisions are made. The Agency's failure to follow the rules is changing the historic character of Muir Beach—and not for the better. I invite you to visit the site of 36 Starbuck to see for yourself.

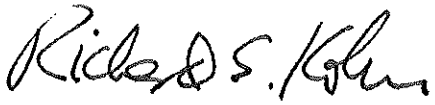
You point out that Ordinance No. 3524 provided an automatic 1 year extension to Planning Permits. With regard to the expiration date of the CDP, it doesn't really matter whether it was February 27, 2010 or February 27, 2011. It had clearly expired when the January 2012 extension was granted. I think that it is significant that in extending land use and development permits for one year, Ordinance No. 3524 states that such permits "shall have one additional year added to the effective date of the approval *before they expire and become void.* So, even under the ordinance as you interpret it to include CDPs, the CDP in this case was void.

I find it extraordinary that Jeremy Tejirian has still not responded to me in writing regarding what appears to be a further extension that was approved to 2014, or regarding my obtaining a copy of the letter of risk. On *June 21* you emailed me that "Jeremy and I spoke about this, and he will need to check with Building to see about the circumstances surrounding that final 2-year extension that was granted. He will also respond to you." Given the fact that your extension—which was supposed to be the final extension-- expired on February 29, 2012, it is still a mystery how another extension came to be made. I look forward to Jeremy's return from vacation so that the facts surrounding these issues can at last be established.

The immediate question is what the CDA plans to do about 36 Starbuck Drive. Construction did not commence until January 2013, long after the extension you approved had expired. It does not seem likely that the later extension was lawful. The permits granted by the CDA are void. See Development Code sec. 22.110.060 and Ordinance No. 3524. The construction has halted as abruptly as it began. As I suggested in an email to Jeremy on July 3, appropriate enforcement action should be taken. At the very least, any aspect of the building plans that have not been started should be prohibited.

The larger question, which I have addressed in my July 10, 2013 letter to Jeremy Kahn, is what action the Coastal Commission is prepared to take to protect its appellate jurisdiction over decisions by local government to approve extensions of CDPs. The current proposal by CDA staff as set forth in Section 22.70.120 is completely inadequate.

Very truly yours,



Richard S. Kohn

cc. Kevin Kahn
Jack Liebster

From: Lai, Thomas <TLai@marincounty.org>
To: 'brendakohn@aol.com' <brendakohn@aol.com>
Cc: Tejirian, Jeremy <JTejirian@marincounty.org>; Kelley, Bill <BKelley@marincounty.org>; Lai, Thomas <TLai@marincounty.org>
Subject: RE: 36 Starbuck
Date: Wed, Jul 10, 2013 3:11 pm
Attachments: ord_3524.pdf (76K)

Hi Richard,

Please accept my belated response to your 6/21/13 letter, as I have been out of the office. In that letter, you questioned the basis for my request to extend the building permit at 36 Starbuck Drive, Muir Beach (from 2/29/11 to 2/29/12) when the Coastal Permit would have expired on 2/27/11. You question how this meets the requirements of Section 22.56.120I which provides procedures for extending a Coastal Permit if a building permit has not been issued during the life of the Coastal Permit.

In my 1/5/12 email to Bridgette Choate, I noted that Board of Supervisors Ordinance 3524 provided an automatic 1 year extension to Planning permits. That action extended the Coastal Permit by 1 additional year, (from 2/27/10 to 2/27/11). In my review of the timeline, actions by the County to continue to process and review the building permit before, and even after 2/27/11, show that the County did not consider the building permit and Coastal Permit to have expired. The applicant continued to proceed in a good faith manner to secure the building permit. These include the following actions:

Acceptance of building permit revisions by the Public Works department in 11/10.

Approval of the building permit plan check by the Building and Safety Division in 12/10.

Approval of the building permit plan check by the Environmental Health Services Division in 12/10.

Approval of the building permit plan check by the Public Works department in 6/11.

As the Planning Department does not have a means to monitor the progress of the building permit review by other County departments after the building permit application has received Planning approval (that occurred on 2/29/08), Planning staff would not have known that review of the building permit continued to occur after the expiration of the Coastal Permit. Had we known that a building permit would not have been issued prior to the expiration of the Coastal Permit, we could have advised the applicant to submit an extension to the Coastal Permit. Having been brought in to review the sequence of actions, I requested the Building Department to grant an extension to the building permit application without a Coastal Permit extension.

With regard to the other question you raised in your original letter (relating to subsequent building permit extensions), please contact Jeremy to discuss when he returns to the office next week.

Regards,

ORDINANCE NO. 3524

ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS EXTENDING CERTAIN TIME LIMITS FOR DEVELOPMENT PERMITS AND WAIVING CERTAIN AFFORDABLE HOUSING IMPACT FEES FOR A SPECIFIED PERIOD

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN ORDAINS AS FOLLOWS:

SECTION I. Notwithstanding any provision of the Marin County Code or any other ordinance to the contrary, land use and development permits that are scheduled to expire within the 2009-10 fiscal year (July 1, 2009 to June 30, 2010) shall have one additional year added to the effective date of the approval before they expire and become void.

SECTION II. Notwithstanding the provision of Ordinance 3500, and during the period from July 1, 2009 to June 30, 2010, the Affordable Housing Impact Fee adopted by said ordinance shall not apply where the conditioned floor space, inclusive of all structures, does not exceed 4,000 square feet.

SECTION III. Effective Date. This ordinance shall be and is hereby declared to be in full force and effect as of thirty (30) days from and after the date of its passage and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the supervisors voting for and against the same in the INDEPENDENT JOURNAL, a newspaper of general circulation published in the County of Marin.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this 11th day of August 2009 by the following vote:

AYES: SUPERVISORS Susan L. Adams, Steve Kinsey, Charles McGlashan, Judy Arnold, Harold C. Brown, Jr.

NOES: NONE

ABSENT: NONE

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK

July 15, 2013

5 Ahab Drive
Muir Beach, CA 94965

Supervisor Kathrin Sears
Marin County Board of Supervisors
3501 Civic Center Drive
Room 329
San Rafael, CA 94903-4157

Re: LCPA July 30, 2013

Dear Supervisor Sears,

Over the course of several years, as members of the public and long time residents of Muir Beach, we have submitted numerous comments in connection with the process of amending the LCP. Our interest arises out of our participation as plaintiffs in *Hyman, et al v. California Coastal Commission*. Among other things, the decision by the Superior Court reinvigorated the visual resource provisions of the LCP for Unit I. We have submitted written comments regarding retention of the community plans (June 10, 2013), visual resources (July 10, 2013) the proposed *de minimis* procedure (June 10 and 21 and July 10, 2013), and the procedure for extending coastal development permits beyond their expiration date (June 12 and 21, July 10 and 11, 2013). We have requested that our letters be made part of the public record. We respectfully request that you take those comments into consideration as you deliberate revisions to the LCPA on July 30.

In addition to substantive content issues, we have learned that the senior CDA staff has failed to enforce the existing section, Interim Zoning Ordinance Sec. 22.56.120I, dealing with extensions of coastal development permits. The case of 36 Starbuck Drive in Muir Beach is illustrative. The responsibility for making sure that his/her permits have not expired rests with the developer. It is not the CDAs role to bail out developers in derogation of the regulations. Yet, as shown by the 36 Starbuck record, in disregard of the regulation, Deputy Director Tom Lai overruled a staff recommendation and granted an untimely extension where it was clear that the permits had expired.

In addition, that case demonstrates that even though the current regulation requires that public notice be given when permit extensions are requested, that requirement was ignored. Without notice to the public, the right to appeal to the California Coastal Commission is illusory. These circumstances give rise to the question of who is responsible for ensuring that the CDA enforces the provisions of the LCP. What is the point of creating regulations if the CDA is not going to enforce them?

This is important because developers are allowed to take out permits but not begin construction for many years. The purpose of the strict requirements for obtaining extensions and for giving public notice of extension requests in Interim Zoning Ordinance sec. 22.56.120I is to allow members of the community to oppose extensions both before the CDA and, in appropriate cases, the Coastal Commission. Failure to apply the regulation means that the public is being cut out of the process and the appellate jurisdiction of the Coastal Commission nullified.

As documented in our correspondence, our efforts to determine how an additional extension came to be granted from February 29, 2012 to 2014 have been stymied. We began requesting information on that issue on June 12, 2013 and had not received a written response by July 10, 2013, when Tom Lai advised us that Jeremy Tejirian (who has been tasked with responding) had left for vacation. This is not a complicated question to answer. Also, the CDA has not complied with our request for a copy of a so-called “letter of risk” that is referred to in the public file but is not in the public file. We could not find any statutory authority for a “letter of risk” and no one in the planning office had ever seen one. This has necessitated our filing a California Public Records Act request to obtain this document.

We herewith request your assistance in ascertaining the facts concerning how the permit extensions for 36 Starbuck Drive came to be granted beyond February 29, 2012, which was supposed to be the expiration date of the final (albeit unlawful) extension. This case should be viewed in the larger context of whether the CDA is ignoring the procedural requirements for obtaining permit extensions in this and other cases and what can be done about it. It should be of great and immediate concern that Section 22.70.120 of the proposed Implementation Plan for the LCPA significantly waters down the protections contained in the existing regulation.

Also, thought needs to be given to what remedial mechanism is available when the CDA violates applicable regulations.

Thank you for your consideration.

Very truly yours,

Richard S. Kohn Brenda F. Kohn

cc. Brian Crawford, Exec. Dir.
Tom Lai, Deputy Dir.
Jack Liebster, Prin. Planner
Kevin Kahn, CCC
Marin County Supervisors (5)

NORTH MARIN
WATER DISTRICT

999 Rush Creek Place
P.O. Box 146
Novato, CA 94948

PHONE
415.897.4133

FAX
415.892.8043

EMAIL
info@nmwd.com

WEB
www.nmwd.com

July 17, 2013

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

Re: Marin Local Coastal Program Amendments

Dear Supervisor Arnold:

North Marin Water District (NMWD) has been providing information to County of Marin staff working on revision/amendment to the County's Local Coastal Program since 2003. Most recently, in 2011, NMWD updated our West Marin water supply information and further commented in two areas which were incorporated into the current draft LCP policy amendments. (1- regarding community sewer systems, specifically in the Old Dillon Beach Village area, and 2- desalination facilities, specifically in relation to salinity intrusion problems for the community drinking water supply derived from wells adjacent to Lagunitas Creek). Thank you for incorporating our comments.

NMWD is supportive of the draft Local Coastal Program amendment, yet has one further comment we request be incorporated. NMWD has a current project to construct a solids handling facility at the existing Pt. Reyes Water Treatment Plant Facility near the U.S. Coast Guard Housing Facility. The project would benefit the environment by capturing any solids from the water treatment process. The project, as shown schematically on the attached aerial photograph (Attachment 1), is in an upland area away from Lagunitas Creek located on the previously disturbed Old Railroad Right-of-Way. It does not infringe upon any riparian corridor or any wetland. The existing Local Coastal Plan however, requires a 100 ft. wetland buffer, in which, the proposed NMWD project would be located.

NMWD requests that the Local Coastal Plan Amendment include some

flexibility to reduce the wetland buffer to accommodate a project such as the proposed solids handling facility. The Proposed Local Coast Program Policy C-BIO-20, Wetland Buffer Adjustments and Exceptions (Attachment 2), would be satisfactory for NMWD to move forward with its proposed project.

Sincerely,

Chris DeGabriele
General Manager

Enclosures as stated

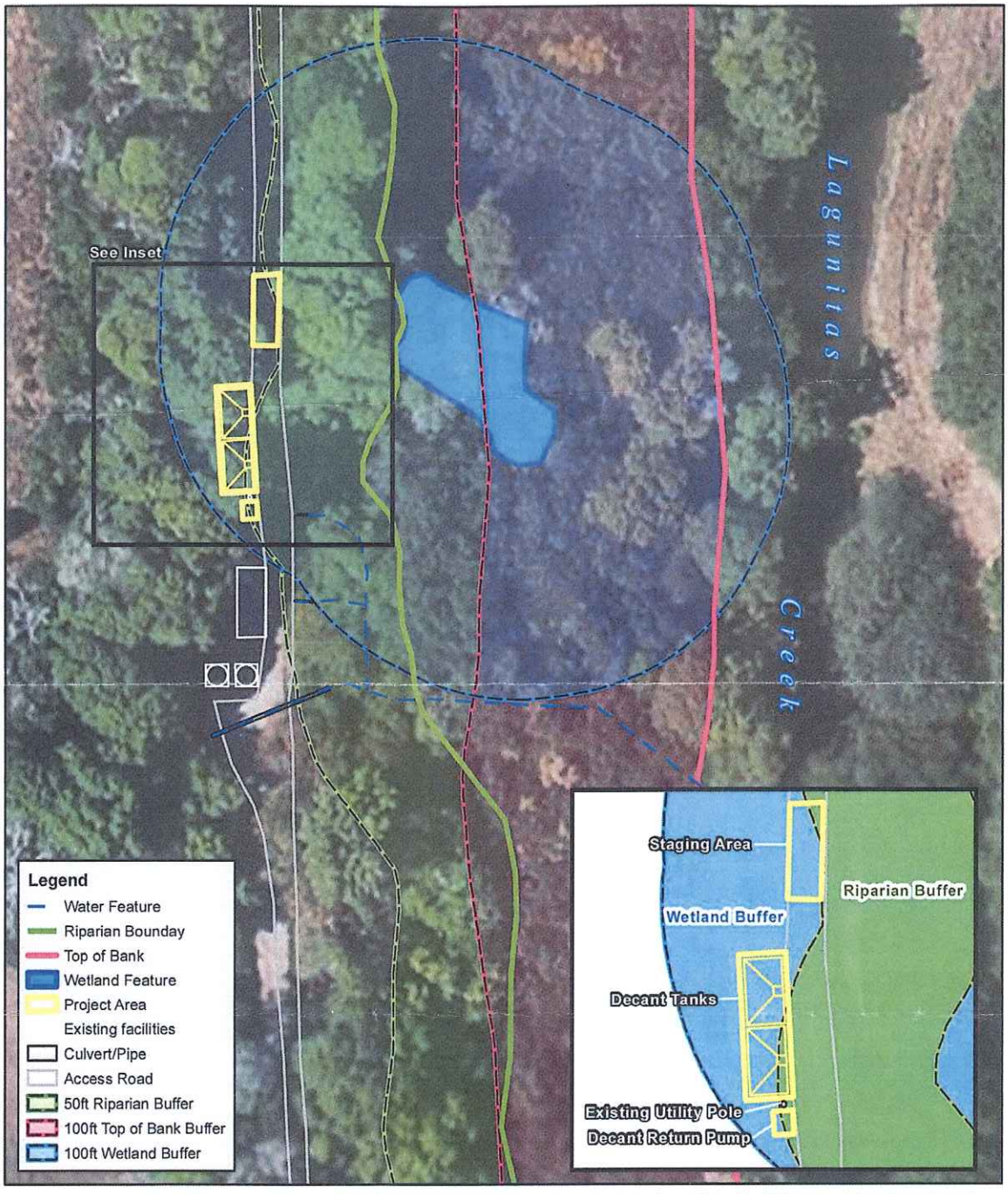
CC:
Supervisor Steve Kinsey
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

Thomas Lai
3501 Civic Center Drive, #308
San Rafael, CA 94903-4157

CD/kly

t:\gm\bod misc 2013\lcp letter.doc

ATTACHMENT 1



USGS 7.5' Quad:
Inverness (1976)

Legal Description:
T3N, R9W, Section 25

CANDA

Scale 1:700
1 Inch = 58 Feet

Point Reyes Water Plant Project Area in Relation to Wetland and Water Features
Marin County

0 25 50 Feet

N

C-BIO-20 Wetland Buffer Adjustments and Exceptions. Buffer adjustments may be considered for coastal permits if the following criteria are met:

a. It is proposed on a legal lot of record located entirely within the buffer; or
b. It is demonstrated that permitted development cannot be feasibly accommodated entirely outside the required buffer; or
c. It is demonstrated that the permitted development outside the buffer would have greater impact on the wetland and the continuance of its habitat than development within the buffer; or
d. The wetland was constructed out of dry land for the treatment, conveyance or storage of water and does not affect natural wetlands.

A buffer adjustment may be granted only if supported by the findings of a site assessment which demonstrate that the adjusted buffer, in combination with incorporated siting, design or other mitigation measures, will prevent impacts that significantly degrade the wetland and will be compatible with the continuance of the wetland ESHA.

A Coastal Permit authorizing a buffer adjustment shall require measures that create a net environmental improvement over existing conditions, in addition to what is otherwise required by minimum applicable site development standards. Such measures shall be commensurate with the nature and scope of the project and shall be determined at the site level, supported by the findings of a site assessment or other technical document. Work required in accordance with this Policy shall be completed prior to occupancy. Appropriate measures may include but are not limited to:

a. Retrofitting existing improvements or implementing new measures to reduce the rate or volume of stormwater run-off and improve the quality of stormwater run-off (e.g., permeable "hardscape" materials and landscape or site features designed to capture, absorb and filter stormwater);
b. Elimination of on-site invasive species ;
c. Increasing native vegetation cover (e.g., expand continuous vegetation cover, reduce turf areas, provide native groundcover, shrubs and trees);
d. Reduction in water consumption for irrigation (e.g., drought-tolerant landscaping or high efficiency irrigation systems);
e. Other measures that reduce overall similar site-related environmental impacts.

The buffer shall not be adjusted to a distance of less than 50 feet in width from the edge of the wetland.

Straus Home Ranch LLC
22888 Highway 1
Marshall, CA 94940
Contact: (213) 304-7371
vivienstraus@gmail.com

July 24, 2013

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

Dear Supervisors,

After our parents died about ten years ago, three of us (Vivien, Miriam and Michael) took ownership of the "Home Ranch" (160 acres), and our brother Albert took ownership of the Dairy (500 acres). We currently lease the Home Ranch pastures to Albert, who uses the land for grazing and growing organic silage. Our family has been farming here on this farm on Tomales Bay since 1941.

While the three of us are not currently involved in active farming, we love this land and strive to maintain, protect and enhance it. Maintaining a ranch is expensive, however, especially after decades of deferred maintenance. We would love our historic hay barn, for example, to survive into the next generation, but the restorations costs are daunting. While we continue to explore additional agricultural uses for the ranch, the reality is that funds from pasture leasing are insufficient to cover the continued maintenance costs, let alone allow us to invest in other improvements.

We are exploring other options that would be consistent with agricultural use of the land. We would like to request that the following practices become allowed without unwieldy and/or expensive restrictions, including: farm tours, agricultural workshops, on-farm retail sales, vacation rentals, weddings and events. These allow additional income to help us maintain our lands to the benefit of all. We'd like to encourage the Board of Supervisors to work with the Coastal Commission to develop Categorical Exclusion Orders for these ancillary activities.

Thank you for your consideration, and please don't hesitate to contact us with any questions.

Sincerely,

Vivien Straus
Miriam Straus Berkowitz
Michael Straus

July 25, 2013

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

RE: Local Coastal Program Amendments

ATT: Jack Liebster, Planning Manager

Dear President Arnold and Supervisors:

This letter transmits Marin Audubon Society's comments on the latest revisions as of the Staff Report for the July 30 hearing. We support many of the most recent revisions made to environmental policies as a result of coordination with Coastal Commission staff.

C-BIO-4.a (Att. 1, p. 3) Heritage Trees…. We agree, it would indeed be difficult to map heritage trees. Using the existing tree ordinance, although it could use strengthening, is probably a good solution. The policy language could reference the countywide ordinance and include any modifications suggested by Commission staff.

C-BIO-15 (Att: 1, p. 4) Diking, Filling, Draining and Dredging #7 Deletion of the sentence allowing dredging in wetlands for boating is more protective of wetlands and should be retained.

C-BIO-14 Wetlands (Att: 2, p.3) This is an interesting change in approach from allowing grazing in wetlands that dates back to 1981, to allowing fill to continue that dates back five or ten years. The Commission's recommendation to allow grazing or other agricultural use that has been ongoing for five years is more protective of wetlands, therefore we support that limit.

Providing for the destruction of wetland for agricultural operations that stopped 10 years ago is far too long a time, and is contrary to the intent of the policy to protect wetlands. There are likely circumstances where wetlands have not been grazed for more than five, ten years or any other date that is chosen. You can't cover all circumstances. Five years is a good compromise and, we expect would cover most circumstances. Ten years is a long time and seems like a blank check to destroy wetlands.

C-BIO-1 (Att: 3, p. 6) Environmentally Sensitive Habitat Areas (ESHAs). MAS strongly supports the Commission staff's recommendation to include a description for terrestrial ESHAS of Fully Protected Species, Species of Special Concern, and Rare Vegetation Communities. This is clear and will lead to fewer problems implementing the ordinance.
C-BIO-2.2 (Att: 3, p. 7) ESHA Protection. The Commission staff suggested language, that "trails in ESHAs *may* be considered resource dependent…" is an improvement over the previous wording. It appears to recognize that trails can be destructive of natural resources and should not be automatically approved. The circumstances under which trails in ESHAs would be allowed are not clear and should be stated. The list of three examples where the Commission

certified trails in ESHAs does not provide information about the reasons for the trail and condition of the ESHAs.

C-BIO-3 (Att: 3, p. 7) ESHA Buffers. We agree with Commission staff that an absolute minimum buffer for terrestrial ESHAs is important to protect terrestrial resources and we support their 25 foot recommendation.

C-BIO-21 (Att: 3, p. 8) Wetland Mitigation. We agree with Commission staff that off-site mitigation ratios for wetland fill should higher, however, we do not support in-lieu fees because of the uncertainty that a project would ever be identified and whether there would be sufficient monies if and when one is found. If in-lieu fees are allowed, they should be for a mitigation project that is well defined and for which permitting seems certain.

Thank you for considering our comments

Sincerely,

Barbara Salzman for the
Conservation Committee

From: Tito Sasaki [mailto:tito@att.net]
Sent: Thursday, July 25, 2013 6:13 PM
To: Liebster, Jack; chris scheuring (cscheuring@CFBF.com); BOS
Cc: 'Sam Dolcini' (slcdiverse@yahoo.com); dgrossi73@att.net; Lex McCorvey (lex@sonomafb.org); Woodside, Steven; Zaltsman, David; 'pjb@pacificlegal.org'; Carlsen, Stacy; Lewis, David; jwatts@malt.org; Margo Parks (Margo@calcattlemen.org); N/D Gates
Subject: Re: Marin County Local Coastal Program Amendments: Agricultural Exclusions

Hi, JACK:
Working late again?
Re: Sec. 30610.5(b): I take your word that this provision also applies to ag land, 'though it's not apparent from the excerpt. My main concern is that "lots immediately adjacent" seems rather indiscriminate. A lot can be one-foot-deep or one-mile-deep. Do you know of any example where a code was written in a similar way that was later corrected to be more reasonable? If one had a mile-deep lot adjacent to a beach, and the next-door neighbor had two lots, one 1/8-mile-deep fronting to the same beach, and the other extending from the back of the first lot 1-7/8-mile deep inland, these two landowners, though they may have an identical configuration of land, would have a vastly different economic impact under the same regulation. Right?
TITO

From: "Liebster, Jack" <JLiebster@marincounty.org>
To: "chris scheuring (cscheuring@CFBF.com)" <cscheuring@CFBF.com>; BOS <BOS@marincounty.org>
Cc: "'Sam Dolcini' (slcdiverse@yahoo.com)" <slcdiverse@yahoo.com>; "dgrossi73@att.net" <dgrossi73@att.net>; "'tito@att.net'" <tito@att.net>; "Lex McCorvey (lex@sonomafb.org)" <lex@sonomafb.org>; "Woodside, Steven" <SWoodside@marincounty.org>; "Zaltsman, David" <DZaltsman@marincounty.org>; "'pjb@pacificlegal.org'" <pjb@pacificlegal.org>; "Carlsen, Stacy" <SCarlsen@marincounty.org>; "Lewis, David" <DJLewis@marincounty.org>; "jwatts@malt.org" <jwatts@malt.org>; "Margo Parks (Margo@calcattlemen.org)" <Margo@calcattlemen.org>; N/D Gates <ndgates@pacbell.net>
Sent: Thursday, July 25, 2013 5:00 PM
Subject: RE: Marin County Local Coastal Program Amendments: Agricultural Exclusions

Dear Mr. Scheuring,
Thank you for your letter of July 1, 2013 concerning Categorical Exclusions for agriculture. As you know , the County has been working hard to fulfill the Coastal Act's mandate and promise to protect agriculture along our coast, and we greatly appreciate the dedicated participation of the agricultural community, including our own Marin County Farm Bureau in that continuing effort.
Because we are likely to be dealing with a number of issues at the Board of Supervisors' Local Coastal Program Amendment (LCPA) hearing next week, I would like to clarify the issue raised in your letter so that perhaps we could resolve it prior to the hearing.
Concerning Categorical Exclusions, your letter (pg. 3, para. 2) states :
"Note that this section *[§ 30610.5]* applies only to ***"urban"*** land areas. We find nothing in this or any other Coastal Act section that applies to deny exclusions on rural or agricultural lands, and it is our opinion that such denials in Marin's existing Categorical Exclusion Orders were likely a misinterpretation of the Coastal Act…"

I note that your letter refers to the Board hearing of February 26, 2013. At the Board's subsequent hearing on April 16, we provided additional information and clarification on the limitations on Categorical Exclusions in the Coastal Act itself. § 30610.5(a) does in fact address what are called "urban land exclusions". However, **categorical** exclusions for agriculture are established under § 30610(e):

Section 30610 Developments authorized without permit…

(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

But the conditions on categorical exclusions do not end there. Looking at § 30610.5, subdivision (b) we see that both types of exclusions, urban and categorical, are subject to the restrictions highlighted below.

Section 30610.5 Urban land areas; exclusion from permit provisions; conditions…

(b) Every exclusion granted under subdivision (a) of this section and subdivision of (e) Section 30610 shall be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings under this division, and an order granting an exclusion under subdivision (e) of Section 30610, but not under subdivision (a) of this section may be revoked at any time by the commission, if the conditions of exclusion are violated. Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610.

Large agricultural parcels that happen to be adjacent to the beach, mean high tide line and public trust, thus "shall not be excluded" under the terms of the Coastal Act itself. The Board hopes to promote greater equity in this regard. In the face of this explicit language, it seems that can only be done with a change in the law. Would you agree?

Thank you for your participation and interest.

Sincerely,

Jack Liebster
Planning Manager, Marin County CDA
(415) 473-4331
jliebster@marincounty.org

Begin forwarded message:

From: Chasteen Dianne K. <dchasteen@CFBF.com>
Date: July 1, 2013, 2:56:01 PM PDT
To: '"kdrumm@marincounty.org"' <kdrumm@marincounty.org>,
'"BOS@co.marin.ca.us"' <BOS@co.marin.ca.us>
Cc: Scheuring Chris <cscheuring@CFBF.com>
Subject: Marin County Local Coastal Program Amendments: Agricultural Exclusions

Dear President Arnold and Honorable Supervisors,

The attached letter is being submitted by Christian C. Scheuring, Managing Counsel, on behalf of California Farm Bureau Federation. If you have any questions or comments, Mr. Scheuring can be reached at (919) 561-5600 or cscheuring@cfbf.com.

Sincerely,
Dianne Chasteen

Legal Secretary to Christian C. Scheuring
Legal Services Division
California Farm Bureau Federation
2300 River Plaza Dr.
Sacramento, CA 95833
(916) 561-5653
dchasteen@cfbf.com

MARIN COUNTY FARM BUREAU

July 26, 2013

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

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

Dear President Arnold and Honorable Supervisors,

The California Cattlemen's Association (CCA) and the Marin County Farm Bureau (MCFB) appreciate the opportunity to comment on the most recent staff comments as prepared for the July 30, 2013 Board of Supervisors hearing on the continued development of the Local Coastal Program Amendments (LCPA). As may be recalled from comments made at the October, January and February meetings, as well as the corresponding letters and the participation in the Coastal Commission Agricultural Workshop in May, we are very concerned with a variety of issues contained within the LCPA.

While several issues will be enumerated herein, we would like to take this opportunity to thank the staff and Board of Supervisors (Board) for several of the positive amendments that have been made thus far. CCA and MCFB's membership are appreciative of the acknowledgement and resolution of some major concerns – although not all – and hope that those remaining will be addressed in a way that respects a healthy balance between the protection of natural resources and the need for agriculture to be profitable in order to remain viable. We would particularly like to extend thanks to the staff of the Community Development Agency (CDA) for their persistence in crafting an LCPA that fits the needs of the community and holds firm to those policies crafted through the lengthy public process. We believe that there have been great compromises reached through this process and we hope that the Board chooses to uphold and defend the efforts that have led to the policies before you.

While we are pleased to see collaboration between the local and state staffs, we're disappointed that this pilot program comes so late in the public hearing process and raises issues involving agriculture that have already been thoroughly debated and presumably decided upon by your Board. We will re-address some of these issues in this letter, but are hopeful that you are mindful of the positions put forward by the agriculture community in letters submitted over the past five years, including compelling arguments that have shaped the development of LCPA thus far. As we have said before, Marin County's LCPA should be a reflection of the priorities of the County, and not a capitulation to an unelected panel. Insofar as the LCPA is consistent with the Coastal Act it should, by law, be approved and certified by the California Coastal Commission (CCC). Your Board has a responsibility, as an elected body, to represent their constituency and demonstrate sound decision making based on public comment. We hope that the Board will rise to the occasion and submit an LCPA that is reflective of the wants and needs of Marin County, and not of CCC staff.

BOS Attachment # 1
Proposed Changes with Tentative Agreement
C-AG-2- Allowed Uses

> ***Program C-AG-2.a Allowed Uses:*** ~~***Use allowed by right.***~~ ***No permit required.*** Seek to clarify for the agricultural community those agricultural uses ~~that are allowed by right and~~ for which no permit is required. These include the Agricultural Exclusions from the existing Categorical Exclusion Orders. ~~Clarify or add to these orders to specifically incorporate agricultural uses as defined in the , including commercial gardening, crop production, dairy operations, beekeeping, livestock operations (grazing), livestock operations (large animals), and livestock operations (small animals).~~ Review aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that ~~do not cause adverse environmental impacts~~ have no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access and, hence, could be eligible additions to the categorical exclusion.

CCA and MCFB do not support the changes as suggested by the Coastal Commission Staff. First, it is not just the "agricultural community" who need clarity and consistency on the permitting requirements for these uses, but more importantly it is the governmental agencies and community-at-large who need to understand that agricultural uses are allowed and permitted, so that ranchers and farmers are not subjected to spurious and misguided complaints resulting in penalties, fines, and cease-and-desist orders imposed for supposed violations of the Coastal Act. The proposed language is restrictive and denies the fundamental principle that certain activities are allowed by right as determined by the general plan. This language marks a philosophical change, which places greater restrictions on farmers and ranchers. The change in language that reads, "review aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that have no potential for any significant adverse affect… and hence could be eligible additional to the categorical exclusions" does not go far enough in rectifying the need to have agricultural uses allowed by right on all farms and ranches in the Coastal Zone. Applying the Agricultural Categorical Exclusions to all ag-zoned lands in the Coastal Zone would rectify this disparity. Not only may these activities and uses not have an impact, they may not even have the *potential* to have an impact. This seems to unreasonably limit the due diligence that would be done to investigate whether or not an exclusion might be appropriate.

Attachment # 2
Local Coastal Program Amendment (LCPA)
CDA Additional Proposed Changes

Section 22.68.070- De Minimis Waiver

CCA and MCFB believe that de minimis waivers are an important component of an LCP. During this the Agriculture Workshop held by the CCC, it was made clear by members of the agriculture community that many of the activities considered to be routing agriculture activities by farmers and ranchers, are considered development by the CCC. General comments made by both staff, commissioners, and members of the public reflected that a clearer and more streamlined permitting process for agriculture is preferred, and while we continue to encourage that many of our practices be considered "routine agriculture activities," there may also be a way to incorporate de minimis waivers in the streamlining of ag permits.

As it relates to the comments included in the staff report, we argue that the inclusion of a list of examples of possible projects which would fall under the de minimis waiver category is both appropriate and consistent with other sections of the LCPA. Throughout the LCPA, examples of various projects are given to help clarify the intent of the policy. Without the inclusion of a list of possible projects, there exists the possibility of inconsistent judgment and misguided interpretation. We ask that the CDA staff's list be retained.

BOS Attachment #3
Unresolved Issues

C-AG-2 Principal Permitted Uses in C-APZ

> …accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including one farmhouse per legal lot, one intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities…

CCA and MCFB are greatly appreciative of CDA staff's recognition that accessory structures are an imperative component of agricultural production. We are concerned, however, about the application of "sufficient restrictions" on intergenerational units including potential restrictions on the number of units allowed as well as the aggregate cap on residential square footage. As we have argued in the past, agricultural landowners have a right to their development potential under the C-APZ-60 zoning. And a 7000 ft.² cap not only severely limits the ability for families to stay on their farms, but it is grossly unfair to disallow larger homes on big ranches when large residences are allowed on tiny lots in other parts of Marin County. It is critical that farmers and ranchers have the ability to build accessory structures and residences that support their continued economic sustainability. It is also important for CCC staff to remember that including these structures as principally permitted uses does not mean that the planning and permitting will not be reviewed. Adding an additional layer of regulatory burdens to farm and ranch families who wish to expand their ability to continue to work and live on their land is counterproductive. We urge the Board to retain the policy including these structures as principally permitted.

We also oppose CCC staff's recommendation that one farmhouse be allowed per "farm" rather than per "legal lot." This has potential takings implications on the legal development potential of any farm larger than 60 acres, without offering just compensation. Farm Bureau originally argued against changing "parcel" to "legal lot," which we still believe to be an unfair and potentially illegal revision of the existing LCP, and to further downzone agricultural properties without the requisite public hearing process is nothing less than egregious.

C-BIO-14 Wetlands

> **C-BIO-14 Wetlands.** Preserve and maintain wetlands in the Coastal Zone as productive wildlife habitats and water filtering and storage areas, and protect wetlands against significant disruption of habitat values. Prohibit grazing or other agricultural uses in a wetland, except in those areas where such activities are ongoing ***(***i.e., within the last ***10 years)*** ~~used for such activities prior to April 1, 1981, the date on which Marin's LCP was first certified. 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).~~

During the Agricultural Workshop (Workshop) held by the CCC, it was suggested that the CCC look into the possibility of retaining, or at least consulting with agriculture experts in the development or modification of agriculture-related policies. This suggestion was met with great support. Despite the seeming appeal during the workshop, it appears now as though the CCC has changed direction. The current C-BIO-14 (Wetlands) policy was modified at the suggestion of UC Cooperative extension Director David Lewis. Mr. Lewis' suggestion that a policy, which allows grazing or other agriculture activities in a wetland, if had been used for such purposes in the past 10 years, is both environmentally sound and realistic for the agricultural community. Despite this expert opinion, CCC staff appears to reject that advice. We would encourage the board to support the local expert, and to remind the CCC of their commitment to reviewing the possibility of relying on expert assistance for these policy decisions.

22.68.030 Coastal Permit Required

> ***Grading (coastal)*** *– Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof that exceeds 150 cubic yards of material. As used in this Development Code, grading does not include plowing, tilling, harrowing, aerating, disking, planting, seeding, weeding, fertilizing or other similar routine agricultural cultivation practices.*

The CCC staff should honor the decision made by the Marin County Board of Supervisors to retain their grading policy as it relates to agriculture. Like many of the policy changes suggested by CCC staff, the desire to decrease the threshold of grading is both arbitrary and unfounded. As has been repeatedly pointed out, if the policies are both adopted by the Board, and reflect the legal guidance of the Coastal Act, then the CCC should respect local jurisdiction and not attempt to otherwise influence their policy.

22.130.030- Definitions

> **Agricultural activities, Ongoing (Coastal).** On land that has been used for crop production, including at a minimum planting or harvesting crops, within at least the previous ***ten years***, ongoing agricultural activities ~~include~~ are limited to normal, routine or repetitive agricultural activities such as crop production, changes in crops, grazing, grading, soil and crop preparation, seeding, planting, cultivation, irrigation, pest management, fertilizing, harvesting, removal of non-native vegetation, removal of no more than one-half acre of native vegetation, continued agricultural activities in areas otherwise qualifying as environmental sensitive habitat areas or their buffers ~~and~~ , restoration of existing fields, and similar activities . Ongoing grazing includes pasturing livestock, managing grazing lands or producing silage on land where livestock pasturing or silage production has occurred within at least the previous ***ten years.***

Our organizations are committed to working with the CCC and local jurisdictions in the creation of definitions that are agreeable to both the agricultural community and the regulatory bodies. However, the inclusion of the change of the word "include" to "limited" is unacceptable. Like any industry, technologies, economies, practices, and tastes evolve. To memorialize and strictly limit those activities that are to be considered normal, severely hampers modification to this policy should different techniques and practices evolve and become routine. While we appreciate the attempt at clarifying these practices, it is shortsighted to strictly limit them.

C-AG-5, -6, -7 and -9 C-APZ Development Standards and Uses:

Similar to comments made previously, CCA and MCFB support the decisions made by the Board as they relate to Development Standards. The changes suggested by CCC staff reflect a continued

misunderstanding of agriculture. Farming and ranching is a generational endeavor. The commitment to the health and productivity of the land is above all else. However, as markets change, the ability to adapt is critical to survival. This flexibility is imperative to the continuation of agriculture along the coast, and includes the ability to provide worker housing. Public policy in California has long advocated for the development of affordable worker housing, and it seems prudent for the CCC staff to accept the Board's recommendation and support the continued effort to provide such residences. Any requirement that applications for agricultural worker housing would be appealable to the Coastal Commission, and would be required to include an evaluation of existing worker housing in the area, would significantly increase an applicant's costs and create a virtual barrier to providing necessary housing for the farm workers.

Additionally, CCA and MCFB find the proposed regulation changes to bed and breakfast, tour, and auxiliary endeavors totally unworkable. To be required to demonstrate a financial need to expand one's business, or to educate others about the bounty of California agriculture is preposterous. The CCC has neither authority nor expertise in the determination of what classifies an economic need. A private citizen should never be required to share private financial information with a government entity to satisfy a requirement for business expansion. Disallowing bed-and-breakfasts as standalone structures further reduces the flexibility required for ranchers and farmers to be economically viable. The CCC is severely unqualified to make such regulations and to make subsequent determinations. The Board should reject this proposal.

While we appreciate that the County has acknowledged that more than one "cluster" will be allowed, as we have stated in the past, and which has been reinforced by land-use attorneys, the 5% clustering provision in itself is a taking without just compensation, as well as an impediment to best management practices on a ranch or farm.

The new proposal put forward by CCC staff to require a "full Local Coastal Program amendment in addition to a Coastal Permit and a Use Permit" on non-agricultural use projects covering more than 20% of a property appears arbitrary and unfounded. While we steadfastly support the continued use of agricultural land for agricultural purposes, this policy essentially ensures that a project of this nature will never come to fruition, regardless of how it might enhance the County's agriculture economy. In keeping with our beliefs about local control and decision making processes, we would suggest that the Board and CDA staff develop these types of policies as they see necessary.

Requiring that farmhouses, intergenerational homes and agricultural worker housing be explicitly subject to public view protection policies also flies in the face of best management practices. The agricultural community must consider placement of additional structures based on the topography of their land, their soil types, production value of the property, and convenience. We must build structures where they will best used and most appropriately situated to provide the service for which they were built. And, as we have asserted in the past, the views of our properties are not owned by the public. For generations, we have maintained and enhanced these lands, and we do not want to see our good work result in limitations of our use on it.

C-BIO-1 ***Environmentally Sensitive Habitat Areas (ESHA)***

CCA and MCFB adamantly oppose the expansion of the definition of terrestrial ESHA as proposed by the CCC staff. As stated in previous letters from our organizations to the Board and the Planning Commission, we have expressed the importance of contextualizing policies such as ESHA. The Coastal Commission as a history of designating ESHA with an overly-broad brush. Much of the grazing land in the Coastal Zone could be arbitrarily designated, and since then ESHA designation requires complete avoidance of the habitat with no provision for mitigation, as well as a buffer with the same prohibitions, this would result in a significant loss of usable land and related income from agriculture production. As previously mentioned, threatened and endangered plant and animal species in California are already

protected by state and federal threatened and endangered designations. Equally, wetlands and riparian areas receive protection from state, federal and local jurisdictions. For those plant and animal species that are not otherwise protected, the public interest would be best served if those designations were appropriated through a public process. Additionally, the threshold to demonstrate a need for the expansion of ESHA does not appear to be met. We encourage the Board to consider this when adopting their final amendments.

C-BIO-3 ESHA Buffers

CCA and MCFB would like to commend the CDA staff for their diligence in pursuing reasonable policies that have been developed with input from the Board and stakeholders. This effort is reflected in the current ESHA buffer which, though not satisfactory to all parties, reflects a collaborative approach. The CCC staff's proposed amendment, however, is a step backward. Not only does the CCC staff's proposal disregard the previous discussions, but it is a reflection of arbitrary policymaking that is not based on science but on preference. We oppose an arbitrary minimum absolute buffer width, such as 25 feet, for terrestrial ESHAs. Buffer size should be based instead on biological site assessment and consideration of factors specific to the site. We urge the Board to reject CCC staff's recommendation.

C-BIO-21 Wetland Impact Mitigation

We are concerned that increased mitigation ratios for any dike and fill development will unfairly limit the development of animal stock ponds that a rancher might deem necessary for the grazing operation, and we oppose such increased mitigation or in-lieu fees.

C-DES-3 Protection of Ridgeline Views

CCA and MCFB again support the CDA staff in their proposed maintenance of current language relating to the Countywide Plan in its definition of "visually prominent ridgeline." Although the Countywide Plan does not specify the coastal zone, this is an important definition that will help ensure parity between local ordinances and the intent of the policy. Once again, we remind you that although the Coastal Act protects the public's views to and along the coast from obstruction, nowhere does it grant others any ownership of views *of* our properties.

CCA supports the CDA staff's proposed changes to C-DES 2- Protection of Visual Resources. It is important to point out, as does CDA staff, that the proposed language is consistent with the Coastal Act. Adding the word "substantial", to the policy gives necessary clarification to the policy and should be accepted. It should be noted that the staff report exemplifies the need to clarify this policy by stating "thus, a new mailbox or tool shed along the road would be subject to denial, even if such a structure might very briefly "obstruct" a view available to a passerby on the highway." Additionally, the restructuring of the policy language to reflect that the intent of the policy is prevent the obstruction of views from *public places*, is an important one that must not be overlooked and should be agreed to by Commission staff.

* * *

As we have commented before, this is a *local* plan. The Board of Supervisors has the statutory authority and obligation to consider the permitting of projects that meet the standards and requirements set forth in their general plan. We urge that the CDA staff be respected in their decisions that acknowledge the importance of agriculture, which have been based on hundreds of hours of public hearings and comments, and which are in keeping with the Coastal Act.

We thank the Board and staff for the incredible amount of time that has been dedicated to this process and hope to see our coordinated efforts reflected in the final adoption of the LCPA. As you deliberate the final

amendments, we urge you to keep in mind the statutory power granted to you by the Coastal Act in Section 30500 Preparation, and Section 30512.2 Land use plan; criteria for decision to certify or refuse certification. These give you the autonomy from, and the authority over, the California Coastal Commission when determining the precise content of your Local Coastal Program. The commission is not authorized to diminish or abridge your authority in this determination to develop an LCP that reflects local needs and policies insofar as it remains consistent with the Coastal Act.

We look forward to seeing the Board take action that represents your dedication to Marin County and the incredible agricultural community that you represent. Although it has been a long process, please do not feel that you need to adopt the amendments on July 30th. It is more important that you carefully consider all public input and make appropriate changes so that you submit the best possible LCPA for certification. Other coastal counties, as well as ranchers and farmers in the inland rural corridor, are watching this closely, as Marin's LCPA will likely set broad precedent.

Thank you for your ongoing, thoughtful consideration.

Sincerely,

Margo Parks
Director of Government Relations

Sam Dolcini
President, Marin County Farm Bureau

CC:
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Steven Woodside, Marin County Counsel SWoodside@marincounty.org
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Nancy Gates, Coastal Landowners for Agricultural Sustainability and Security ndgates@pacbell.net

From: Jennifer Fry Thompson
Sent: Friday, July 26, 2013 5:42 PM
To: Liebster, Jack; chris scheuring; BOS; slcdiverse@yahoo.com; Dominic Grossi; Lex McCorvey; Woodside, Steven; Zaltsman, David; Paul J. Beard; Carlsen, Stacy; Lewis, David; Margo Parks; N/D Gates
Subject: FW: Marin County Local Coastal Program Amendments: Agricultural Exclusions

Mr. Liebster,

Paul Beard and I wanted to contribute to the conversation here by expressing our support of Mr. Scheuring's comments, but also by sharing a few additional thoughts about alternative paths the Board of Supervisors may be able to take in order to achieve a similar result:

(1) Mr. Zaltsman is quite right that the County has the power to propose an amendment of its LCP to accommodate the pressing needs of the agricultural community. One such proposed amendment that would be consistent with the Coastal Act could, for example, specifically define the term "lot" in the last sentence of Section 30610.5(b)—a term that is undefined in the Coastal Act. For example, the term "lot" in this context could be defined to mean a "a buffer that runs inland from the beach/mean high tide line (MHTL) by X feet." This would substantially alleviate the present inequity of designating certain inland lots that are not adjacent to the beach/MHTL as Excludable Areas, while *not* excluding large portions of agricultural lots that happen to be adjacent to the beach/MHTL, but that may run inland to the same extent as those excluded lots.

(2) Section 30610.5(b)'s limitation does not apply to Section 30610(e)'s provision allowing the exclusion of "[a]ny category of development." Whether or not an exclusion based on *geography* may be prohibited, an exclusion based on the *nature of a project*—like agriculture-related development—is not. Thus, the County has a legal way of obtaining an important goal for its agricultural constituents by requesting, by way of an LCP amendment, that the Coastal Commission exclude agriculture-based projects (including all those projects listed in the existing Agricultural Exclusions in the Categorical Exclusion Orders) from the costly and burdensome CDP process. I would note that the County's LCP (C-AG-2.a.) already contemplates the possibility of using this legal strategy of obtaining relief for the agricultural community. That section provides for "review [of] aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that do not cause adverse environmental impacts and, hence, could be eligible additions to the categorical exclusion."

Thanks for your consideration.

Paul Beard & Jennifer Thompson
Pacific Legal Foundation

From: Scheuring Chris [mailto:cscheuring@CFBF.com]
Sent: Friday, July 26, 2013 4:20 PM
To: 'Liebster, Jack'; BOS

Cc: 'Sam Dolcini' (slcdiverse@yahoo.com); dgrossi73@att.net; 'tito@att.net'; Sonoma County Farm Bureau - Lex; Woodside, Steven; Zaltsman, David; 'pjb@pacificlegal.org'; Carlsen, Stacy; Lewis, David; jwatts@malt.org; Margo Parks (Margo@calcattlemen.org); N/D Gates; McDonough Nancy
Subject: RE: Marin County Local Coastal Program Amendments: Agricultural Exclusions

Dear Mr. Liebster –

Thanks for the direct communication. In a nutshell, we continue to believe the Section 30610 grants authority to the Board to create an agricultural exclusion which is consistent with the protection of coastal resources. The authority regarding categorical exclusions under Section 30610 is withdrawn by Section 30610.5 only to the extent that urban land areas are at issue, and in cross-referencing 30610 it can only speak in reference to urban land areas. I understand that you differ.

Have a great weekend.

Chris Scheuring
Legal Services Division
California Farm Bureau Federation
2300 River Plaza Drive, Sacramento, CA 95833
Tel. (916) 561-5660; Fax (916) 561-5691

From: Liebster, Jack [mailto:JLiebster@marincounty.org]
Sent: Thursday, July 25, 2013 5:00 PM
To: Scheuring Chris; BOS
Cc: 'Sam Dolcini' (slcdiverse@yahoo.com); dgrossi73@att.net; 'tito@att.net'; Sonoma County Farm Bureau - Lex; Woodside, Steven; Zaltsman, David; 'pjb@pacificlegal.org'; Carlsen, Stacy; Lewis, David; jwatts@malt.org; Margo Parks (Margo@calcattlemen.org); N/D Gates
Subject: RE: Marin County Local Coastal Program Amendments: Agricultural Exclusions

Dear Mr. Scheuring,

Thank you for your letter of July 1, 2013 concerning Categorical Exclusions for agriculture. As you know , the County has been working hard to fulfill the Coastal Act's mandate and promise to protect agriculture along our coast, and we greatly appreciate the dedicated participation of the agricultural community, including our own Marin County Farm Bureau in that continuing effort.

Because we are likely to be dealing with a number of issues at the Board of Supervisors' Local Coastal Program Amendment (LCPA) hearing next week, I would like to clarify the issue raised in your letter so that perhaps we could resolve it prior to the hearing. Concerning Categorical Exclusions, your letter (pg. 3, para. 2) states :

> "Note that this section *[§ 30610.5]* applies only to ***"urban"*** land areas. We find nothing in this or any other Coastal Act section that applies to deny exclusions on rural or agricultural lands, and it is our opinion that such denials in Marin's existing Categorical Exclusion Orders were likely a misinterpretation of the Coastal Act…"

I note that your letter refers to the Board hearing of February 26, 2013. At the Board's subsequent hearing on April 16, we provided additional information and clarification on the limitations on Categorical Exclusions in the Coastal Act itself. § 30610.5(a) does in fact address what are called "urban land exclusions". However, **categorical** exclusions for agriculture are established under § 30610(e):

> **Section 30610 Developments authorized without permit…**
> (e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

But the conditions on categorical exclusions do not end there. Looking at § 30610.5, subdivision (b) we see that both types of exclusions, urban and categorical, are subject to the restrictions highlighted below.

> **Section 30610.5 Urban land areas; exclusion from permit provisions; conditions…**
> (b) Every exclusion granted under subdivision (a) of this section and subdivision of (e) Section 30610 shall be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings under this division, and an order granting an exclusion under subdivision (e) of Section 30610, but not under subdivision (a) of this section may be revoked at any time by the commission, if the conditions of exclusion are violated. Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610.

Large agricultural parcels that happen to be adjacent to the beach, mean high tide line and public trust, thus "shall not be excluded" under the terms of the Coastal Act itself. The Board hopes to promote greater equity in this regard. In the face of this explicit language, it seems that can only be done with a change in the law. Would you agree?

Thank you for your participation and interest.

Sincerely,

Jack Liebster
Planning Manager, Marin County CDA
(415) 473-4331
jliebster@marincounty.org

Begin forwarded message:

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Dianne Chasteen

Legal Secretary to Christian C. Scheuring
Legal Services Division
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Because we are likely to be dealing with a number of issues at the Board of Supervisors' Local Coastal Program Amendment (LCPA) hearing next week, I would like to clarify the issue raised in your letter so that perhaps we could resolve it prior to the hearing. Concerning Categorical Exclusions, your letter (pg. 3, para. 2) states :

> "Note that this section *[§ 30610.5]* applies only to ***"urban"*** land areas. We find nothing in this or any other Coastal Act section that applies to deny exclusions on rural or agricultural lands, and it is our opinion that such denials in Marin's existing Categorical Exclusion Orders were likely a misinterpretation of the Coastal Act…"

I note that your letter refers to the Board hearing of February 26, 2013. At the Board's subsequent hearing on April 16, we provided additional information and clarification on the limitations on Categorical Exclusions in the Coastal Act itself. § 30610.5(a) does in fact address what are called "urban land exclusions". However, **categorical** exclusions for agriculture are established under § 30610(e):

> **Section 30610 Developments authorized without permit…**
> (e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

But the conditions on categorical exclusions do not end there. Looking at § 30610.5, subdivision (b) we see that both types of exclusions, urban and categorical, are subject to the restrictions highlighted below.

> **Section 30610.5 Urban land areas; exclusion from permit provisions; conditions…**
> (b) Every exclusion granted under subdivision (a) of this section and subdivision of (e) Section 30610 shall be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings under this division, and an order granting an exclusion under subdivision (e) of Section 30610, but not under subdivision (a) of this section may be revoked at any time by the commission, if the conditions of exclusion are violated. Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610.

Large agricultural parcels that happen to be adjacent to the beach, mean high tide line and public trust, thus "shall not be excluded" under the terms of the Coastal Act itself. The Board hopes to promote greater equity in this regard. In the face of this explicit language, it seems that can only be done with a change in the law. Would you agree?

Thank you for your participation and interest.

Sincerely,

Jack Liebster
Planning Manager, Marin County CDA
(415) 473-4331
jliebster@marincounty.org

Begin forwarded message:

From: Chasteen Dianne K. <dchasteen@CFBF.com>
Date: July 1, 2013, 2:56:01 PM PDT
To: "'kdrumm@marincounty.org'" <kdrumm@marincounty.org>, "'BOS@co.marin.ca.us'" <BOS@co.marin.ca.us>
Cc: Scheuring Chris <cscheuring@CFBF.com>
Subject: Marin County Local Coastal Program Amendments: Agricultural Exclusions

Dear President Arnold and Honorable Supervisors,

The attached letter is being submitted by Christian C. Scheuring, Managing Counsel, on behalf of California Farm Bureau Federation. If you have any questions or comments, Mr. Scheuring can be reached at (919) 561-5600 or cscheuring@cfbf.com.

Sincerely,
Dianne Chasteen

Legal Secretary to Christian C. Scheuring
Legal Services Division
California Farm Bureau Federation
2300 River Plaza Dr.
Sacramento, CA 95833
(916) 561-5653
dchasteen@cfbf.com

Scott Miller
P.O. Box 145
Dillon Beach, CA. 94929
(707) 878-2167

July 26, 2013

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

Re: LCPA Hearing (July 30, 2013)
Attachment 1: Short Term Vacation Rentals

Dear Staff and Supervisors,

Thank you for another opportunity to comment on the LCP update.

Policy C-HS-6

I like the change made at the request of the Coastal Commission staff. The first word in the title should also be changed to "Regulate", to match the text (the title says restrict and the text says regulate).

Suggested changes:

C-HS-6 ~~Restricted~~ Regulated Short-Term Rental of Primary or Second Units.
~~Consider~~ Regulate~~ing~~ the use of residential housing for short term vacation rentals.

I fully appreciate the change that has already been made (regulate, not restrict), but please consider removing the word "Consider". I think we can skip that part of the debate and go ahead and start regulating. Vacation rentals are a cottage industry because they involve more than one client visiting the property at a time, and most involve more than one employee (manager, cleaners and maintenance workers). Existing regulations require a use permit for cottage industries (such as bed and breakfasts). Therefore a use permit should be required for vacation rentals.

Program C-HS-6.a

I also appreciate the changes made to this program. Please consider the following additional changes:

Program C-HS-6.a Vacation Rental Ordinance.
1. Work with community groups and applicable county departments to ~~determine the level of support for~~ craft an ordinance regulating short-term vacation rentals.
2. Research and report to the Board of Supervisors on the ~~feasibility~~ progress of such an ordinance, options for enforcement, estimated program ~~cost~~ revenue to the County, and the legal framework associated with rental properties.

As the Dept. of Finance is now aware, many of the vacation rentals in the coastal zone do not pay the Transient Occupancy Tax. Program C-HS-6 could be one of the only programs in the LCP that would actually add to the general fund.
In other words: **This policy pays for itself.** (As soon as you get done considering it and start doing it.)

If Marin were to regulate these businesses, which already qualify as cottage industries (as in, use permit required), it would simultaneously increase revenue, demonstrate adequate visitor serving facilities, and improve the safety of those facilities for visitors.

It's a win/win/win situation. The only losers are the dishonest operators.

Remember: This is not a Resident vs. Renter Issue.
It is an Honest Operator vs. Dishonest Operator Issue.

Please, if you need more convincing, review the details in my December 6 letter.

Thank you.
Sincerely,
Scott Miller

Some follow-up to my December 6 letter:

Table 3 in Appendix #2 is still incorrect.

There are still many Dillon Beach vacation rentals missing from the list.
It lists 46.
HomeAway has 59, VRBO has 56, Dillon Beach Resort has 3.
Moore Vacation Rentals has 28, Dillon Beach Prop. Mgt. has 18.
Many of these are repeats but, at the very least, **HomeAway + DBR = 62.**

There are not 650 campsites at Lawson's Landing.
233 of the trailers (Area 2) are not visitor serving.
The permit allows for 417 campsites.
There are currently 204 sites. (According to their website)

Corrections/additions to my TOT numbers:

The house I used for the TOT example should also be paying $150 per year for a business license, bringing his annual total owed and unpaid to $7465 (up from $7315).
It has now been on the rental market for 6 years.
This ***one operator*** now owes about ***$40,000*** in back taxes, ***before penalties and interest.***
If the other 15+ operators missing from Attachment #2 do half the business this rental does, the ***lost revenue is over $55,000 per year, just in Dillon Beach.***

Every year you "consider" regulating vacation rentals there are hundreds of thousands of dollars slipping through your fingertips.

July 26, 2013

Marin County Board of Supervisors

Via Email: bos@marincounty.org

Re: Local Coastal Program Amendments (LCPA) Seventh Board Public Hearing -- Adopt Resolution to submit LCPA to California Coastal Commission, with revisions.

Dear Marin County Board of Supervisors,

West Marin Sonoma Coastal Advocates (WMSCA) thank the Community Development Agency, LCPA staff, Coastal Commission staff, Planning Commission, and members of the public for their continuous commitment to crafting the best possible LCP for Marin County.

WMSCA have only one request. Please modify the final sentence under C-AG-2 Coastal Agricultural Production Zone (C-APZ) (BOS Attachment #5, Referenced Policies and Sections, Agriculture, C-AG-2, #6, page 2):

C-AG-2 Coastal Agricultural Production Zone (C-APZ).

In the C-APZ Zone, the Principal Permitted Use shall be agriculture as follows:

6. Accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including one farmhouse per legal lot, one intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities (not including Wind Energy Conversion Systems and wind testing facilities).

In the last sentence, strike the words **"not including"** and add **"Wind Energy Conversion Systems (WECS) and wind testing facilities are specifically excluded from the Coastal Zone."**

We want to take this opportunity to thank the Board and everyone involved in this review process.

Respectfully submitted on behalf of WMSCA,

Beverly Childs McIntosh
San Anselmo, California

Susie Schlesinger
Petaluma, California

Helen Kozoriz Shoemaker
Oakland, California

Frank Egger
Fairfax, California

Sid Baskin
San Rafael, California

Durward Armstrong
Petaluma, California

Cc:
Kevin Kahn, North Central Coast District Supervisor, California Coastal Commission

From: IConlan@aol.com
To: Drumm, Kristin
Subject: LCP Board of Supr Hearing July 30, 2013
Date: Friday, July 26, 2013 4:52:53 AM

President Judy Arnold and the Marin County Board of Supervisors

By Email to kdrumm@marincounty.org

Dear President Arnold and Honorable Supervisors:

I would like to thank the members of the Marin County Board of Supervisors, with special acknowledgment to Supervisor Steve Kinsey regarding the long road traveled with regard to the Local Coastal Plan, in preparation of submittal to the California Coastal Commission (CCC).

In an unprecedented recognition of agricultural stakeholders by the CCC, agriculture was allowed in the person of Albert Strauss, an opportunity to sit at a CCC "workshop" table and present an agricultural stakeholder's point of view, for which we are grateful to Supervisor Kinsey, who shepherded this significant event, and the members of the Board who supported this event.

I also would like to recognize and thank Planning Director Brian Crawford, Jack Liebster and all the Planning Staff for all the accommodation afforded both sides of the contentious issues involved in this long process.

The Staff has always been professional, kind and courteous, and I and others, were surprised more than once when on a late weekend night or early morning emailing an inquiry to Jack Liebster received an almost instant reply, demonstrating to us all the great dedication and patience this staff has exerted to help those of us who are so passionately concerned about the future of agriculture in Marin County.

I, as well as my fellow agricultural stakeholders request the Board to include the **Agricultural Exclusions** as outlined in the July 1, 2013 erudite letter of our California Farm Bureau Counsel Christian Scheuring, Esq., which we endorse.

Meanwhile, Back at the Ranch, My fellow agricultural stakeholders and I, remain concerned about the following issues:

1. **Bed & Breakfast operations have been removed as a "Principally Permitted Use (PPU)".**
   This PPU was a specially granted privilege by the CCC many years ago, and now jettisoning this privilege in favor of a nebulous "farm stay" that disallows an evening meal is ridiculous. I have listened to the discussion and decision of this issue led by Commissioner Wade Holland and

respectfully strongly disagree with his vision of farming and ranching in West Marin for the next 30 years, when neither he nor I will be around to witness the demise of farms and ranches which he has architecturally designed, if in fact his vision is allowed to remain.(restrictions on farm processing facilities, farm stands, intergenerational housing, B&B and his version of "farm stays")

2. **The proposed LCP forbids a place of worship, or a Veterinary Clinic** in land under the jurisdiction of the CCC, is unacceptable. This proposal aside from Constitutional issues regarding religion-- smacks of personal basic bias and prejudice. Forbidding a Veterinary Clinic will be generating unfair competition for the livestock producer under the jurisdiction of the CCC. Farmer Jones will have to travel many more expensive extra miles for Vet Services than his competitor who has the good fortune to farm or ranch outside the constraints of CCC.

3. **RIDGELINES** Farmers and Ranchers stakeholders, (lands in same families for generations) by the LCP proposals, will be required to perform their work so as not to offend the sight of passing motorist, cyclist and hikers. Their agricultural methods must now conform to a skewered concept of "how *not to impair the visually prominent ridgelines*".
   This notion is capricious and arbitrary and inappropriate for farm and ranching activities, and best left to federal lands, Bill Boards, and parks, not to ranches farmlands.

4. **The LCP proposal will be invading the privacy and proprietary information of farmers and ranchers who will be required to *provide humiliating financial disability proof and need for supplemental income*** in order to conduct events on their lands such as weddings, educational events, demonstrations of farming activities, tours, nature walks, landscape painting clubs, BarBQs, animal care demonstrations, barn dances, and other diversified activities in order to make a living for their families. This is unacceptable.

5. **The LCP proposal requiring clustering of buildings** with an arbitrary stated percentage, without regard to health, safety and welfare of farming families is unfair on its face.
   Is this to satisfy the nebulous "*viewers*" who are passing by, or have come out to the countryside on weekends and holidays, so that they will not be offended or distracted by various farming activities taking place on appropriate areas of the ranches, in place probably years before they

were even born?

These *"viewers"* of course, remain secure with their own steady regular paycheck or mailbox income, or trust funds, (not dependent on the vagaries of farming and ranching which owners and family require 18 hours days without minimum wage, time and half, or double pay on holidays. The growing crops, poultry and livestock, without reason and letters behind their names have no idea which is a Sunday or a holiday or after 5 PM, and demand their nourishment.

So these politically well placed "viewers" would deny the farmers/ranchers the ability to make a living for their own families, and now are required to farm/ranch to the visual satisfaction of a fleeting passing "viewer" chorus, without regard to the needs of crops and animals.
This requirement is demanded notwithstanding the thousands of acres of public park lands already in place, for the "viewers" to enjoy, unfettered by the activities of those who provide their food and fiber.

6. **The "right to farm" on farmland**, in the proposed LCP appears to be diluted in language that removes, replaces, and diminishes provisions that specified agricultural uses that were previously "allowed by right"

7. **Intergenerational housing,** while historically allowed throughout this great United States of America, (the Kennedy & Bush recreational compounds) are now proposed to be diminished or eliminated for farmer Jones as a "Principally Permitted Use". This is the legacy of Planning Commissioner Wade Holland who proclaimed that for thirty years the farmers of West Marin didn't need such housing, so why now? (see archive video tape of Planning Committee Meeting) Gee whiz we ask Commissioner Holland, do you suppose farmer Jones's son has finally reached majority, married and had a family of his own in these past 30 years, works on the farm and also caring for aging parents and his wife works in town to help pay the bills? They surely should be entitled to a home of their own on the family farm lands,what is the basis of this arbitrary discrimination?

   Tiburon, Belvedere, and other parts of Marin have family compounds, some with private boat houses and piers, *all for entertainment and recreational purposes.* Yet farmer Jones who is providing local food is

denied as a "principally permitted use" a home for his daughter or son (who might need to have an additional job in town to support the family) Have the authors of these Draconian rules ever considered the average income of farmers in West Marin?

8. **ALTERNATE USES OF WETLANDS** While land has been used for grazing for over a century on many of the ranches in West Marin, seasonal weather may convert an area to a wetland, which becomes so designated. Good stewardship of the land and animals would not allow animals to graze in standing water marshes for fear of fatal liver flukes.

Historically grazing is observed on lands in summer months on seasonal wetlands. A Congressional Research Report for Congress (7-5700 www.crs.gove RL33483 entitled, *Wetlands: An Overview of Issues* points out that an inventory of wetland in the nation was loosely compiled in 1970's and 1980's, and notes an estimated 74 % of all remaining wetlands are on private lands. The study notes that government regulation of private property raises the argument that landowners should be compensated *when a "taking" occurs and alternate uses are prohibited or restrictions on use are imposed to protect wetland values*. Many landowners argue that a taking should be recognized when a site is designated as a wetland. In 2002 The Supreme Court held that a Rhode Island man, who had acquired property *after* the state enacted wetland regulations, was not precluded from bringing an action to recover compensation, acknowledging that alternate economic uses could be allowed on wetland areas. (*Palazzolo v Rhode Island,* 533 U.S. 606 (2002)).

My understanding of the proposed LCP would preclude any alternate economic use whatsoever of a designated wetland, thus exposing the county and state to costly litigation. The Congressional Research Service page 16 noted:

Agricultural Wetlands and the Section 404 Program

The CWA Section 404 program applies to qualified wetlands in all locations, including agricultural lands. But the Corps and EPA exempt "prior converted lands" (wetlands modified for agricultural purposes before 1985) from Section 404 permit requirements under a memorandum of agreement (MOA), and since 1977 the Clean Water Act has exempted "normal farming activities."

Wetlands should be available to the farmer/rancher to be used for tours, bird watchers, landscape painters, events, and cattle grazing, *when appropriate,*

defined as good stewardship. So when areas on our lands are designated as "wetlands" and they are dry, indeed the farmer/rancher who has been utilizing his lands should continue to do so under the aegis of the *Palazzolo* ruling which recognized retained economic use.

9. **Buffer zones should be flexible and appropriate**, without a mandatory minimum buffer zone of 25 feet. As a young farmer pointed out, organic dry farming might well be appropriately placed near a waterway with no adverse affect on land, flora or fauna.

10. **An applicant applying for worker housing** should not be burdened with providing a study of existing worker housing, which is required under the proposed LCP.

Thank you for an opportunity to present concerns, in the trust that agriculture in Marin County will continue for the next 100 years.

Respectfully submitted

Ione Conlan

West Marin Rancher Farmer

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

From: IConlan@aol.com
To: Drumm, Kristin
Subject: LCP Addendum to 7/26/13 Ltr to BOS
Date: Sunday, July 28, 2013 10:17:30 PM

President Judy Arnold and the Marin County Board of Supervisors

By Email to kdrumm@marincounty.org

Dear President Arnold and Honorable Supervisors:

Please add as an Addendum, the following comments which were inadvertently left out of my email of July 26, 2013, or as we farmers and ranchers say at these LCP hearings, "*we seem to find ourselves continually sounding like undertakers at the wedding party*"…

The death toll of farming and ranching in Marin County appears to be is eminent *if we allow some (excluding our good Supervisor Steve Kinsey) appointed Coastal Commissioners and their Staff, to run amuck.*

We simply cannot stand by as passing stewards of these rangelands and farmlands in which we and our families, have all invested our lives, lifetime assets, our "*blood, sweat, tears and toil*" on these magnificent lands—we cannot allow these discriminatory bold land takings and "social engineering" manipulations, and assertions by third party *appointed* Coastal Commissioners and staff, affect our future generations in Marin County, as the CCC staff play the role of puppeteer pulling the strings, deciding what is best for our farms and ranches in our local counties *without any knowledge of agriculture*, whimsically dismissing local agriculture stakeholders.

MERGING OF PARCELS I, and my fellow farming and ranching stakeholders, request that the Board and County Staff revisit the **mandatory merging of land parcels as a condition for a permit approval**, as proposed in the current LCP.

Prohibiting a land division as condition for permit approval can be found in Policy C-AG-7.B.3, which calls for the requirement of the "execution of a covenant not to divide," and Development Code 22.65.040.2.a. that states,"…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."

This is another insidious method of converting land value into a downward spiral. It is an **unreasonable discrimination against coastal land owners**, a unique method of diminishing land values, promoting ***unfair competition*** for producers who must compete in the market place with other producers who do not have such onerous takings of their fee property.

To what motive do we assign this? Merging of parcels affects the land value. Among adverse affects is the amount of operating loan a farmer,rancher or dairyman can negotiate with his banker, or a landowner negotiating a *USDA, MALT, or a NATURE CONSERVANCY conservation easement*, thus depriving the landowner of the same advantages as other landowners, who have not been so deprived of rights. This smacks of discrimination and unfair play, seeking to put the landowner out of business, another death blow to agriculture and those who work the land and have sacrificed so much to keep the land in the family in agriculture.

"LEGAL PARCEL" –"LEGAL LOT "

Under the existing C-APZ-60 an Ag landowner may have one home per 60 acres, whether owning 60 acres or 6000, CCC staff insidiously seeks to diminish that right to **one farm house per *farm*, whether the farm is 60 or 6,000 acres, manipulating "parcel" to "legal lot", in their *exquisite machinations*, which is fatal to agricultural lands in Marin County.**

SOCIALLY ENGINEERING LIFE STYLE

Placing a cap of 7,000 ft. on our farmlands and ranches is an outrage. It is an attempt to engineer the end of generational farming, and disrupt lifestyle of families. **It is CCC staff manipulating *who, when, where, and how families can live on their family farm.***

What shameful social engineering, when elsewhere in Marin we find huge homes on small lots, and family compounds on the Marin Bay waters mysteriously manipulated outside the purview and jurisdiction of CCA, yet considered coastal by the National Oceanic & Atmospheric Administration, (NOAA) which has already declared all of Marin County a Coastal County, so we may expect in the future an absorbing Federal Agency encapsulating the CA Coastal Commission.

Meanwhile, Back at the Ranch, I, and my fellow farmers and ranchers entrust the Marin Coastal Agricultural Lands to this thoughtful local Board who we pray, will not betray their local constituency, and will not destroy our right to farm/ranch and pass our knowledge and skills on to future generations.

We endorse, approve, and applaud our Agricultural Organizations' comments, specifically the July 26, 2013 letter written jointly by the California Cattlemen's Association (CCA) Margo Parks, Director of Governmental Affairs, and Sam Dolcini, President Marin County Farm Bureau, as they noted:

"Marin County's LCPA should be a reflection of the priorities of the County and not a capitulation to an unelected panel. Insofar as the LCPA is consistent with the Coastal Act it should, by law, be approved and certified by the California Coastal Commission (CCC). Your Board has a responsibility, as an elected body, to represent their constituency and demonstrate sound decision making based on

public comment. We hope that the Board will rise to the occasion and submit an LCPA that is reflective of the wants and needs of Marin County, and not of CCC staff."

Respectfully submitted,

Ione Conlan
West Marin Farmer/Rancher

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

From: Ken Levin [mailto:klevin@horizoncable.com]
Sent: Sunday, July 28, 2013 9:25 PM
To: BOS
Subject: Coastal Plan Amendment

I am in favor of this amendment as a way to safeguard the rights of county property owners as well as protect the environment.

Please pass this amendment.

Thank you

Ken Levin
Box 715
Point Reyes Station

From: Chris Lish
Sent: Monday, July 29, 2013 7:53 AM
To: BOS
Subject: Please reject the proposed LCP Amendment

Dear Marin County Board of Supervisors,

I write in strong opposition to the proposed Local Coastal Program (LCP) Amendment that the Board of Supervisors is set to approve on Tuesday afternoon. The proposed LCP Amendment would weaken protections for wetlands, streams, and their buffers, greatly reduce protections for agricultural production lands, greatly diminish scenic view and resource protections, and remove the County's comprehensive look at all parcels under common ownership when development is proposed. While the Amendment provides better storm water quality provisions, overall I much prefer the existing Certified LCP to protect our unparalleled coastal resources and rural character. Please reject the proposed LCP Amendment.

Thank you for your consideration of my comments. Please let me know how you intend to proceed on this issue. I look forward to your response. Please respond by e-mail if possible.

Sincerely,
Christopher Lish
PO Box 113
Olema, CA 94950
lishchris@yahoo.com

From: Johnston, Bob [mailto:rajohnston@ucdavis.edu]
Sent: Monday, July 29, 2013 11:24 AM
To: BOS
Cc: Johnston, Bob
Subject: LCP Amendment

Dear BOS,

Please do not appove the LCP amendments proposed by your staff. They weaken several provisions in the current LCP.

I live in West Marin and the open space on ranches will be increasingly important for our economy. Stream protection will become even more important as climate change stresses all ecosystems.

Thanks,

Bob

Robert A. Johnston, Emeritus Professor
Dept. of Env. Science & Policy
University of California, Davis
Inverness Home/Office: 415 663-8305
Wed-Sat evenings: 415 663-8709

USPS: P.O. Box 579
Point Reyes Station, CA 94956
UPS/FedEx: 20 Drakes Summit Rd.
Inverness, CA 94937
Cell: 530 559-0032 (poor service)

PACIFIC LEGAL FOUNDATION

July 29, 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: "Categorical Exclusions" for Agricultural Lands Along the Coast

Dear Supervisors:

We wanted to draw your attention to an issue that has been discussed via email between Jack Liebster and others. Namely, the extent to which the Coastal Act authorizes you to extend categorical exclusions for agriculture in the Coastal Zone. Mr. Liebster has argued that the Board cannot adopt geographical exclusions for agricultural lots located directly on the coast. That is because Section 30610.5(b) states in relevant part:

> Tide and submerged lands, 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.

Section 30610(e) provides:

> Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

Hence, Mr. Liebster maintains that under the Coastal Act, the Commission may only have authority to grant categorical exclusion orders for agricultural lands that are not tide or submerged lands, beaches, or lots immediately along the coast.

Whether or not an exclusion based on *geography* may be prohibited, an exclusion based on the *nature of a project*—like agriculture-related development—is not. That is because Section 30610.5(b)'s limitation does not apply to Section 30610(e)'s provision allowing the exclusion of "[a]ny category of development." Thus, the County has a legal way of obtaining an important goal for its agricultural constituents by requesting, by way of an LCP amendment, that the Coastal Commission exclude agriculture-based projects (including all those projects listed in the existing Agricultural Exclusions in the Categorical Exclusion Orders) from the costly and burdensome CDP process. We would note that the County's LCP (C-AG-2.a) already contemplates the possibility of using this legal strategy of obtaining relief for the agricultural community. That section provides for "review [of] aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that do not cause adverse environmental impacts and, hence, could be eligible additions to the categorical exclusion."

In addition, the County could consider other amendments to its LCP to accommodate the pressing needs of the agricultural community. One such proposed amendment that would be consistent with the Coastal Act, for example, could specifically define the term "lot" in the last sentence of Section 30610.5(b)—a term that is undefined in the Coastal Act. The term "lot" in this context could be defined to mean a "a buffer that runs inland from the beach/mean high tide line (MHTL) by X feet." This would substantially alleviate the present inequity of designating certain inland lots that are not adjacent to the beach/MHTL as Excludable Areas, while *not* excluding large portions of agricultural lots that happen to be adjacent to the beach/MHTL, but that may run inland to the same extent as those excluded lots.

We hope that you will seriously consider these options as tools to support sustainable agriculture in Marin County.

Sincerely,

PAUL J. BEARD II
JENNIFER F. THOMPSON
PACIFIC LEGAL FOUNDATION

Attorneys

CC: Marin County Board of Supervisors BOS@co.marin.ca.us
Steven Woodside, Marin County Counsel Swoodside@marincounty.org
Jack Liebster, Marin County Planning Manager Jliebster@marincounty.org
David Zaltsman, Marin County Counsel Dzaltsman@marincounty.org
Stacy Carlsen, Marin Agriculture Commissioner Scarlsen@co.marin.ca.us
Jack Rice, California Farm Bureau Federation Jrice@cfbf.com
Chris Scheuring, California Farm Bureau Federation Cscheuring@cfbf.com
Doug Ferguson doug.ferguson@sbcglobal.net
Paul J. Beard II, Pacific Legal Foundation pjb@pacificlegal.org
David Lewis, UCCE djllewis@ucdavis.edu
Jamison Watts, MALT jwatts@malt.org
Tito Sasaki, Sonoma County Farm Bureau tito@att.net
Sandra Schubert, Undersecretary of Agriculture Sandra.Schubert@cdfa.ca.gov
Nancy Gates, Coastal Landowners for Agricultural Sustainability and Security ndgates@pacbell.net

PACIFIC LEGAL FOUNDATION

July 29, 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: Comments for July 30, 2013, Public Hearing on Local Coastal Program Amendments

Dear Supervisors:

Pacific Legal Foundation, the nation's oldest public interest property rights foundation, has followed Marin County's Local Coastal Amendment process with great interest. Foundation attorneys have regularly filed comment letters highlighting particular concerns,[1] and Principal Attorney Paul Beard recently addressed some of these concerns in person at your February 26th hearing. While we very much appreciate some of the changes that your Board, the Marin County Planning Commission, and the staff of the Community Development Agency have adopted to address property owners' concerns, we remain alarmed about a number of issues.

Primarily, we believe that the LCPA, as drafted, does not sufficiently advise permitting authorities, the public, or Marin County property owners of the limits on the County's ability to demand dedications of private property in exchange for building permits. Throughout the LCPA, there are requirements that property owners dedicate public access easements, conservation easements, or open space easements in order to put their property to particular uses.[2] We fully agree with the Marin County Farm Bureau's Attachment #1 to its letter of 2/19/2013, that the LCPA should contain more detailed, clear and consistent language setting forth the circumstances under which the County may require such dedications.

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[1] *See*, *e.g.*, 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; and those to the Board of Supervisors: 10/1/2012, and 3/18/2013.

[2] *See*, *e.g.*, Development Code Sections: 22.64.180 *Public Coastal Access Standards*, 22.65.040 *C-APZ Zoning District Standards*, 22.64.180 *Public Coastal Access*, and Policies: C-AG-7 *Development Standards for the Agricultural Production Zone* (C-APZ), C-AG-7.B.3 *Conservation Easements*, C-PA-2 *Public Coastal Access in New Development*.

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Incorporating the following "constitutionality clause" into the LCPA, both in the Land Use Plan and Development Code, and including brief references to the clause in applicable policy and code sections, would solve this problem. To date, we have not seen your board specifically address this issue, even though it has been raised numerous times by the Farm Bureau, and Pacific Legal Foundation. We again request that you consider incorporating the following language into C-INT-1, Consistency with Other Law:

Proposed Constitutionality Clause

> 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.

It is settled law that the County may only require property owners to dedicate easements—whether for public access, open space, or conservation—as a condition of obtaining a development permit, where there is a close connection between the easement and the mitigation of harm that will be caused by the proposed development. As we have explained before, under the United States Supreme Court's decision in *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987), the burden falls on the government to demonstrate that close connection or "essential nexus" between the impact of the development and harm mitigation. The Court's subsequent decision in *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), further requires government to undertake an "individualized determination" to show that there is "rough proportionality" between the condition and the harm. Where those connections are missing, dedication requirements are illegal.

Last month, the Court reaffirmed the continuing importance of these limitations on government permitting conditions in *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013). In that case, the Court reiterated the holdings of *Nollan* and *Dolan*, noting, that "government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz*, 133 S. Ct. at 2591. The Court also described these cases as a special application of the unconstitutional conditions doctrine which "protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits." *Id*. at 2594. It noted that:

> [Given the] realities of the permitting process, . . . land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than the property it would like to take. By conditioning a building permit on the owner's deeding over a public right-of-way, for example, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation.

Id. The Marin County Draft LCPA does not go far enough to counter this dynamic or to incorporate the federal Constitution's limit on government permitting power. The following examples are particularly troubling and we urge you to address them:

Section 22.64.180.B.1 Public Coastal Access Standards

Section 22.64.180.B.1 provides:

> 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, the dedication of a lateral, vertical and/or bluff top accessway shall be required . . .

While we appreciate that this code section is premised on "impacts" to public access—and the reference to "a nexus" seems to imply that the County will fulfill its constitutional obligations, the reference to Land Use Plan Policy C-PA-2 is troubling. That policy provides in relevant part:

> Impacts of public access include, but are not limited to, intensification of land use resulting in overuse of existing public accessways, creation of physical obstructions or perceived deterrence to public access, and creation of conflicts between private land uses and public access.

These conditions setting forth what may constitute "impacts," say nothing about their proportionality. Neither is it clear how a "perceived deterrence to public access" could possibly be a cognizable harmful impact for which mitigation could legally be required. This language gives the distinct impression that the County will always be able to come up with "evidence of impacts" to satisfy the LCP, anytime property owners along the coast apply for permits.

Of course, that is not what the Constitution, as interpreted by *Nollan*, *Dolan*, and *Koontz* requires. Adding the constitutionality clause, as proposed above, would ensure that the County acts within the scope of its lawful authority when demanding easement dedications.

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

In addition, we are concerned that other provisions of the LCPA unlawfully restrict the right of property owners to make productive use of their land and hence leave the County vulnerable to legal challenge. Section C-AG-7 is particularly egregious. Its requirement that property owners with land zoned C-APZ must place 95% of their property into a permanent agricultural conservation easement in order to use 5% of the land for non-agricultural uses, is precisely the type of "one-size fits all" provision that *Nollan*, *Dolan*, and now *Koontz* disallow.

Even more troubling, however, is the fact that by its own terms, this section only allows proposed development for non-agricultural uses if "the development is necessary because agricultural use of the property would no longer be feasible" and "the proposed development will not conflict with the continuation or initiation of agricultural uses on that portion of the property that is not proposed for development." C-AG-7(B)(4)(a)-(b). If both of these conditions are met—agricultural uses are no longer feasible on that particular 5% of the property and the proposed development will not inhibit agricultural production on the remaining 95% of the property—the County will never be able to satisfy the individualized assessment required by *Nollan*. How could the County ever demonstrate that there is an essential nexus between the impact of the proposed development of 5% of the property, and the condition that 95% of the property be put into an agricultural easement when the County will only allow non-agricultural development *if it does not impact agricultural uses*?

Since the LCPA concedes that the County will only approve development if there is no adverse impact on agricultural uses, this requirement fails both the "essential nexus" and "rough proportionality" standards. A property owner may only be required to dedicate land for an agricultural easement where such an easement mitigates—both in nature and extent—specific harmful impacts of proposed development.

In addition, the requirement in Policy C-AG-7.B.3, that a property owner execute an unconditional covenant not to divide his or her property in exchange for a permit to use land for non-agricultural uses has takings implications. Unless the County meets its burden of establishing that the proposed use will create harmful impacts that are proportional—both in nature and extent—to the surrender of the owner's right to divide his or her property, the requirement fails the constitutional standard. Reference to the constitutionality clause should be included as a part of this policy and in the corresponding Development Code section 22.65.040.C.2.a.

CDA staff has opined that a single constitutionality clause and references to it were unnecessary and would render the document cumbersome. We disagree. Eliminating the unclear and sometimes internally-inconsistent language and replacing it with a simple reference to the clause wherever it is applicable, would result in a more transparent, clear, and consistent document.

Some additional examples of where existing language is unclear, internally inconsistent, or does not go far enough to ensure that the LCPA complies with the "essential nexus" and "rough proportionality" constitutional standards, include:

Conservation Easement Requirement

22.65.040 - C-APZ Zoning District Standards: "*Where consistent with state and federal laws* . . . Preservation shall be accomplished by permanent conservation easements or other encumbrances acceptable to the County . . ." (emphasis ours).

Policy C-AG-7.B.3. Conservation easements: "*Where consistent with state and federal laws*, a permanent agricultural conservation easement . . . shall be required . . . " (emphasis ours).

Prescriptive Rights

Policy C-PA-6.4. Protection of prescriptive rights. New development shall be evaluated to ensure that it does not interfere with the public's right of access to the sea where acquired through historic use per Land Use Plan Policy C-PA-7.

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.

Notably, the LCPA Appendices, Appendix 1 - List of Recommended Public Coastal Accessways, recommend that on APN #100-040-33 and -57 "Public pedestrian access shall be maintained to Estero day San Antonio on dirt road north of Oceana Marin . . ." and that "Lateral and/or blufftop access shall be required on all parcels north of 100-100-46/north of Oceana Marin . . ."

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. 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. Please see Attachment #1 of MCFB's 2/19/2013 letter for additional Policies and Codes where reference to a constitutionality clause would satisfy existing law.

We also support the positions set forth in the 7/26/2013 letter submitted jointly by the California Cattlemen's Association and the Marin County Farm Bureau dealing with CDA's July 2, 2013, Staff Report, in particular the issues with constitutional Fifth Amendment takings implications including:

- the proposed aggregate cap on residential square footage;
- the proposed allowance of one farmhouse per "farm" rather than per "legal lot;"
- the proposed 5% clustering provision;
- the proposed expansion of ESHA and ESHA buffers; and
- the proposed building limitations for the "protection of Ridgeline views."

Further, we concur with CCA's and MCFB's assertion that the Coastal Act gives you, the local government, the authority over and autonomy from the Coastal Commission when determining the precise content of your Local Coastal Program. *See* Pub. Res. Code §§ 30500, 30512.2.

In closing, we urge you to carefully consider these highlighted concerns. Bringing the LCPA into closer conformity with constitutional norms for land use will help to insulate the County from future litigation. It will put applicants and County employees alike on notice of their respective rights and obligations, and it will ensure respect for the constitutional rights of Marin County property owners.

Sincerely,

PAUL J. BEARD II
JENNIFER F. THOMPSON
PACIFIC LEGAL FOUNDATION

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west marin environmental action committee

July 29, 2013

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

Dear Supervisors,

The Environmental Action Committee of West Marin (EAC) thanks you for the opportunity to provide comments on the staff report and proposed Local Coastal Program Amendment (LCPA). ***EAC strongly urges you not to pass the ordinance that would send the proposed LCPA to the Coastal Commission***. The proposed LCPA contains many significant unresolved issues and numerous inconsistencies that should preclude the approval of the LCPA document at this time.

EAC does not understand the justification for the Board's abdicating its policy-making responsibilities on these significant issues. Only very limited progress has been achieved in overcoming the fundamental deficiencies of the proposed LCPA. **We recommend that before scheduling another vote the Board address the hard issues that have been abundantly clear for over two years based on repeated comments from CCC staff.**

The County characterizes this document an "amendment" but simultaneously proposes that the existing Certified LCP Units I and II should not be carried forward as part of the new, to-be-certified LCP document. No sufficient explanation has been given for this proposed exclusion.

Additionally, the public has not been provided the required findings for many of the proposed policy changes despite public requests for those findings for over three years.

EAC respectfully reiterates its April 16th comments that the proposed LCPA 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. That comment letter is attached hereto for reference.

EAC offers the following specific comments on the July 30, 2013 staff report.

C-AG-3: Attachment 2, page 3 – The CDA staff proposes watering down the clustering or "grouping" requirement on C-ARP lands by instead proposing that development be "in a group or groups." C-ARP lots are typically much smaller than C-APZ and thus the clustering requirement should be more stringent.

C-DES-2: Attachment 2, page 3 – CDA staff continue to omit the proactive requirement to protect views to and along the coast as clearly stated in the Coastal Act. This section is not sufficient in its current form.

Grading (coastal): Attachment 3, pages 2, 4 – EAC disagrees that the threshold for triggering a coastal development permit for grading should be 150 cubic yards. This is a significant amount of earthen material, and there are not facts or findings to justify the number.

22.130.030 Agricultural activities, Ongoing (coastal): Attachment 3, page 4 – This new definition includes a provision that would allow removal of up to one-half acre or 21,780 square feet, of native vegetation. It would also allow ongoing activities in ESHA with no assessment or mitigation. Neither of these provisions is acceptable.

C-AG-2 Principal Permitted Uses in C-APZ: Attachment 3, page 5 – The definition of "agriculture" continues to be too broad and allows as PPUs uses that are related, but are more akin to commercial manufacturing. This is one of the major unresolved issues that has been outstanding for years and which should be resolved prior the Board's approval of the LCPA.

C-BIO-20 Wetland Buffer Adjustments and C-BIO-25 Stream Buffer Adjustments – These sections are not listed in Attachment 3 as unresolved but should be given that the language in both remains unacceptable to EAC and the environmental community. Additionally, it is doubtful that the Coastal Commission staff supports the allowance to significantly reduce the ESHA buffer size from the standard 100-feet to the CDA's proposed 50-feet.

C-PK-6 Bed and Breakfast Inns: Attachment 5, page 13 - It is unclear the extent of "facilities" that are allowed in support of B&Bs. There should be some standards and limits to ensure that they do not encroach upon working agricultural lands, ESHAs and ESHA buffers.

22.68.030 Coastal Permit Required: Attachment 5, page 15 – The last sentence of this definition should include "new or expansion of a surface impoundment."

Again, there is no basis for a vote on this incomplete document. The Board should delay approval of the proposed LCPA until the many significant issues are much more fully understood and resolved by the public, Commission staff, and CDA staff.

Respectfully submitted,

Amy Trainer, Executive Director

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July 29, 2013

RE: Comments on LCP Amendment Approval

Dear Board of Supervisors,

We urge you to NOT approve the LCP "Amendment" in its current form. (Note: it cannot be an amendment, if the original LCP documents I and II are not retained.) In each of Sierra Club's previous comments to you, we have consistently raised concerns over failure in critical elements of the process and structure of the proposed LCP.

Unfortunately, these failures have continued throughout, and have produced a product that is inadequate, does not uphold the Coastal Act, and proposes to REDUCE protections for the Marin Coast. Unresolved issues remain significant, and any submission to the Coastal Commission is premature, until these are adequately resolved.

Sierra Club's goals are to preserve the Coastal protections already Certified in LCP I and II, at a minimum, and to gain additional protections. Any reduction of resource protections or weakening environmental regulation and control is unacceptable.

Since April 2009, the CCC Staff has submitted comments to the County, mirroring Sierra Club comments, and even pointed out ADDITIONAL problems with format and language in the County's draft Policies. Despite the CCC staff expertise, it appears the County has chosen to ignore their concerns, including identified inconsistencies and incompatibilities with the California Coastal Act and Public Resources Code in the proposed Amendment.

For example"…the County must still be able to comply with requirements of the California code of Regulations sections 13552 and 13511 for adequacy of information to file a LCP amendment."

The County has consistently eliminated existing LCP policies, replaced them with generalized and unspecific statements, altered coastal act citations, or has omitted Policies with no replacement language at all. The Coastal Act requires FINDINGS for each change, addition, removal or replacement of an item or language in a Certified Local Coastal Plan. The County is consistent in its failure to make findings on its new, proposed LCP.

Sierra Club hopes that the Board of Supervisors will accept its responsibility to conduct due diligence on the LCP "Amendment" by complying with the California Coast Act provisions and thereby protecting our Marin Coastal resources.

Please do NOT APPROVE the sending the LCP "Amendment" to the Coastal Commission, until all outstanding issues are resolved.

Sincerely,

Michele Barni, Chair, Sierra Club Marin Group

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July 30, 2013

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

Re: July 30, 2013 Board of Supervisors' Hearing on the Marin County LCP Update

Honorable Supervisors:

We wanted to take this opportunity to provide some brief comments on the Local Coastal Program (LCP) update that you are going to be considering on July 30th. As you are aware, we have been coordinating with your staff as the LCP Update has progressed through the County's process. Over the past four years, from the preliminary Issue Paper phase, to the Planning Commission phase, through the Board of Supervisors phase, Commission and County staff have collaborated through numerous in-person meetings, conference calls, memorandums, and emails to address the LCP Update's consistency with Coastal Act requirements. Over that time, Commission staff provided seven detailed comment letters for the Planning Commission hearings, and, during the Board of Supervisors phase, met with County staff in person in five separate meetings, while also holding weekly conference calls this summer. We have done our best to work with County staff to provide feedback on proposed policy language and Coastal Act consistency issues, and have lent expertise from our technical staff on issues such as land use, biology, water quality, and hazards. We consider this coordination effort to have been both effective and productive, and we want to thank County staff, as well as the Planning Commission and the Board, for all of the hard work that has gone into the LCP update effort.

At the same time, although much progress has been made, we simply ran out of time to work through all of the Coastal Act consistency issues that we had identified with your staff prior to your hearing on July 30th. We want to assure you, however, that we will continue to coordinate with County staff after the Board acts on the update on July 30th. Our goal will continue to be to work out as many issues as possible before the Update is considered by the Coastal Commission in a public hearing. We are hopeful that we can reach agreement on the majority of the remaining issues – and ideally all of them – prior to the time this is taken up by the Commission, and we are committed to a collaborative process to try to make that so.

In the meantime, and as your staff is aware, in our view the primary remaining issues concern how best to protect coastal agriculture and habitats and respond to coastal hazards; and what County policies, ordinances, and programs should be included as part

of the LCP. There are other remaining issues (e.g., certain public access standards, allowed uses in visitor serving zones, etc.), but these seem to be less complicated. In terms of agricultural protection, we continue to believe that the LCP needs to be structured around a more traditional definition of agriculture that is tied to working of the land (including crop production, cultivation, and grazing), so that standards and criteria can be made clearer in terms of allowing, siting, and designing other uses and development that might be appropriate on agricultural lands (e.g. farmhouses, farmworker housing, intergenerational housing, agricultural processing structures, etc.). There are many sub-issues related to agricultural protection, but many of our remaining concerns stem from the Update's proposed definition of agriculture.

In terms of habitat protection, the main issues relate to ensuring that habitats can be appropriately identified and protected during the coastal development permit (CDP) review process, including in terms of the degree to which more or less discretion is allowed (e.g., in terms of defined setbacks versus setbacks that can be adjusted based on a biologist's opinion). We remain committed to a series of policies that can ensure that all habitats will be identified, including in terms of sensitive habitats specifically, and appropriate setbacks and related development standards applied, including flexibility in varying standards where appropriate. The issues here seem more readily resolvable as they are more discrete than the questions surrounding agricultural protection.

With regard to coastal hazards, we would like to have further discussion with the County on issues related to shoreline hazards and hazard response. Development and redevelopment along eroding shorelines with rising sea levels create a very particular set of LCP questions regarding how best to address development pressure while still protecting coastal resources. We are concerned that the Update has yet to fully take on this issue, and is instead proposing what appears to be fairly general guidance. Recent Commission actions and other LCP updates that are currently being developed provide some sense of what more detailed LCP language might look like, and this has been provided to your staff. We recognize a full LCP update addressing coastal adaptation issues for the County's entire coastline may not be feasible at this time, but we would like to discuss how to provide more attention to this issue at this opportunity.

Finally, in terms of what could or should be included in the LCP, there has been much confusion. Some of this centers around cross-references in the LCP (which, in our view, makes the cross-referenced item part of the LCP), but mostly this centers around which code sections the County intends to submit to the Commission as part of the Update. Neither of these issues have to date been clarified. On both issues, it will be important that the County is very clear about what is submitted to the Commission to be certified. On this point, we continue to believe that if the County intends to use a policy, code or ordinance or any other document to make CDP decisions, then that policy, code, ordinance, or other document needs to be part of the LCP. The County cannot legally base CDP decisions on non-LCP policies, codes, ordinances, or other documents. We encourage the County to be thorough in terms of ensuring that the LCP Update includes all of the items with which the County intends to apply in CDP decisions.

Thank you for all of the time your staff has spent with us over the time the Update has been proceeding through the County's process, and, should the Board adopt the Update on July 30th, we look forward to ongoing collaboration as we prepare the Update for Coastal Commission consideration. If you have any questions or would like additional detail on these points, please don't hesitate to contact me at (415) 904-5260 or by email at kevin.kahn@coastal.ca.gov.

Sincerely,

Kevin Kahn
Coastal Planner
North Central Coast District
California Coastal Commission