

August 24, 2015

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

**SUBJECT:** Supplement to the Staff Report for the Resubmittal of the Local Coastal Program – Land Use Plan Amendments (LUPA) and Implementation Program Amendments (IPA) to California Coastal Commission

Dear Members of the Board,

This Memorandum supplements and revises the Staff Recommendation provided to you on August 4. The Supplement contains the following parts. These changes are incorporated into the Staff Recommendation, and are thereby made part of the cited documents (LUPA, IPA) as described.

Sections:

- A. Errata.
- B. Revisions to text in the August 15, 2015 Board Letter.
- C. Revisions to Attachment 1, Staff Recommendations and cited documents.
- D. Revisions to Attachment 2, Land Use Plan Amendments (LUPA)
- E. Revisions to Attachment 3, Implementation Program Amendments (IPA)
- F. Revisions to Attachment 4, Resolution text referencing the LUPA Maps
- G. Additional Documents.

## Section A – Errata

**1. Attachment 2, Land Use Plan Amendments (LUPA).** Errata changes are highlighted.

- a. Pg. 14, 10<sup>th</sup> line from the top: “~~make past tense~~ nonagricultural uses unless...”
- b. Pg. 15, **C-AG-2 Coastal Agricultural Production Zone (C-APZ)**; last line of first paragraph: add in the word “for:” “~~and compatible with,~~ or and necessary for agricultural production...”
- c. Pg. 20. **C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands;** clarification:
  - A. **Standards for Agricultural Uses-All Development in the C-APZ:**  
All of the following development standards apply:
    - 1. Permitted development shall protect and maintain renewed and continued agricultural production use and ~~contribute to agricultural~~ viability on site and shall not impact on- adjacent agricultural lands. Development of ~~agricultural facilities~~ shall be sited to avoid

agricultural land (i.e., prime agricultural land or “non-prime land” (referred to in the Coastal Act as “other land suitable for agricultural use”) whenever possible, consistent with the operational needs of agricultural production. If use of agricultural such land is necessary, prime agricultural land shall not be converted utilized if it is possible to utilize non-prime lands, other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted used for structural development.

- d. Pg. 22 and 23; **C-AG-8 Agricultural Production and Stewardship Plans**, and **C-AG-9 Residential Development and Residential Development Agricultural Dwelling Unit Impacts and Agricultural Use**; **Format:** Denote subsections with letter rather than number.

#### Section B – Revisions to text in the August 15, 2015 Board Letter

1. Pg. 1; at the end of “**Amendment 1:** The following Chapters of the LUPA;” add “Local Coastal Program Maps” to the list of items to be submitted to the Coastal Commission.

#### Section C – Revisions to Attachment 1, Staff Recommendation and cited documents

1. Insert Table of Contents (attached) as first page to facilitate reference.
2. Pg. 4; **Support for Agricultural Production (C-AG-2)**; Revise the Recommendation and related documents to emphasize the critical role and proper application of the Principal Permitted Use designation in protecting coastal agriculture. Add the following text to the end of the last paragraph on page 4:

The Coastal Act provides for several categories of development that are appealable to the Coastal Commission. The first and second are “geographic” categories, for developments approved on sites that are between the sea and the first public road or near wetlands, streams, or bluffs (PRC Sec. 30603(a)(1) and (2)). (Note that a development located within the “geographic appeal area” is appealable regardless of its status as the “principal permitted use,” contrary to the statement on the final page of the CCC staff’s letter (i.e., that “a development is not appealable if it is demarcated with a “PP” in Tables 5-1 through 5-3 of Chapter 22.62”). A development approved in the geographic appeals area is appealable, no matter what kind of use it is.)

Another category includes approved development that is not designated as the principal permitted use under the certified county LCP (PRC Sec. 30603(a)(4)). Under the latter provision, the question of appealability turns on whether or not it is designated as the principal permitted use. The question is not whether, for instance, the development is consistent with all applicable development standards. There are practical reasons for that outcome, as well as the plain language of the Coastal Act itself.

A development application, as submitted, may or may not be fully consistent with all LCP standards. If not fully consistent, then conditions of approval are adopted to bring the development into full consistency, or failing that, it is denied. But any such conditions are of course adopted only after staff analysis, public comment (which is accepted whether or not a public hearing is held), and a decision on the coastal permit. Thus, at the initial point that an

application is submitted, it is not possible to ascertain if the development will ultimately meet all applicable development standards or not.

The County's Board-adopted Development Code provides in Sec. 22.70.030.B. that upon receiving a complete permit application the first step by staff is to determine the applicable permit processing category. If the project is defined as appealable to the Coastal Commission, then in general a public hearing is required. As noted above, this initial determination requires knowing where a development is proposed (i.e., whether it is located in the "geographic" appeals area) and whether or not a development might be appealable based on another criterion, such as whether it is designated as the principal permitted use or not. At this stage, of course, the application has not been analyzed for consistency with LCP provisions, and thus it is not feasible to determine whether "all applicable development standards" will be met.

Furthermore, Board-adopted Sec. 22.70.040 provides a procedure for instances where anyone may dispute the determination of whether a proposed development is appealable or not. That procedure reflects the CCC's regulations in Sec. 13569, which states that "The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted" (emphasis added). Again, the determination of permit category takes place at the initial stage of application submittal, that is, prior to analysis of the project and prior to the crafting of any conditions of approval that might be necessary to bring the project into full compliance with development standards.

The Land Use Tables, such as Table 5-1-a, clearly designate, and are the definitive determinant of, whether a given use is a PPU or not. The reference to standards there is to assure that the development itself must be brought into compliance with all standards.

However, in considering the Coastal Commission staff comments on this issue, staff recognizes that the proposed text of the IP at Sec. 22.32.025 – Farmhouse (Coastal) makes the determination of whether a farmhouse is a principal permitted use or not sound somewhat dependent on the application of development standards, "including those set forth in Sections 22.32.024 and 22.65.040 in the C- APZ zone". While the meaning of the provisions is that a development consisting of a farmhouse may be allowed if it meets development standards, the wording is insufficiently clear and could be misinterpreted to suggest that such use would be the principal permitted use only if it meets development standards. A similar situation has been identified in Sec. 22.32.026 – Agricultural processing Uses (Coastal): and Sec. 22.32.027 – Agricultural Retail Sales Facilities/Farm Stands (Coastal). It is possible that other sections are similarly subject to misinterpretation, and will be corrected if found. In all cases, however, development can only be allowed if it meets all standards.

Consequently, the following corrections are made to the identified sections that contain this inconsistency, and will be made to similar situations, if any exist, prior to submission of the Agriculture-related IP to the Coastal Commission:

**22.32.025 – Farmhouse (Coastal)**

The standards of this Section shall apply in the C-APZ zone to farmhouses defined in Section 22.130.030. **(Coastal)** In addition to the provisions of Section 22.32.024 pertaining to Agricultural Dwelling Units (coastal), the standards of this Section shall apply to farmhouses. Farmhouses shall be accessory and incidental to, in support of, and compatible with agricultural production. The intent of these provisions is to facilitate farmhouses that are integral with and necessary to support agricultural operations and that are consistent with the provisions of the

Marin County Local Coastal Program (LCP). In the C-APZ, farmhouses also shall be considered necessary for agricultural production.

**A. Principal permitted use, zoning districts.** A farmhouse is a type of agricultural dwelling unit that may be allowed by Article V, Table 5-1 (Coastal Zones – Permit Requirements and Development Standards); .

**B. Permit Requirement.** All Farmhouses (Coastal) shall be ~~and~~ subject to development standards, including those set forth in Sections 22.32.024 and 22.65.040 in the C-APZ zone. *(renumber following sections as necessary)*

#### **22.32.026 – Agricultural Processing Uses (Coastal)**

The standards of this Section shall apply to agricultural processing defined in Section 22.130.030 (“Agricultural Processing”).

For Agricultural and Resource-Related Districts outside the Coastal Zone, see Section 22.08.040.E.

**A.** Agricultural processing is allowed as a Principal Permitted Use in the C-APZ zoning district.

**B. Permit Requirement.** All Agricultural Processing Uses (Coastal ) shall ~~provided it~~ meets all of the standards set forth below.

*(renumber following sections as necessary)*

#### **22.32.027 – Agricultural Retail Sales Facilities/Farm Stand (Coastal)**

~~(Coastal)~~ The standards of this Section shall apply to the sale of agricultural products as defined in Section 22.130.030 (“Agricultural Retail Sales Facility/Farm Stand”).

For Agricultural and Resource-Related Districts outside the Coastal Zone, see Section 22.08.040.F.

**A.** The sale of agricultural products is allowed as a Principal Permitted Use in the C-APZ zoning district.

**B. Permit Requirement.** All Agricultural Processing Uses (Coastal ) shall ~~provided it~~ meets all of the standards set forth below.

*(renumber following sections as necessary)*

3. Pg. 6; **Policy C-AG-2. Coastal Agricultural Production Zone (C-APZ)**; Revise the Recommendation and related documents to clarify the definition of “farm tract,” making it clear that all contiguous legal lots in a common ownership will be treated as though they were a single legal lot. Revise the last paragraph as shown and add the text following:

~~However, b~~ Based upon other Commission Modifications, (e.g. C-AG-5.A) staff believes the failure to modify the “legal lot” references was an oversight. In view of the compromise language

developed by CDA and CCC staffs, the Resubmittal replaces the Commission-approved “legal lot” language with “farm tract.”

The phrase “farm tract” as defined is intended to provide clarity. Marin’s Development Code’s Definitions section in Chapter 22.130 is specifically designed to provide a consolidated, consistent, easily accessible means to spell out the exact meaning of every significant phrase used in the Code. Having definitions dispersed throughout the text requires time-consuming searches, while repeating them multiple times, adds wordy clutter, and the risk of creating inconsistencies when sections of the Code are changed.

CDA and CCC staff are now in agreement with the substance of the compromise policy on contiguous legal lots in common ownership. What’s left is simply a matter of crafting the correct language to carry out this policy. CDA staff recommends your Board adopt the following revision to the definition for “farm tract” in Chapter 22.130 to make it clear that all contiguous legal lots in a common ownership will be treated as though they were a single legal lot.

**Farm tract (coastal).** All contiguous legal lots; under a common ownership within a C-APZ zoning district.

4. Pg. 10; **Program C-AG-2.b.** Revise the Recommendation and related documents to retain the study program, but delete the references to “residential development” in the body of the LUP text. Add the following to the end of the text at the bottom of Page 10:

After discussion with several individuals, staff is revising our recommendation to keep the study program, but delete the references to “residential development” in the body of the LUP text. These references are strictly limited by the condition that they would not come into effect unless and until a subsequent LUP Amendment put them into force and were included to show how such provisions would be integrated into the policies if that condition ever were met, in order to promote thought and discussion of this concept.

Since that discussion has now been launched, and given the other more immediate issues to be resolved with the LUP Amendment, it is appropriate to remove those references, and defer work on Program C-AG-2b until after the LUP Amendment is certified. Therefore the **staff recommendation is revised to remove references to “residential development” as a conditional use in the C-APZ except as provided in Program C-AG-2b**, including the following sections:

- **C-AG-7. A. 4**
- **C-AG-7. B**
- **C-AG-7. C.1**
- **C-AG-8.2 and .3**
- **C-AG-9 – all subsections where phrase occurs.**
- **22.32.115**

- 22.62.060.B
- Table 5-1-c, C-APZ column.
- 22.65.040.C.1.d
- 22.65.040.C.3.a
- 22.65.040.C.3.c.1
- 22.65.040.C.4

**Section D – Revisions to Attachment 2, Land Use Plan Amendments (LUPA)**

1. As noted above, changes described in the Revise Staff Recommendation will be made in the LUPA document.

**Note:** The LUPA Maps are maintained on the [www.MarinLCP](http://www.MarinLCP) website.

2. Map 6: Special-Status Species and Sensitive Natural Communities.

Map 6 displays special-status species and sensitive natural communities from the California Natural Diversity Database (CNDDDB). The Department of Fish and Game has prepared “CNDDDB Data Use Guidelines” to provide users guidance with displaying useful information while protecting sensitive material. Staff recommends that the scale and disclaimer of Map 6 will be updated to comply with the latest guidelines since the map was prepared before the guidelines were released.

3. Maps 27a – k: Categorical Exclusion Areas

Maps 27a – k display categorical exclusion order areas based on maps originally certified by the California Coastal Commission. These maps are based on Categorical Exclusion Orders E-81-2, E-81-6 and E-82-6 that exclude categories of development within a specifically defined geographic area from the permit requirements of the Coastal Act. While the maps accurately reflect these orders, the map display will be updated to improve clarity.

**Land Use Plan Amendments (LUPA) Appendices**

4. Appendix 1: List of Recommended Public Coastal Accessways; Pg. 7, third row down from top

The following is a minor and technical correction that will be made to Appendix 1 of the LCPA. Appendix 1 includes the List of Recommended Public Coastal Accessways from Units I and II. The entire Appendix is available online here: <http://www.marincounty.org/~media/files/departments/cd/planning/local-coastal/appendixall722013.pdf>. Revise the “List of Recommended Public Accessways” in Appendix 1 on page 7, third row down from top, to update and correct the parcel number as follows:

106-201-41 (LCP states that		Parcel apparently renumbered as <del>406-</del>	No record of OTD being recorded or
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previous CCC permit required an OTD, but the OTD need not be accepted due to access on adjacent property at Marconi Cove; Unit II, p. 20)		<u>240-72 106-301-11</u>	accepted
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**Section E – Revisions to Attachment 3, Implementation Program Amendments (IPA)**

1. Pg. 24; Definition of “**Actively and directly engaged.**” Revise the definition to add “or maintaining a lease to a bona fide commercial agricultural producer” to the end of the definition. The objective of the Land Use Plan policies is to meet the Coastal Act priority for protecting agriculture land and use while simultaneously protecting other coastal resources. A critical part of meeting this objective is accommodate the established patterns of Marin’s unique and productive agricultural economy. Much of Marin’s agricultural operations rely on leasing agricultural lands from other users. Additionally, one of the most successful means of bringing new agricultural producers in to replenish the producer community is to provide land available for lease. This addition will recognize and accommodate that reality.

**Section F – Revisions to Attachment 4, Resolution text referencing the LUPA Maps**

1. Pg. 5; Consistent with Section B above, revise the Resolution at the end of “**Amendment 1: The following Chapters of the LUPA:**” to add “Local Coastal Program Maps” to the list of items to be submitted to the Coastal Commission. Aside from the revisions noted above, the Land Use Plan Maps, which are maintained for most purposes on the CDA [www.MarinLCP.org](http://www.MarinLCP.org) website, have not changed since the Board adopted them in 2013. \

**Section G – Additional Documents**

1. Table of Contents for original Staff Recommendation (Attachment 1)
2. Coastal Commission March 27, 1981 re Agricultural Activities
3. Map of CCC Categorically Excluded and Non-Excluded areas.

**SIGNATURE:**

Jack Liebster  
 Planning Manager

# Memorandum

To : Regional Executive Directors

Date : March 27, 1981

Subject: Agricultural Activities  
Involving Removal of Major  
Vegetation

From : California Coastal Commission - Michael Fischer

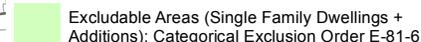
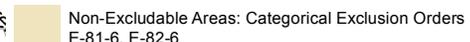
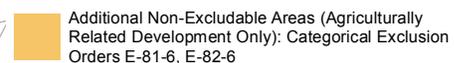
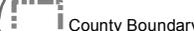
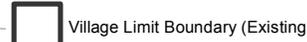
On March 19, 1981, the Commission asserted jurisdiction over expansion of agricultural activities located in areas containing major vegetation. The Commission determined that expansion of agricultural uses into areas of native vegetation constitute a "change in the intensity of use of the land" and therefore are developments under the Coastal Act. Please note that this decision concerns only that vegetation removal which changes the basic use of land from essentially natural to a cultivated agricultural use. Changes from one agricultural use to another, such as crop rotation, removal of agricultural vegetation (e.g., old orchards or windbreaks), or modification of small areas of vegetation, the edge of cultivated areas are not within the scope of the Commission's assertion.

In light of the significance of this assertion given the 1978 Opinion of the Attorney General's office and the need to not disrupt, continuing agricultural operations, the Commission advised us all to proceed cautiously and to assert jurisdiction only in those situations where it is quite clear that significant coastal resources are threatened. The recommendation adopted by the Commission lists criteria which should be used in reaching that decision. Several copies have been mailed to each region.

In order to assure uniformity of application, please do so within these two guideposts. First, if a certified local LCP or LUP addresses this issue (such as Santa Barbara or San Mateo County), assert jurisdiction in a manner and to an extent consistent with the provisions in the LCP or LUP. Secondly, if possible, violations are discovered, consult with Linda Breeden or Roy Gorman of the state legal staff before sending a notification of a violation to the property owners. This consultation requirement will help to assure that the new policy is being applied properly throughout the state during this period prior to certification of LCP's.

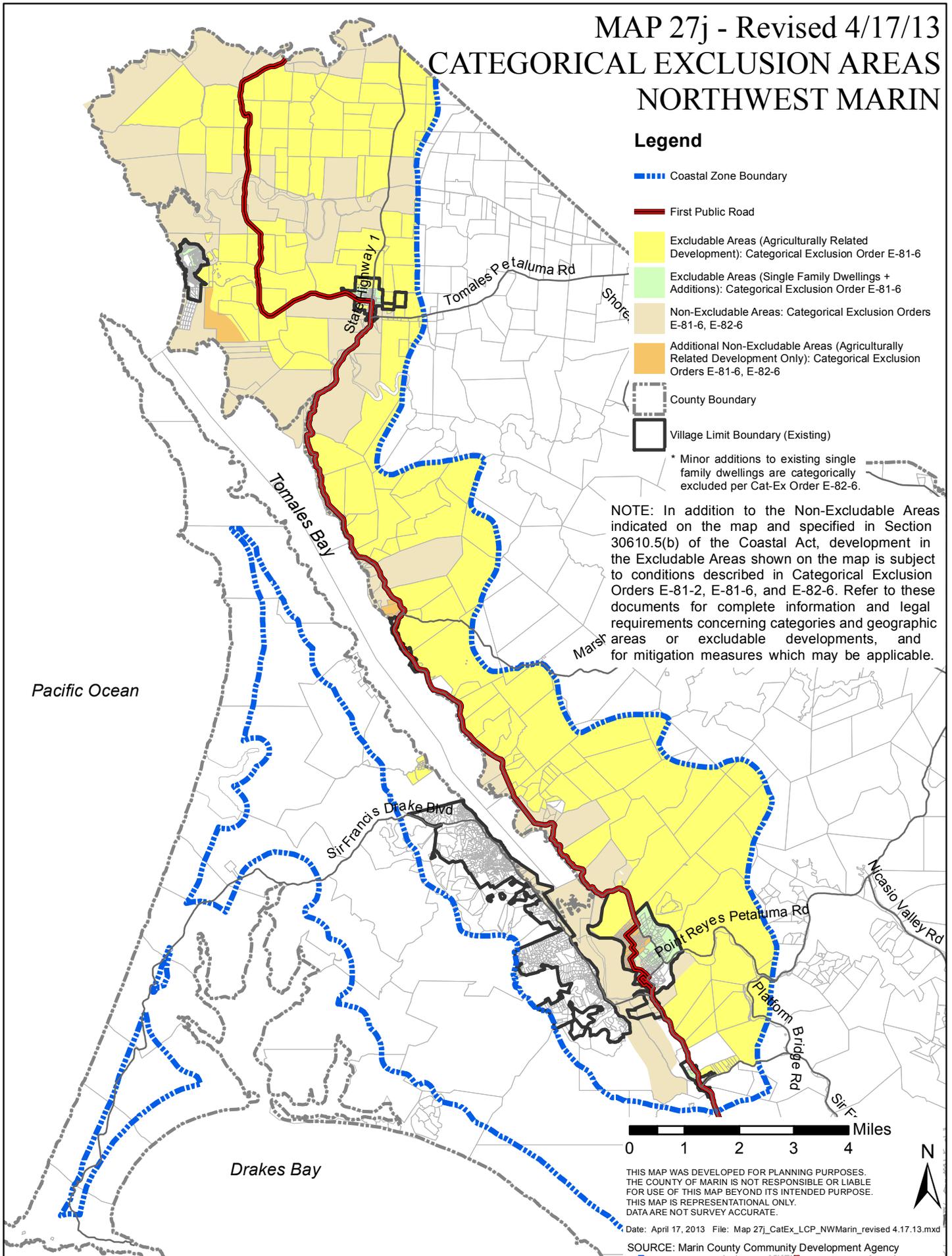
# MAP 27j - Revised 4/17/13 CATEGORICAL EXCLUSION AREAS NORTHWEST MARIN

## Legend

-  Coastal Zone Boundary
-  First Public Road
-  Excludable Areas (Agriculturally Related Development): Categorical Exclusion Order E-81-6
-  Excludable Areas (Single Family Dwellings + Additions): Categorical Exclusion Order E-81-6
-  Non-Excludable Areas: Categorical Exclusion Orders E-81-6, E-82-6
-  Additional Non-Excludable Areas (Agriculturally Related Development Only): Categorical Exclusion Orders E-81-6, E-82-6
-  County Boundary
-  Village Limit Boundary (Existing)

\* Minor additions to existing single family dwellings are categorically excluded per Cat-Ex Order E-82-6.

NOTE: In addition to the Non-Excludable Areas indicated on the map and specified in Section 30610.5(b) of the Coastal Act, development in the Excludable Areas shown on the map is subject to conditions described in Categorical Exclusion Orders E-81-2, E-81-6, and E-82-6. Refer to these documents for complete information and legal requirements concerning categories and geographic areas or excludable developments, and for mitigation measures which may be applicable.



0 1 2 3 4 Miles

THIS MAP WAS DEVELOPED FOR PLANNING PURPOSES. THE COUNTY OF MARIN IS NOT RESPONSIBLE OR LIABLE FOR USE OF THIS MAP BEYOND ITS INTENDED PURPOSE. THIS MAP IS REPRESENTATIONAL ONLY. DATA ARE NOT SURVEY ACCURATE.

Date: April 17, 2013 File: Map 27j\_CatEx\_LCP\_NWMarin\_revised 4.17.13.mxd

SOURCE: Marin County Community Development Agency