October 4, 2016

California Coastal Commission
Via email: Dan.Carl@coastal.ca.gov

Re: Marin LCP Amendment comments

Dear Coastal Commission staff,

Thank you for the opportunity to provide comments on your draft modifications to Marin County's LCP Amendment. As you know, I've been extensively engaged in this process for the past five years, first for the Environmental Action Committee of West Marin and now for the California Coastal Protection Network, reviewing thousands of pages of draft policy and code language. This is a strenuous process for anyone, but especially for members of the public who may lack the familiarity, time or resources to engage in this level of review and comment. Given that this LCP will set the stage for the future of Marin County's coastal zone over the coming decades, it is essential that a robust public process is adhered to and I am concerned that the public has not been afforded the time required to do an adequate review.

In August 2015, and again in April 2016, you wrote 16-page comment letters to Marin County regarding your concerns about the numerous instances where the proposed LCP Amendment did not meet Coastal Act standards. The County's responses to those combined 32 pages of comments were significantly lacking – the overall attitude seemed to be that the Board had acted and they weren't interested in further discussions, despite the fact that they had ignored apparent agreements reached in some of your meetings. Thus, the County pushed through a whole new Land Use Plan in August 2015 without any workshops or public hearings prior to the one to approve the LUP, and did the same for the Implementation Plan this past April. Clearly, the public deserves more than this compressed timeframe to review and comment on a document of this complexity and consequence.

As a result of the lack of public engagement, the County's proposed LCP Amendment, even with staff modifications, does not adequately address the concerns of the community. Further, it is our understanding that because of the exceptional amount of work needed by the Commission staff to bring the County's non-Coastal Act compliant submission into compliance with the Coastal Act, the public will likely be given less than two (2) weeks to review the proposed final LCP Amendment and staff report. We object to this, as it is simply not fair that the County has circumvented an adequate public process, yet now pressures the Commission staff to meet an arbitrary November hearing date when the Commission could postpone a couple of months and give this

document and the public the time they deserve to analyze, reflect, discuss, and come to agreement on a final version.

For these reasons, we do not believe that this document is ready for the Commission's consideration until the public has had adequate time to provide a full and fair review, and opportunity to comment, including meeting with Commission staff. We offer the following comments for your consideration, and thank you again for your staff's continued diligent and excellent work on the Marin LCP Amendment.

Summary of CCPN Outstanding Concerns on Marin LCP Amendment

1. Applying 1983 Categorical Exclusion for Agriculture to the Amended LCP means an extraordinary amount of development on agricultural production zone lands will a) be categorically exempt from permit requirements, b) not receive a public hearing, c) not be appealable to the Coastal Commission, and d) not have to meet LCP compliance standards as required in 22.70.070 to protect groundwater and scenic resources, among other things.
2. LCP Amendment has insufficient safeguards to protect groundwater resources.
3. Viticulture standards are still absent and County Development Agency does not regulate viticulture.
4. LUP Policy C-DES-2 to protect visual and scenic resources does not comply with Coastal Act.
5. Water quality standards in 22.64.080.C. are insufficient to protect coastal resources.
6. "Sufficient" parking for retail sales facilities and farm stands should be specified.

1. Applying the 1983 Categorical Exclusion for Agriculture to the Amended LCP means an extraordinary amount of development on agricultural production zone lands will a) be categorically exempt from permit requirements, b) not receive a public hearing, c) not be appealable to the Coastal Commission, and d) not have to meet LCP compliance standards as required in 22.70.070 to protect groundwater and scenic resources, among other things.

The proposed Marin LCP Amendment greatly expands the definition of "agriculture" to include numerous forms of "development" that have not been considered agriculture for over thirty years under the 1981 Marin Certified LCP. The Categorical Exclusion Order E-81-6 states: "Agriculture means the tilling of the soil, the raising of crops, horticulture, viticulture, livestock, farming, dairying, and animal husbandry, including all uses customarily incidental and necessary thereto." The proposed Marin LCP Amendment ads accessory structures, accessory activities, dwelling units, and other uses all under the new definition of "agriculture."

The concern is that, when this expanded definition is combined with the Categorical Exclusion Order, future development in the agricultural zone receives little to no oversight. For example, development constructed on agricultural production zone lands

(C-APZ), under the Categorical Exclusion Order does not receive Design Review. A barn can be built with no coastal development permit, so the owner can put it on an open hillside in the viewshed or wherever they choose regardless of the scenic resource impact. The owner can later [there is no time restriction] turn it into a commercial processing facility, a tasting room, or other commercial agricultural use, and since it would be in an existing building, no Design Review is required when a barn is converted to commercial agricultural use.

When the use is changed from a barn, from an agricultural ***production*** purpose to an agricultural ***accessory*** structure, it remains under the County's large umbrella of "agriculture" and a Principally Permitted Use (PPU) for C-APZ lands. So while the change in use does require a coastal permit, it does not require a public hearing and cannot be appealed. This means that an enormous amount of potential new development is possible with almost no public input or Coastal Commission oversight.

For the LCP Amendment, the Commission staff initially required that prior to a coastal development permit approval, agricultural accessory structures, accessory activities, and agricultural dwelling units would have to show that they were "necessary" for ongoing viable agricultural use of C-APZ lands. However, the Marin Board of Supervisors and their staff objected, stating they did not want coastal zone C-APZ property owners to have to make this finding on a case-by-case basis, and that all such uses were deemed "necessary."

Without including a requirement to show that these new commercial and industrial agricultural uses are "necessary for" continued viable agriculture the Commission is allowing these uses 'by right' with no opportunity to ask questions or address impacts. That means that a cattle rancher can lease a part of his land to a cheese maker or wine producer, that lessee could build a barn with no County or Commission oversight and then turn that into a processing facility as a PPU with no public hearing or public appeal. That same leaseholder is entitled to build an inter-generational house on the property and determine who lives there, and there's no obligation that the owner/occupier of the IG house be part of the farming family – despite the fact that this is precisely why the County said all the new inter-generational housing was needed. It's unclear how exactly all this development potential by a 3rd-party supports family farming and meets the Chapter 3 standards of the Coastal Act for rural lands and agricultural protection.

It's also unclear how these development uses on C-APZ lands meet Coastal Act standards when they've all been deemed "necessary" for agriculture at a programmatic level. Sections 30241, 30242, and 30250(a) of the Act support the preservation of agriculture by strictly limiting conversion of agricultural lands to other uses. One of the major conflicts is with the Act's policies requiring that new development be located within or close to existing developed areas or in other suitable areas where it can be concentrated (Section 30250(a)). As the Marin Certified LCP states, "the purpose of these policies is to avoid sprawl and its associated environmental and economic costs."

At a minimum, there should be a requirement to show on a case-by-case basis that the new, permanent development of structures [accessory or otherwise] on agricultural lands is "necessary" for agriculture, and there should be at least minimal siting, design, and resource protection standards for development that's previously been deemed

categorically exempt. Otherwise there is no ability of the County or the public to address cumulative impacts to C-APZ lands for visual resources, water quality, water quantity, wildlife habitat, or the ongoing viability of agriculture operations.

The reality is, for the past many years, even in the heart of the drought, agriculture in Marin has been booming: the County Agriculture Commissioner's report from 2014 showed a 20% increase in the gross value of Marin agricultural products [$80M to $100M], and a 10% increase in 2015 [$100M to $110M]. We are thrilled that Marin's agriculture is so incredibly successful, and all projections indicate it will continue to be. But, there's a clear argument that *some of the enormous amount of potential new development on C-APZ lands may not be "necessary" for* the continued viable agriculture in Marin. The County's study from 2003[1] supports this, as it clearly showed that adding housing and commercial development to agriculturally zoned lands raises property taxes and insurance costs, and often those expenses can push agricultural producers over the edge. The Report concludes that, "Before improvements, the parcels range from small net incomes to significant net costs. After proposed improvements, however, all of the parcels have costs exceeding potential agricultural income." "While these landowners may choose to sustain higher annual costs for the benefits of their rural estate lifestyle, landholding costs in the range of three to ten times the potential agricultural income will, in the long term, be a disincentive to continued agricultural operations." The Report further concludes that, "keeping land values (and thus costs) in balance with agricultural income is critical to maintaining long-term agricultural viability."

To safeguard coastal zone resources in the C-APZ district, the Commission must, at a minimum, **insert three requirements in 22.65.040 as follows**:

1) Require the Director to proactively make findings in its Categorical Exclusion determination that any new structure on C-APZ lands will not impact scenic and visual resources and that it meets Chapter 22.42 Design Review standards.
2) Require that any new use or change in the intensity of an existing use – regardless of whether the structure is subject to the Categorical Exclusion Order – must meet the standards and findings of 22.70.070 and is not subject to waiver or a de minimis permit.
3) Require that new agricultural accessory structures and uses [commercial/industrial processing facilities] and inter-generational houses must present substantial evidence that the proposed uses are "necessary for" the ongoing agricultural viability of the property.

These findings must be included in the Director's interpretation that is provided to the Commission and made available to the public for review and appeal. Without this, there are virtually no safeguards from adverse impacts, both individually and cumulative, to the public viewshed, or to coastal resources like groundwater wetlands, streams, and riparian areas.

[1] "Marin County Agricultural Economic Analysis Final Report" (Report) prepared for the County's Community Development Agency in November 2003 by Strong Associates.

2. LCP Amendment has Insufficient Safeguards to Protect Groundwater Resources.

When you pump groundwater beyond annual recharge levels, you lower the groundwater level or the aquifer. In the case of shallow groundwater lenses like those in the Marin coastal zone, that unsustainable pumping can dry up nearby riparian corridors and wetlands. These critical habitats are very limited in presence in West Marin, and the County has not comprehensively mapped them in this LCP update, thus it is all the more important to put safeguards in place to protect them.

Section 22.64.140.A.1.b has good standards for well development or expansion, but there are no listed mitigations in place to restrict pumping to a sustainable level, nor is there a requirement to pump test the well during the dry season.

Further, the Commission asked the County in March to "explain how consistency with the standards in Marin County Code Chapter 7.28 will ensure that the development of private wells will not adversely impact adjacent biological resources including streams, riparian habitats, and wetlands, and will not adversely impact water supply available for existing and continued agricultural production or for other priority land uses consistent with the Coastal Act and LCP requirements. The County responded that it would utilize regulations for "minimum well standards for domestic water use."

However, this is wholly insufficient since Marin Code Chapter 7.28 contains no technical standards for well testing or groundwater availability requirements. Further, much of the new development the County's expanded definition of "agriculture" would not be "domestic" uses but would include commercial and industrial uses that can use much more water than domestic uses, so the domestic standards are insufficient.

Additionally, the County says that, "It is not reasonable or feasible to require each individual development application for a well to analyze impacts on adjacent biological resources including streams, riparian habitats, and wetlands, as well as impacts on the water supply for existing and continued agricultural production or other priority land uses. It would be difficult to develop objective standards and methodology to determine if there is sufficient water capacity for other uses." However, requiring a permit applicant to perform both individual and cumulative assessments of groundwater pumping on these resources is exactly what is needed to ensure their long-term protection. The County offers a non-response but that is not sufficient to adequately address this important substantive issue.

Actually, there are plenty of regulations from other jurisdictions that the County could borrow from but it has chosen not to quantitatively address protection of groundwater resources. Thus, it is incumbent on the Commission to require modifications to IP section 22.64.140 to ensure that West Marin's very limited groundwater resources, and the sensitive habitat areas they are connected to, are protected.

To safeguard groundwater resources, and the sensitive habitats they are connected with, **add the following underscored language to 22.64.140.A.1.b**:

1) The sustainable yield of the well meets the LCP-required sustained pumping rate (minimum of 1.5 gallons per minute) when tested in the dry season months of May through October, and must be equal to or exceed the project's estimated water demand as determined by a licensed engineer.

3) The extraction will not adversely impact other wells located within 300 feet of the proposed well, or which are determined to by hydro-geologically connected; will not adversely impact adjacent and hydro-geologically connected biological resources including streams, riparian habitats, and wetlands; …

4) The County shall require a water meter to be placed on all new wells, and for those expanded uses of existing wells. The County may place limits on groundwater usage to mitigate long-term impacts to the aquifer when the report of a Civil Engineer or Geologist indicates that groundwater resources are limited and/or the well may become compromised by seawater intrusion.

3. Viticulture Standards are Still Absent and the County Development Agency does not Regulate Viticulture.

In letters dated October 2, 2014 and March 23, 2015 that I drafted for EAC and which were submitted to Commission staff, it was pointed out that the County's Development Agency does not regulate viticulture and that the County's ministerial permit ordinance governing viticulture was insufficient to govern this industrial land use. The Commission should include viticulture standards in Chapter 22.32, Standards for Specific Land Uses.

Our previous concerns regarding the County's Vineyard Ordinance are re-stated below and remain in effect:

1. The Vineyard Ordinance may contradict or otherwise be inconsistent with various provisions of the Coastal Act, including Sections 30006, 30240, 30251, and 30603.

2. The Vineyard Ordinance vests sole authority to regulate and permit all activities associated with the planting or replanting of a vineyard - grading, terracing, ripping, soil chiseling, removal of vegetation, field road construction, installation of underground drainage systems and water supply systems –with the County's Agricultural Commissioner (the "Ag Commissioner"). See Sections 23.11.060 and 23.11.090 under the definition of "Initial vineyard planting work."

3. The Vineyard Ordinance establishes a ministerial permit system - the Ag Commissioner is required to issue a permit for the proposed vineyard development on slopes up to 50% as long as a "County recognized qualified professional" issues a report saying the vineyard development is alright. A "County recognized qualified professional" can include a certified rangeland management specialist or "other registered or certified professional acceptable to the agricultural commissioner . . ." An actual licensed civil engineer report is required only in limited circumstances. Sections 23.11.090, .100, and .120.

4. The Ag Commissioner is not required to consult with the Community Development Agency – the sole agency authorized to implement the Local Coastal Program and issue development permits - or with the Department of Public Works – the agency that issues grading permits and oversees erosion control measures. Section 23.11.150.

5. The Vineyard Ordinance limits the Ag Commissioner's review of the submitted erosion plan and proposal to develop a vineyard on slopes up to 50% to merely ensuring the plan was "prepared, reviewed, and certified in accordance with this chapter, and that the plan includes all of the information required by that section." There are no substantive or meaningful standards to guide issuance of a permit. Section 23.11.150.

6. Section 23.11.090 puts limits on the use of "best management practices" by defining that term as "those practices or sets of practices that have proven to be the most effective feasible means of preventing or reducing stormwater runoff, erosion, and sedimentation in vineyards, given technological, institutional, environmental, and economic constraints." (Emphasis added).

7. Section 23.11.170 does not establish the amount of riparian setback or give any standards
for determining the appropriate setback distance. The provisions of the Marin County Code that the applicant "shall comply with" are not set forth. In general, the Code exempts agricultural activities from riparian setback requirements and the definition of "stream" in 23.11 is inconsistent with other provisions of the Code and LCP.

8. Section 23.11.190 states the erosion and sediment control plan requirements, but does not include actual requirements because there are none. Subsection (b)(2) states that the "agricultural commissioner shall prepare and maintain detailed plan requirements and have them available on request."

9. This Vineyard Ordinance provides no oversight of surface water or groundwater use for vineyards. Vineyards consume an exceptionally large amount of water and have the potential to significantly impact community groundwater supplies. This ordinance provides no testing or monitoring requirements for the viticulture water source, including the number of new wells, their location, the amount of water used from each, requiring that a meter be placed on new and existing wells used for viticulture, and requiring monitoring reports be submitted to monitor overall groundwater levels and consumption. See 23.11.140.

10. The Vineyard Ordinance does not provide any public process for neighbors or the public to review and comment, or possibly appeal a proposed vineyard. The public should be afforded an opportunity to comment on a proposed vineyard's size, location, construction near streams or impacts to wildlife and wildlife habitat, and other possible impacts. The only appeal provisions is for a person the Ag Commissioner finds has likely violated the ordinance, yet the Commissioner is explicitly designated as the sole review authority for appeals.

11. This Vineyard Ordinance does not address the use of pesticides or other man-made chemicals that are often used by viticulture operators, nor does it address their impacts on the community water supply, bird and fish habitat, or nearby organically certified farms.

See 23.11.140.

12. There is no indication that the erodible soils and slope standards are based on science or best practices.

These important issues must be addressed before the LCP Amendment can go forward.

4. LUP Policy C-DES-2 to Protect Visual and Scenic Resources does not Comply with the Coastal Act.

LUP Policy C-DES-2 does not comply with the Coastal Act. It provides for development to protect "significant" views, but this is a lesser standard than what the Coastal Act requires. Section 30251 of the Coastal Act provides, in part, that:

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed **to protect views to and along the ocean and scenic coastal areas**, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (Emphasis added).

The Coastal Act does not protect "significant" views, it protects "views to and along the ocean and scenic coastal areas," among many other situations. The purpose of this provision is the protection of the public's view shed from public areas, not from private property, which is why the types of areas are enumerated. But simply enumerating the areas from which the public has protected views "to and along the ocean and scenic coastal resources" in no way means that only "significant" views can or should be protected. The Coastal Act is clear – public views are protected – and this policy language must be amended to comply with the law.

5. Water Quality Standards in 22.64.080.C. are insufficient to Protect Coastal Resources.

Section 22.64.080.C. contains no standards for grading to protect coastal resources. Rather, subsections 1-10 of this section simply refer back to Land Use Policies, providing insufficient guidance to protect water quality from erosion. Further, subsection 2 states that, "grading shall not take place on slopes greater than 35%, to the extent feasible." This standard was previously 25%, so its unclear why it was increased to 35% from whatever initial technical basis the 25% standard was derived. Given that the vast majority of the coastal zone is within the viewshed of Point Reyes National Seashore, a wildly popular national park, the County should not allow grading on slopes above 20% to protect the panoramic views from numerous national park trails.

6. "Sufficient" Parking for Retail Sales Facilities and Farm Stands should be Specified.

In section 22.32.027.B.1., the term "Sufficient parking" is not defined but it should be. Without a definition, what constitutes "sufficient parking" will be determined by the purported demand of consumers or left to a case-by-case basis. A small, limited number of parking spaces should be provided in order to ensure protection of the maximum amount of agricultural land for production. Please add a formula that determines the small number of allowable parking spaces for commercial uses on C-APZ lands.

Thank you for your consideration of our comments and concerns. We look forward to reviewing the Environmental Hazards chapters when they are ready.

Best regards,

Amy Trainer
California Coastal Protection Network