STAFF RECOMMENDATION

As described in the Board letter, staff recommends that your Board approve for Resubmittal to the California Coastal Commission the Land Use Plan Amendments (LUPA) to the certified Marin County Local Coastal Program as shown in Attachment 2 and the specified Chapters and Sections of the Marin County Development Code comprising the portion of the Implementation Program Amendments (IPA) related to Agriculture as shown in Attachment 3, including those revisions to the LUPA and IPA described in detail in Parts I and II below. LUP and IP Amendments would not take effect until further action by the Board after Coastal Commission approval. As noted previously, policies and implementation measures related to Environmental Hazards are not recommended for resubmittal at this time.

Part I. LUPA Resubmittal – Community Development (CD), Public Facilities & Services (PFS), and Public Coastal Access (PA)

Attachment 2 contains amendments to the entire Land Use Plan, except for the Environmental Hazards Chapter to be addressed at a later date. The Agriculture Chapter is addressed separately in Part II below. Staff recommends that the Board accept all the modifications suggested by the Coastal Commission shown in the balance of Attachment 2, except for the three issues outlined below, where staff recommends the Board adopt the text shown.

Community Development (CD)

The Coastal Commission modified a policy addressing non-conforming structures and uses to include a reference to Environmental Hazards Policy C-EH-5. As described in the staff report, staff is not bringing forward the Environmental Hazards Chapter at this time. Therefore, any references to policies in this chapter should be removed as shown below

> **C-CD-5 Non-Conforming Structures and Uses.** Allow existing, lawfully established non-conforming structures or uses to be maintained or continued, provided that such structures or uses are not enlarged, intensified, ~~or~~ moved to another site, ~~*or redeveloped, as defined by Policy C-EH-5*~~. Structures or uses that are enlarged, intensified, moved to another site ~~*or redeveloped as defined in C-EH-5*~~ must be brought into conformance with the LCP. If a nonconforming use of land or a nonconforming use of a conforming structure is discontinued for a continuous period of one year, the use shall be deemed to have been abandoned and shall lose its legal nonconforming status.

Public Facilities and Services (PFS)

Public Facilities and Services Policy C-PFS-4 addresses the availability of water and other services for visitor-serving and recreational uses. As approved by your Board, the policy requires this issue to be addressed at the time there is a proposal to extend or enlarge a community water or sewage treatment facility. However, the Coastal Commission modified the policy to apply to any new development in areas with limited service capacity. As revised, this policy would require an analysis of water and sewage capacity for a wide variety of potential future uses for each individual development application in areas with limited service capacity.

Although it is reasonable to expect that the expansion or enlargement of community water or sewage systems would be accompanied by an analysis of needs and capacities, the completion of such studies by individual applicants as part of every application, including minor projects such as a new or enlarged residence is not reasonable or feasible. It would be difficult to develop objective standards and methodology to determine if there is sufficient water and sewage capacity for future uses. In addition, it would be highly speculative to estimate the type and amount of priority land uses that may or may not be proposed or approved in the future. Accordingly, staff recommends that a portion of the added text be removed as shown below.

> **C-PFS-4 High Priority Visitor-Serving and other Coastal Act Priority Land Uses.** In acting on any coastal ~~project~~ permit for the extension or enlargement of community water or community sewage treatment facilities, determine that adequate ~~treatment~~ capacity is available and reserved in the system to serve VCR- and RCR-zoned property, ~~and~~ other visitor-serving uses, and other Coastal Act priority land uses (i.e. coastal-dependent uses, agriculture, essential public services, and public recreation). ~~*In areas with limited service capacity (including limited water, sewer and/or traffic capacity), new development for a non-priority use, including land divisions, not specified above shall only be allowed if adequate capacity remains for visitor-serving and other Coastal Act priority land uses, including agricultural uses*~~.

Public Coastal Access (PA)

Public Coastal Access Policy C-PA-3 describes categories of projects that are exempt from public coastal access requirements. However, modifications approved by the Coastal Commission narrowed the applicability of these exemptions only to those cases where design measures cannot adequately mitigate potential adverse impacts resulting from such requirements. The Commission also deleted language carried over from the County's existing certified LCP which addresses the impact of public accessways on the privacy of adjacent residences. As approved by your Board, the policy was consistent with the provision of Public Resources Code Section 30212, which exempts specific types of projects without regard to any possible mitigation. Accordingly, the modifications indicated below should be removed for consistency with Coastal Act requirements.

> **C-PA-3 Exemptions to Public Coastal Access Requirements.** The following are ~~E~~exempt from the public coastal access requirements of Policy C-PA-2 ~~a coastal permit for *only if access design measures (such as setbacks from sensitive habitats, trails, or stairways) or management measures (such as regulated hours, seasons, or types of use) cannot adequately mitigate potential adverse impacts associated with public coastal access requirements*~~:
>
> 1. Improvement, replacement, demolition or reconstruction of certain existing structures, as specified in Section 30212 (b) of the Coastal Act, and
> 2. Any new development upon specific findings under Section 30212 (a) that (1) public access would be inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate public access exists nearby, or (3) agriculture would be adversely affected.
>
> ~~Upon specific findings that public use of an accessway would seriously interfere with the privacy of adjacent residents, public access need not be required. The findings on any point above shall include a consideration of whether or not (1) design measures such as setbacks from sensitive habitats, trails, or stairways, or (2) management measures such as regulated hours, seasons, or types of use could adequately mitigate potential adverse impacts from access.~~

Part II. LUPA Resubmittal – Agriculture (AG) and Implementing Program

Background

Throughout the Marin LCP Amendment process, provisions to protect coastal agriculture have been some of the most intensely analyzed and discussed of all the elements, with a particular focus on the C-APZ zone, which covers approximately 30,800 acres (64%) of Marin's Coastal Zone. These lands primarily support livestock grazing, with a small amount of prime agricultural land used for row crops.

From the outset, the County has maintained the strong protections afforded to agriculture initiated with the Countywide Plan of 1973, and strengthened with the LCP in 1981 and 1982, including strict limitation of the non-agricultural development of lands suitable for agriculture, requiring minimum lot sizes, limiting subdivision, concentrating development within community boundaries, restricting urban-level public services from agricultural land, and promoting other means to protect agricultural land such as MALT, TDRs and continuing support for the Williamson Act.

As noted previously, the topic of agriculture has been a source of some disagreement between County and Commission staff throughout the process. Ultimately, the Coastal Commission approved substantive changes to 8 of the 10 Agricultural policies approved by your Board, which resulted in extensive modifications to the Implementing Program (IP) as well. In the interest of moving the LCP Updates to conclusion, County staff has accepted the vast majority of these policy and IP changes. However, several key issues remain which are discussed in detail below (in the order they appear in the Land Use Plan) along with recommended policy and IP revisions intended to resolve those concerns. In addition to this discussion, the complete set of policy and IP provisions related to agriculture are also provided in the following attachments:

> Attachment 2 shows the text of the LUP Agriculture Chapter recommended for Resubmittal to the Coastal Commission. This text shows the Suggested Modifications adopted by the Commission in cross-out/underline format, with further changes recommended by staff in double-underline and italics.
>
> Attachment 3 provides text of the Agriculture-related Implementation Program Amendments recommended for Resubmittal. Because this document required re-organization to return it to the format of the County's Development Code, a clean copy of the Resubmittal text is provided. This Resubmitted Amendment took into account the Coastal Commission staff's published staff recommendations dated April 2, 2015, with a April 15, 2015 Addendum. The Commission staff's recommendations were not acted upon by the Commission itself since the County withdrew the IP Amendment. A copy tracking changes to the Commission staff's proposed modifications in cross-out and underline format is posted at www.MarinLCP.org and available on request.

1. Support for Agricultural Production (C-AG-2)

Successful agricultural production relies on a variety of elements which are functionally-related to agricultural production itself, ranging from barns and fences to homes for the farmer or rancher and agricultural workers. Historically, and throughout the LCP Amendment process, the County has consistently maintained that such uses and facilities are inherently "necessary" for agriculture. For example, Policy C-AG-2.6 as adopted by your Board states in part:

> **C-AG-2 Coastal Agricultural Production Zone (C-APZ).**
> …Ensure that the principal use of these lands is agricultural, and that any development shall be accessory and incidental to, in support of, and compatible with agricultural production. 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).

This statement confirms that the listed uses are indeed necessary for the operation of agriculture, just like the farmhouse and one intergenerational unit.

However, modifications to the LUP and associated IP provisions approved by the Coastal Commission instead utilize the phrase "accessory to, in support of, and compatible with, and necessary for agricultural production" in numerous places. Although insertion of the term "and necessary for" appears to be a minor change, it effectively reverses the use and context of the full phrase, turning it into a conditional use based upon an independent test of whether the use is "necessary" in order to be allowed, rather than an affirmation that, as the principal permitted use, it is necessary. The modification would potentially subject the farmhouse, the intergenerational unit, agricultural worker housing, and all of the principally permitted uses - even the raising of a given kind of livestock – to challenge, case-by-case argument and legal proceedings asserting that a given use is not absolutely "necessary." The intent of defining principally permitted category in a land use designation or zoning district is to provide clarity, certainty and predictability about the basic use allowed for the land. Conditions and standard of use of course will be applied, but the LCP must lay out a simple, well-defined and unambiguous statement of what is, and what is not, a Principally Permitted Use. The Resubmittal language will achieve this by removing replacing the conjunction "and necessary" with "or necessary" throughout the document.

2. Agricultural Dwelling Units on Contiguous Lots in Common Ownership (C-AG-2, 5, and 7)

As approved by your Board and the Coastal Commission, the C-APZ zone allows one farm house and one intergenerational unit as the principal permitted use and up to one additional intergenerational unit as a conditional use. In combination, all such units must not exceed a maximum density of one unit per 60 acres and are subject to combined size limit of 7,000 square feet (plus up to 540 square feet for garage space and up to 500 square feet of office space in the farmhouse used in connection with the agricultural operation). To avoid having to repeat this precise but cumbersome description repeatedly in the LCP, the Resubmittal incorporates these details in a new definition of "Agricultural Dwelling Cluster," which is used throughout this report. Similarly, the Modifications define all legal parcels under common ownership as a single "farm". The Resubmittal re-defines this to "farm tract" to distinguish it from the other use of the word "farm" in a different context throughout the LCP. These changes to terminology have been incorporated into the text of Policies C-AG-2; 5; and 7.

Both the current certified LCP and the LUP policies and associated IP provisions for the C-APZ zone approved by your Board specify the amount of development permitted per "legal lot". However, modifications approved by the Coastal Commission allow only a single agricultural dwelling cluster for all parcels under the same ownership (including non-contiguous parcels), regardless of the number of legal lots owned or their location in the County (only within coastal zone, anywhere in the County, etc.). A process is provided through which an applicant may seek to demonstrate that non-contiguous parcels are "wholly-independent farming operations" (based on factors such as the type and history of agricultural production on the property, the extent of long-term capital investments in independent operations and infrastructure, etc.) and thus, eligible for their own agricultural dwelling cluster. However, making the findings required for non-contiguous property may pose a significant burden for farmers and ranchers whose expertise lies in producing food and fiber while being stewards of the land, rather than preparing evidence for a quasi-judicial permit process. The Resubmittal deletes this requirement.

Prior to the Commission's April 16th hearing, CDA staff requested that language be added within IP Section 22.65.040(C)(1)(e)(4) to clarify that legal lots zoned C-APZ that comprise a farm may be sold, and that the required deed restriction for a farmhouse/intergenerational home approval is only to be recorded against the legal lot upon which the dwelling unit is located, and not on the other legal lots that comprise the farm. Commission staff made these changes in an Addendum dated April 15, and the Resubmittal incorporates them (see highlighted text below):

> 4. *Only one farmhouse or a combination of one farmhouse and up to two intergenerational homes with a combined total of 7,000 square feet (plus the allowed 540 square feet of garage space and 500 square feet of office space in the farmhouse used in connection with the agricultural operation) is allowed for the farm identified in subsection (3) above, regardless of the number of legal lots the farm owner or operator owns that comprise the farm. Nothing in this subsection shall be construed to prohibit the sale of any legal lot comprising the farm, nor require the imposition of any restrictive covenant on any legal lot comprising the farm other than the legal lot upon which development of one farmhouse and up to two intergenerational homes is approved. Future development of other legal lots comprising the farm shall be subject to the provisions of the LCP and Development Code, including but not limited to Section 22.65.040.*

This Modification allows only one farmhouse or a combination of one farmhouse and up to two intergenerational homes per "farm" (defined with considerable complexity "in subsection (3) above"), regardless of the number of legal lots the farm owner or operator owns. Thus the Modification language ties the allowed dwelling units to the *ownership* of the land, rather than the characteristics of the land or lot, as in traditional land use planning.
The Resubmittal returns these provisions to their original location in Section 22.32.024 - Agricultural Dwelling Units (Coastal) by clarifying in Subsection 22.32.024.B that "No more than one Agricultural Dwelling Cluster may be permitted per farm tract…" The Resubmittal thereby applies all the restrictions, requirements and standards pertaining to agricultural dwellings to the farm tract (all contiguous legal lots in common ownership).

Note: The final adopted Coastal Commission Modifications CCC staff report did continue to restrict farm dwellings "**per legal lot,**" and agricultural worker housing "**per legal parcel**" or "**lot:"**

> **C-AG-2 Coastal Agricultural Production Zone (C-APZ)…**
>
> 4. Agricultural Dwelling Units, consisting of:
>
> a. One farmhouse or a combination of one farmhouse and one intergenerational home **per legal lot,** consistent with C-AG-5, including combined total size limits;
>
> b. Agricultural worker housing, providing accommodations consisting of no more than 36 beds in group living quarters **per legal parcel** or 12 units or spaces **per legal lot** for agricultural workers and their households;

The Suggested Modifications to the Implementation Program, however, expanded those restrictions beyond legal lots to "all parcels owned (in either total or partial fee ownership) by the same owner of the property," (modified sec. 22.65.040.C.1.e.3 for example). These criteria are arguably not consistent with the LUP Policies.

However, 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."

3. Agricultural Produce Sales (C-AG-2, subsection 5.a)

Similar to the Board adopted LCPA, the Resubmittal provides that agricultural retail sales and small facilities for conducting the sales are part of the Principal Permitted Use of Agriculture (as with small processing facilities discussed in the following section). In its action on the LUPA, the Commission added a Modification that such sales and processing be limited to products grown in the "farmshed" (defined to include both Marin and Sonoma Counties).

The implementation of this policy continued to be a source of vigorous discussion, especially with and among members of the agriculture community and representatives of the East Shore Planning Group. Concerns had revolved around whether sales of products from anywhere in Marin or Sonoma Counties could transform the typical farmstand into a general commercial outlet by allowing for products such as wines produced throughout Sonoma. The Resubmittal limits all sales to those grown on the farm where the sales facility is located or on the operator's other farms in the two counties. Specific performance standards to control traffic, hours of operation and protection of prime agricultural are also provided, as shown in the excerpt below:

> **22.32.027 – Agricultural Retail Sales Facilities/Farm Stand (Coastal)…**
>
> A. The sale of agricultural products is allowed as a Principal Permitted Use in the C-APZ zoning district provided it meets all of the development standards set forth below:
>
> 1 The building(s) or structure(s) or outdoor areas used for retail sales do not exceed an aggregate floor area of 500 square feet;
>
> 2 Agricultural products to be sold are produced on the same farm as the proposed sales facility, or on the operator's other agricultural properties located in Marin County or Sonoma County;
>
> 3. The operator of the sales facility is directly involved in the agricultural production on the property on which the sales facility is located, and other properties located in the farmshed which provide agricultural products to the retail sales facility. For the purposes of this Section, "directly involved" means actively and directly engaged, ~~means~~ making day-to-day management decisions for the agricultural operation and being directly engaged in the production of agricultural commodities for commercial purposes on the property
>
> B. All Agricultural Retail Sales Facilities and Farm Stands shall meet the following standards~~:~~
>
> 1 Sufficient parking, ingress, and egress is provided. In addition, conditions as to the time, place, and manner of use of the sales facility may be applied as necessary through the Coastal Permit process to ensure consistency with provisions of the LCP.
>
> 2- The sales facility and the building(s) or structure(s) or outdoor areas used for retail sales are not placed on land designated as prime agricultural land.
>
> A Coastal Permit appealable to the Coastal Commission and Use Permit approval is required for agricultural retail sales which exceed an aggregate floor area of 500 square feet or for an agricultural retail sales facility of any size that does not comply with standards in Section 22.32.027.A.1 to A.3.~~one or more of the four standards~~ listed above.

While no group may have gotten exactly what it wanted, it is staff's understanding that there is now support for the provisions included in the Resubmittal.

4. Agricultural Processing Uses (C-AG-2, subsection 5.a)

The Resubmittal's proposal for permitting small on-site processing facilities stems from significant advantages to protecting farmland, diversifying the agricultural economy and supporting the viability of continuing agriculture that would come from allowing small facilities to process product from multiple sources throughout the "farmshed." A useful example is the production of three milk cheese, where the different kinds of milk (e.g. goat, cow, even buffalo) could come from ranches/dairies under different ownerships. Moreover, the ability to use a nearby processing facility instead of building one's own creates economies of scale and reduces the need to potentially site additional facilities on land suitable for agriculture.

Pertinent parts of the Implementing Program for Policy C-AG-2.5.a are shown below:

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")…

A. Agricultural processing is allowed as a Principal Permitted Use in the C-APZ zoning district provided it meets all of the standards set forth below:

1. The building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet;
2. With the exception of incidental additives or ingredients, agricultural products to be processed are produced within the farmshed, defined as the same farm as the proposed processing facility or on other agricultural properties located in Marin County or Sonoma County.
3. The operator of the processing facility is directly involved in the agricultural production on the property on which the processing facility is located. For the purposes of this Section, "directly involved" means actively and directly engaged, ~~*means*~~ making day-to-day management decisions for the agricultural operation and being directly engaged in the production of agricultural commodities for commercial purposes on the property
4. Sufficient parking, ingress, and egress is provided. In addition, conditions as to the time, place, and manner of use of the processing facility may be applied as necessary through the Coastal Permit process to ensure consistency with provisions of the LCP.

A Coastal Permit appealable to the Coastal Commission and Use Permit approval is required for an agricultural processing use which exceeds an aggregate floor area of 5,000 square feet or for an agricultural processing use of any size that does not comply with standards in Section 22.32.026.A.1 to A.3.~~one or more of the fourtandards~~ listed above.

B. Coastal Permit and Design Review for a processing facility.

1. Any processing facility, regardless of size, shall require a Coastal Permit.

2. Any processing facility shall require Design Review independent of and in addition to the Coastal Permit, unless it satisfies all the following conditions:

(a) It will be developed and operated wholly within an existing permitted, legal nonconforming, or categorically excluded structure; and

(b) Its development will not include any significant alteration of the exterior appearance of the existing structure.

5. Securing Affirmative Agricultural Easements through Conditional Residential Development (C-AG-2.B & C-AG-10)

Section 22.57.032I.2 of the current certified LCP establishes "One single-family dwelling per parcel" as a Principal Permitted Use. Section 22.57.035I.2, among many other conditions, requires that:

> 2. Permanent conservation easements over that portion of the property not used for physical development or services shall be required to promote the long-term preservation of these lands. Only agricultural uses shall be allowed under the easements. In addition, the county shall require the execution of a covenant not to divide the parcels created under this division so that they are retained as a single unit and not further subdivided.

The fact that the County adopted this language in 1981 is a testament to how forward-thinking Marin has been in identifying innovative ways to protect agricultural land and uses. In the *Moritz* permit (5675 Horseshoe Hill Road, Bolinas), the County took this innovation another step forward, creating an "affirmative agricultural easement," requiring not only that the agricultural land be preserved, but further requiring that the land will actually be farmed. An owner that does not wish to farm is thus required to lease or otherwise open the land to a farmer who will do so.

This approach was taken up by the Coastal Commission, whose staff in November 30, 2005 and January 18, 2007 held public workshops to "encourage a dialogue … about the best way to protect agricultural land and agricultural production through the use of affirmative agricultural easements (*Affirmative Agricultural Easement Workshops: A Summary,* California Coastal Commission, Oct.31, 2007). The appropriateness of this approach was re-affirmed in the Commission's *Background Report for Workshop on Agriculture in the Coastal Zone* (Ap. 26, 2013, p.14) and its online *LUP Update Guide, Part 5 Agricultural Resources July2013.pdf* (Revised Sept. 2013, accessed July 20, 2015). The *Workshop* document specifically discussed the Commission's action on Appeal No. A-2-SMC-06-021 (Chan), noting 'The Commission found that an affirmative easement (proposed by the applicant) consistent with LCP requirements to maintain the maximum amount of agricultural land in production and to minimize conflicts with other land uses as required by the LCP.'"

The Marin Agricultural Land Trust (MALT) has similarly adopted the affirmative agricultural easement, and the conforming standard draft easement templates of both MALT and the County contain these provisions. MALT has done a phenomenal job of securing land for permanent agricultural use in Marin County. However, even with the millions of dollars that Marin voters have made available for land preservation by taxing themselves through the recent Measure A and other means, it will still take years to save all of Marin's coastal agricultural land and make it available for production.

The Resubmittal calls for refining and extending the affirmative agriculture easement technique for land protection inherent in the current certified LCP and illustrated by the *Moritz* and *Chan* coastal permits by establishing a specific Program (C-AG-2.b) to develop the details of the approach.

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

B. Conditional uses in the C-APZ zone include **…** non-agricultural uses including residential development potentially up to the zoning density ~~including residential development potentially up to the zoning density,~~ consistent with Policies C-AG-5, 6, 7, 8 and 9.

Residential development (as opposed to Agricultural Dwelling Units) shall not be permitted in the C-APZ until specific provisions and standard conditions consistent with the Agriculture Chapter of the certified Land Use Plan are adopted by the Marin County Board of Supervisors and certified as an LCP Amendment by the California Coastal Commission. No residential development is permitted on the same legal lot where an Agricultural Dwelling or Dwelling Unit Cluster is located…

Program C-AG-2.b Option to Secure Affirmative Agricultural Easements Through Restricted Residences. Evaluate the efficacy of permitting limited non-agricultural residential development within the C-APZ zone as a means of securing permanent affirmative agricultural easements over the balance of the legal lot. Characteristics of the program could include (a) prohibiting residential development on a legal lot where an Agricultural Dwelling or Dwelling Unit Cluster is located, (b) restricting the development envelope to the minimum feasible size (e.g. 10,000 sq. ft) (c) limiting house size to less than amount allowed for agricultural dwellings, but permitting transfer of development credits to increase allowable house size by securing affirmative agricultural easements on additional agricultural lands. The program and associated policies have no effect until certified as an LCP Amendment by the Coastal Commission.

Aspects of this program could include a much more restricted development area (the Coastal Commission in Appeal A-2-SMC-07-001 (Sterling) required all residential development to be confined within an area no greater than 10,000 square feet). Additionally, residential development could require a greater minimum acreage than one unit per 60 acres, and/or a smaller house size limit than the 7,000 square feet allowed for agricultural dwellings. Such a program could also have a transfer of development credits component. For example a larger house could potentially be allowed in exchange for additional agricultural acreage being preserved through a affirmative agricultural easements or deed restrictions. Potentially, incentives could be devised to supplement to MALT's current efforts to add affirmative agricultural components to lands already protected by a conventional agricultural easement. Such a program could help implement the objectives of Policy C-AG-10 as approved by both the Board of Supervisors and the Commission, which support the use of the County's adopted model agricultural easement, implementation of Transfer of Development Rights (TDR) programs and similar innovative techniques to permanently preserve agricultural lands.

History demonstrates that Marin's tradition of creativity and commitment to finding new ways to achieve environmental preservation, resource protection and sustainability should be given a modicum of free rein and encouragement by the Commission in developing this program. In the meantime, the Resubmittal prohibits non-agricultural residences until such a specific program is crafted, adopted by the Board, and certified by the Coastal Commission.

6. Ongoing Agriculture (C-BIO-14)

It is noteworthy that the Modifications to the LUPA Agriculture Chapter nowhere mention permit requirements for agricultural activities *per se*, yet this has been a topic of intensive discussion since the Commission staff's draft Implementing Program Modifications raised the subject in December 2014. The LUPA Modifications adds "ongoing agricultural activities" to C-BIO-14 as an allowed use in wetlands, while deleting the concept of a wetland incidentally created by agricultural activity:

> **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 for ongoing agricultural activities ~~in those areas 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).~~

The Adopted Findings on the Modifications state in part (pg. 41):

> A suggested modification is thus required to Policy C-BIO-14 clarifying that only ongoing agricultural activities may continue to be allowed within a wetland or its buffer…
>
> As modified above, the policy already allows agricultural activities within wetlands so long as the agricultural activity is an ongoing use…

The Modifications to the Implementing Program address "ongoing agricultural activities" primarily as a question of when such activities constitute a "development" requiring a coastal permit. Staff has been unable to identify extensive instances of the Coastal Commission requiring Coastal Permits for changes in cropping, cultivation or management patterns or the type of agricultural product being raised, despite widespread changes in agricultural activities occurring in the Coastal Zone over the years. In discussing Commission guidance on the subject, the CCC April 2, 2015 Staff Recommendation cites the Commission's March 19, 1981 policy statement and summarizes it as follows:

> The Commission has grappled with the question of what types of agricultural activities constitutes development numerous times, and on March 19, 1981, the Commission issued a policy statement clarifying that it had 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** constitutes a "change in the intensity of the use of land" and is therefore development under the Coastal Act. The Commission's determination concerned vegetation removal that **changes the use of the land from open space or another natural use to a cultivated agricultural use.** The Commission recommended various criteria to determine whether adverse impacts are possible, including considering the steepness of slopes, proximity to wetlands, streams and other habitat, and the effect of the proposed expanded agricultural operation on water resources and supply (emphasis added).

Thus the concern is with "vegetation removal that changes the use of the land from open space or another natural use to a cultivated agricultural use." This central idea is repeated numerous times throughout Commission's determination, and is clearly distinguished from applying to land that is, or has previously been, in agricultural use. For example the Policy's summation cites a recommendation from the State Assembly as "legislative direction" relative to the definition of development:

> … the state Commission should consider including within the definition of "development," for purposes of the permit process, first time conversion of agricultural land from native vegetation to crop production…(emphasis added).

Similarly, a March 2, 1981 memorandum from then-Chief Counsel Roy Gorman and Staff Counsel Linda Breeden that initiated and formed the basis for the Policy adopted by the Commission states the issue with unmistakable clarity (p.1):

> …Staff then recommends that the Commission find that agricultural development which involves the removal of major vegetation to begin or expand agricultural croplands into areas not previously farmed requires a coastal development permit. …(emphasis added).

As shown below, the Resubmittal language is consistent with, and even more restrictive than, this Commission policy.

Ample additional evidence supports this interpretation.

Prior to the 1981 policy statement, The Commission had earlier asked the California Attorney General for advice on the meaning of "the removal or harvesting of major vegetation other than for agricultural purposes" in relation to the Coastal Act's definition of "development." While Commission staff took issue with part of the Attorney General's opinion, in a separate section referring to the to the history of the Legislature's crafting of the definition of development in the Coastal Act of 1976, the A.G. found

> "…we can recognize and give account to a legislative intent to leave hands off coastal agricultural activity, especially in ongoing agricultural use of land, but also to scrutinize major changes in water consumption associated - with agriculture as might result from large-scale removal of native vegetation in the conversion of undeveloped land into agricultural use…(*Attorney General Opinion No. SO 77/39 I.L.*, April 6, 1978, p. 10; emphasis added)

Again, the concern is over removal of native vegetation and major changes in water consumption that are the consequence of converting land in a natural condition to agricultural use. As discussed below, the recommended Resubmittal language achieves this end.

In his guidance to staff regarding the Commission's 1981 action on the question, then-Executive Director Michael Fischer similarly emphasizes that the concern under the Coastal Act is with the change of land from a natural state to agricultural use:

> …The Commission determined that expansion of agricultural uses into areas of native vegetation constitute a "change in the intensity of use of the land" …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 direction emanating from the Commission's established policy is clear:

1. Only the initial conversion of land from native vegetation may be "development,"
2. Changes from one agricultural use to another is not development requiring a coastal permit,
3. There is a need under the Coastal Act to not disrupt continuing agricultural operations, and
4. Even where there are proposals to extend agriculture into areas of native vegetation, permit jurisdiction should only be asserted where significant coastal resources are threatened.

The proposed language in the Resubmittal not only meets all of the objectives described above, but significantly exceeds them in terms of protecting environmental resources.

A significant contributing factor to this result has been staff's participation in the dialogue among a diverse group of Marin County LCPA stakeholders organized by the Marin Conservation League (MCL) Agricultural Land Use Committee. MCL's work was specifically designed to explore the full range of views on this matter, provide insight into the specific concerns from these different points of view, and search for potential areas of common ground. While there is no claim that any consensus was reached, the language of the Resubmittal has benefitted from the exchange of views among these participants, as well as other input from the public.

Recommended text of "Ongoing Agriculture (Coastal)" definition for Resubmittal

Add the following to Chapter 22.130, Definitions:

Agricultur~~al Production Activities,~~ Ongoing (Coastal) means the following ~~*Existing*~~ agricultural ~~*production*~~ activities~~*, including*~~:

1. All ~~*ongoing grading and*~~ routine agricultural cultivation practices (e.g. plowing, tilling, planting, harvesting, and seeding), which ~~*have*~~ are not ~~*been*~~ expanded into Environmentally Sensitive Habitat Areas (ESHAs) and ESHA buffers, Oak woodlands or areas never before used areas for agriculture., and

2. Conservation practices required by a governmental agency including, but not limited to, the State Water Resources Control Board or Regional Water Quality Control Board, in order to meet requirements to protect and enhance water quality and soil resources.

The following activities shall not be considered ongoing agriculture~~*al activities*~~ for the purposes of the definition of "Development:" and constitute~~s~~ new development requiring a

coastal permit consistent with Chapters 22.68 and 22.70, unless such development is categorically excluded by a Coastal Commission approved Categorical Exclusion Order.

1. Development of new water sources such as construction of a new or expanded well or ~~*expansion of a*~~ surface impoundment.
2. Installation or extension of irrigation systems
3. Terracing of land for agricultural production;
4. Preparation or planting of land for viticulture, including any initial vineyard planting work as defined in Chapter 22.130;
5. Preparation or planting of land for growing or cultivating the genus *cannabis* .
6. Routine agricultural cultivation practices on land with an average agricultural slope of more than 15%.

   (**Note:** See page 15 for proposed definitions of "initial vineyard planting" and "average agricultural slope")

Consistent with the Commission's policy, section A.1 of this definition specifies that normal and routine agricultural operations do not constitute development provided they do not expand into ESHAs or natural lands never before used areas for agriculture.

Section A.2 provides that the implementation of Government mandated conservation practices on farms and ranches conducted to protect and enhance the quality of water and soil resources is part of ongoing agricultural activities. This includes establishing in-stream habitat for anadromous fish and migratory bird populations. It also includes the tools to improve grazing livestock distribution and the handling and land application of manure resources. Such practices are implemented to support compliance with environmental regulations, for example the approved and implemented Conditional Waivers for Grazing Lands and Existing Dairies by the San Francisco Regional Water Quality Control Board:

- Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed Resolution No. R2-2013-0039 http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/tomalespathogens/R2-2013-0039.pdf
- Conditional Waiver of Waste Discharge Requirements for Existing Dairies Resolution No. R2-2015-0031. - http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/agriculture/CAF/Resolution%20R2-2015-0031.pdf

Standard design and implementation of practices includes the installation of fences, alternative water sources (using existing water), revegetation with selected native species, and manure distribution systems to irrigate fields with dairy manure in place of truck spreading methods.

During the discussions hosted by the MCL group, it became clear that certain potential agricultural practices were of significant concern due to their possible environmental effects. At the same time it became evident that such practices were not realistic for Marin County, nor were they being contemplated by most of the agricultural community. Moreover, on the apparently slim chance that such activities might be proposed, there was substantial agreement that they should be subject to Coastal Act regulation. Therefore, sections 22.130.B.1 through B.6 are intended to make clear that such activities will be defined as development. Additional definitions are proposed to implement these provisions.

7. Definitions - Chapter 22.130

In addition to the definition of "ongoing agriculture" described above, it is recommended that the following new or revised definitions be included in Chapter 22.130;

Average agricultural slope. The average percent slope of new or existing agricultural land prior to the commencement of any agricultural planting work. All average slopes shall be calculated using the most recent data from the United States Geological Survey (USGS), field-based documentation, surveyed cross sections, or computer generated topographic mapping.

Grading (coastal) – Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof that exceeds 50 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 for ongoing agricultural operations (see "Agriculture, Ongoing").

Initial vineyard planting work – The removal of existing vegetation or agricultural plants, vines, or trees, grading, disking, ripping, soil chiseling, terracing, and other major soil conditioning and recontouring, vineyard field road construction, installation of underground drainage system, grassed waterways, diversion ditches, and other drainage improvements, installation/development of vineyard water supply system, installation of temporary and permanent erosion and sediment control measures, and other activities undertaken as part of the initial land preparation phase of an authorized vineyard planting or re-planting.