CALIFORNIA CATTLEMEN'S ASSOCIATION
1221 H STREET • SACRAMENTO, CALIFORNIA • 95814-1910
SERVING THE CATTLE INDUSTRY SINCE 1917
PHONE: (916) 444-0845
FAX: (916) 444-2194
www.calcattlemen.org

October 2, 2012

Chairman Steve Kinsey, President
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

Via email c/o Kristin Drumm: Kdrumm@marincounty.org

Re: Local Coastal Program Amendments

Dear Chairman Kinsey and Supervisors,

The California Cattlemen's Association (CCA) respectfully submits our comments on the Local Coastal Program Amendments (LCPA). Our letter references the staff's report and shall include references herein. CCA represents 2,000 ranchers, including many who have been ranching in coastal communities for generations. As century long stewards of the land, California's ranchers' reliance on the land inherently demands respect and support of the natural resources. It is these natural resources along the coast that the Coastal Act and local governments seek to protect, and while we are encouraged that others see the value in the land our membership has been working on and caring for for centuries, it is imperative that the CCC and the agricultural community at large work together to ensure that California can continue to have open space for generations to come.

CCA appreciates the opportunity to comment on this document and acknowledges the work that has been done on it thus far. In order to produce the best document possible, CCA encourages staff to seriously consider suggestions made in this document.

I. Development

CCA appreciates the acknowledgement by staff that agriculture in Marin County is composed almost wholly of family farms. Unlike other occupations, farming and ranching require generations of investment of both time and money, and to continue the work done by parents, children and grandchildren frequently step in to support the aging generation. In order to support the continuation and succession of family farms and ranches, the Planning Commission- recommended LCPA includes a provision to allow up to two "intergeneration homes" on agricultural properties in the Coastal Agricultural Production Zone (C-APZ). While CCA supports the concept of intergenerational housing allowances, we believe that limiting the number of homes to two, prohibits and discourages multiple generations from continuing to tend to the land. If the homes can be built in a manner that both provides for the continued stewardship of the land, while maintaining habitat and open space, then the homes should be permitted. These decisions should not be arbitrarily set as blanket rules, but instead, should allow for flexibility within local government policy making.

C-AG-6 Non-Agricultural Development of Agricultural Lands

"Require that non-agricultural development, including division of agricultural lands shall only be allowed upon demonstration that long-term productivity on each parcel created would be maintained and enhanced as a result of such development. In considering divisions of agricultural lands in the Coastal Zone, the County may approve fewer parcels than the maximum number of parcels allowed by the Development Code, based on site characteristics such as topography, soil, water availability, environmental constraints and the capacity to sustain viable agricultural operations."

The wording in this section needs to be clarified. While the language states that non-agricultural development must be done to ensure long-term productivity, this language inherently restricts the ability of land owners to ensure that they are able to rely on the structures necessary to continue in their agricultural practices. It would behoove members to define what is intended by the words "enhance" and " productivity". While the construction of a barn may be necessary for the continued operation of ranch, it may not necessarily increase or improve productivity. Members should consider that a land owner is unlikely to build a structure that does not support the continuation of his agricultural operation, as this would be both time and cost prohibitive.

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.
Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP , and in particular the policies of the Natural Systems and Agriculture Element of the LUP.

A. Standards for Agricultural Uses in the C-APZ:

All of the following development standards apply:

1. Permitted development shall protect and maintain continued agricultural use and contribute to agricultural viability. Development of agricultural facilities shall be sited to avoid agricultural land whenever possible, consistent with the operational needs of agricultural production. If use of agricultural land is necessary, prime agricultural land shall not be converted if it is possible to utilize other lands suitable for agricultural use. In addition, as little agricultural land as possible shall be converted.

4. In order to retain the maximum amount of land in agricultural productions or available for future agricultural uses, farmhouses, intergenerational homes, and agricultural homestay facilities shall be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space

While this language was likely mistakenly written in its current form, CCA would like to call the members' attention to the fact that this policy encourages agricultural facilities to be built in a location which avoids agricultural lands. Clearly, it is impossible to avoid agricultural land on a parcel that is zoned as such. CCA recommends that this language be changed to reflect a more coherent policy. CCA also would like to remind the Board that as most of this land is private property, should a landowner

wish to disturb his productive land and forego some of his profit for the building of an agriculturally related structure, he should be allowed to do so.

It seems to be a common notion amongst many of the staff that the farm or ranch owner will not do what is best for the continued production of his land. If it is more efficient and effective to build an agricultural structure near the area on which agricultural production occurs, the landowner should have the ability to do so. The alternatives to this policy may be that a rancher builds a barn five miles from his most frequently used pasture, and as a result of policy restriction, is forced to drive hay back and forth from the barn to the pasture as opposed to having built the structure in a location which was most beneficial for his use.

Additionally, it is inappropriate to rule that intergenerational homes and agricultural facilities "shall be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage…" Five percent is an arbitrary number, and in the case of smaller parcels, could mean that the barn gets placed next door to the family home; a generally undesirable location.

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

B. Standards for Non-Agricultural Uses:
In addition to the standards of Section A above, all of the following development standards apply to non-agricultural uses, including division of agricultural lands or construction of two or more dwelling units (excluding agricultural worker or intergenerational housing). The County shall determine the density of permitted residential units only upon applying Policy C-AG-6 and the following standards and making all of the findings listed below.

1. In order to retain the maximum amount of land in agricultural production or available for future agricultural use, homes, roads, residential support facilities, and other nonagricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space. Proposed development shall be located close to existing roads, or shall not require new road construction or improvements resulting in significant impacts on agriculture, natural topography, significant vegetation, or significant natural visual qualities of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations and shall be designed and sited to avoid hazardous areas. ~~Any new parcels created shall have building envelopes outside any designated scenic protection area.~~

Here again, the Board must determine whether or not they want to protect agriculture and open space, as the language severely hampers farmers and ranchers from a variety of practices that are necessary to ensure the continuation of their operations. It is not always reasonable that new structures be made near existing roads, and in fact, this may frequently be deleterious to agriculture. Those raising livestock want to ensure that their animals are away from the road, and thus, this provision ensures that the construction of any related facilities would be untenable. Additionally, the language states that "…development shall be sited to minimize impacts on scenic resources…" This is a catch-22. Firstly, who determines scenic resources? Secondly, should a landowner be prohibited from erecting a facility which would allow his continued participation in agriculture, then that very view shed which is being " protected" will

be ultimately diminished by the landowner's inability to continue farming and ranching and providing coveted open space.

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands.
B. Standards for Non-Agricultural Uses:
3. Consistent with state and federal laws, a permanent agricultural conservation easement over that portion of the property not used for physical development or services shall be required for proposed land divisions, non-agricultural development, and multiple residential projects, other than agricultural worker housing or intergenerational housing, to promote the long-term preservation of these lands. Only agricultural and compatible uses shall be allowed under the easement. In addition, the County shall require the execution of a covenant not to divide for the parcels created under this division so that each will be retained as a single unit and are not further subdivided.

The language of section three is misleading and untrue. Neither state nor federal law requires a conservation easement over lands used for non-agricultural development. This language completely mischaracterizes the Supreme Court decision in *Nollan v. California Coastal Commission* 483 U.S. 825 (1987), which states that a nexus must exist between the proposed project and the requirement for the easement. It is required by law that either the landowner must be a willing volunteer in the establishment of the easement, or the state or county must take the property and reimburse the land owner via eminent domain, otherwise, the condition of an easement in exchange for a permit would classify as an illegal taking. The language above does not reflect this critical component, and CCA advises that it be changed to do so.

In addition to the egregious interpretation of the requirements of easements, this policy also prohibits farmers and ranchers from dividing their land should they need to do so for financial reasons. If this option is off the table, landowners may be either forced to sell all of their property, or be subject to restrictive uses of an easement. The Board may wish to consider that should agricultural lands be subject to an easement, the county will no longer receive property taxes. It would behoove the Board to consider whether or not it is wise to implement a policy which will certainly reduce revenues to the County.

II. ESHA

C-BIO-2 ESHA Protection ~~Development Proposal Requirements in ESHAs.~~

3. Avoid fences, roads, and structures that significantly inhibit wildlife movement, especially access to water. *(relocated text from PC-Approved C-BIO-1.2)*

While CCA agrees that it is important to protect the environment and habitat from harmful actions, we must question the logic behind the above section. Of prime concern is that fences are often used to do exactly what this provision aims to do; protect sensitive habitat. Ranchers will often fence areas to either include or exclude livestock. It should also be pointed out that it is highly unlikely that the type of fence used in most agricultural productions would significantly inhibit wildlife movement. It is important here, to distinguish the difference between a wall and a fence. Secondly, the roads on agricultural properties are generally not public access roads, and consequently, have little traffic, thus, do not pose a threat to wildlife movement. This policy is more appropriately changed to target commercial

development and public access properties, not private agricultural lands. Fences and agricultural roads should be categorically excluded as agricultural activities.

Section 22.64.050 – Biological Resources *(excerpt)*
A. Submittal Requirements
1. Biological studies.

a. **Initial Site Assessment Screening**
The Marin County Community Development Agency (CDA) shall conduct an initial site assessment screening of all development proposals to determine the potential presence of Environmentally Sensitive Habitat Area (ESHA). The initial site assessment screening shall include a review of reports, resource maps, aerial photographs, site inspection and additional resources as necessary to determine the presence of ESHA.

b. **Site Assessment.** A site assessment shall be submitted for those Coastal Permit applications where the initial site assessment screening ~~may be required to provide a site assessment based on a review of the best available scientific and geographic information~~ reveals the potential presence of an Environmentally Sensitive Habitat Area (ESHA) within 100 feet of the proposed development. The permit will be ~~and~~ subject to a level of review that is commensurate with the nature and scope of the project ~~and the potential existence of an Environmentally Sensitive Habitat Area (ESHA).~~ A site assessment shall be prepared by a qualified biologist hired by the County and paid for by the applicant, and shall confirm the extent of the ESHA, document any site constraints and the presence of other sensitive resources, recommend buffers, development timing, mitigation measures or precise required setbacks and provide other information, analysis and potential modifications necessary to protect the resource. ~~demonstrate compliance with the LCP~~. Where habitat restoration or creation is required to eliminate or offset potential impacts to an ESHA, a detailed Restoration and Monitoring Plan shall be required, as provided in this section. ~~The Restoration and Monitoring Plan shall be consistent with the guidance provided in the California Coastal Commission LCP Guide for Local Governments, *Protecting Sensitive Habitats and Other Natural Resources* (undated).~~

The site assessment section of this document gives reason for pause, and sets forth two policy precedents which CCA believes to be inappropriate and misguided. First, how is one to determine the "potential presence" of an EHSA? It would seem clear that given the current definitions, either the area does or does not meet the requirements of ESHA. To allow for the "potential presence" opens the door to a wide range of interpretation. It could be argued that any piece of land could have the "potential" for ESHA, given certain adjustments in weather, management, and planting. CCA encourages the Board to refine this language to ensure that decisions are being made on the habitat that actually exists and can be documented, not the flora, fauna and animals that could hypothetically exist.

Of equal concern is the requirement that the landowner pay for the biological assessment on his property. This requirement cuts to the core of a discussion on the role of representative government. Through the above policy, should it be adopted, the Board will determine that it values certain habitats over all other uses. As a representative body, the Board is therefore making that determination as a reflection of the values of its constituents. If, in fact, it is the people of Marin County who value specific habitats over all other uses, then it should be the residents of Marin County who pay for this biological assessment. This is the same concept of a "user –pays" fee, and should be adopted in order to ensure

that the people of Marin County support parity between the use of tax payer dollars and the value of those services.

III Wetlands

C-BIO-14 Wetlands

3. Prohibit grazing or other agricultural uses in a wetland, except in those reclaimed areas presently (~~prior to the certification of this amended policy on [DATE]~~) used for such activities (i.e., grazing was established prior to April 1, 1981, the date on which Marin's first LCP was certified~~)., or in new areas where a Ranch Water Quality Plan has been approved by the California Regional Water Quality Control Board, or where the landowner demonstrates to the CDA's satisfaction that he/she has developed and implemented management measures in partnership with Marin Resource Conservation District, Natural Resource Conservation Service, or comparable agency to prevent adverse impacts to wetland functions and resources.~~

4. 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).

CCA supports the changes made in section four, but would encourage that stock ponds be added to the list of agricultural activities that might result in a manmade wetlands. It would also help to clarify that the wetlands, from which grazing and agricultural uses are prohibited, are natural wetlands, and not seasonal wetlands created by commercial or agricultural activities.

C-BIO-20 Wetland Buffer Adjustments and Exceptions. Consider granting adjustments and exceptions to the wetland buffer width standard identified in Policy C-BIO-19 in certain limited circumstances for projects that are implemented undertaken in the least environmentally damaging manner. An adjustment may be granted in any of the following circumstances:

1. The County determines that the applicant has demonstrated that a 100-foot buffer is unnecessary to protect the resource because any significant disruption of the habitat values of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. A wetland buffer may be adjusted to a distance of not less than 50 feet if such reduction is supported by the findings of a site assessment which demonstrates that the adjusted buffer, in combination with incorporated siting and design measures, will prevent impacts which would significantly degrade those areas, and will be compatible with the continuance of those habitat areas~~. An adjustment to the wetland buffer may be granted only where~~

CCA appreciates the acknowledgement that a 100-foot buffer might be unnecessary in all cases, but if the Board is to adopt this policy and flexibility, it should be found to be equally unnecessary to prescribe a 50 foot buffer. If the staff and Board believe that adequate analysis can be made to determine the appropriate buffer, then they should allow that decision to be made without restrictions.

IV Agricultural Processing

22.32.026 – Agricultural Processing Uses

A. Limitations on use:

1. Processing of agricultural product is a Principal Permitted Use only if conducted in a facility not exceeding 5,000 square feet that is located at least 300 feet from any street or separate ownership property line (and not within an Environmentally Sensitive Habitat Area [ESHA]) or its buffer.
2. To qualify as a Principal Permitted Use, the agricultural product that is processed must be grown principally in Marin County or at a site outside Marin County that is operated by the operator of the processing facility ("principally" shall mean at least 75% by dollar volume of the processor's sales of the processed product). The operator of the processing facility must be directly involved in the agricultural production on the property on which the production facility is located.
3. "Agricultural product that is processed" does not apply to additives or ingredients that are incidental to the processing.
4. A Conditional Use Permit shall be required if the processing facility is open routinely to public visitation or if public tours are conducted of the processing facility more than 24 times per year.
5. Under these criteria, up to 25% by dollar sales volume of the agricultural product that is processed could be grown outside Marin County (on sites not operated by the operator of the processing facility).

~~6. Any agricultural processing in a C-ARP zoning district is a Conditional Use requiring a Use Permit~~.

While CCA appreciates that agricultural processing is a principal permitted use, this language seems to put both unverifiable and unfounded restrictions on those agricultural producers who are trying to bring economic support to the region. The first concern posed by this language, is that the standards to be met to qualify for " principal" use are nearly impossible to measure. The language demands that at least 75% by dollar volume of the processor's sales of the processed product must be grown in Marin County. To establish a percentage of the sales that must be derived from Marin -grown products is absurd. There is no way to verify this dollar amount, as producers do not record their sales based upon county of origin.

It seems additionally restrictive and arbitrary to determine that a conditional use permit shall be required if a processing facility is open to public visitation more than 24 times per year. The number of visitations does not detract from the agricultural operations that take place on the property, and it seems that the Board would want to encourage public tours so that visitors and residents alike can gain greater appreciation for the open space provide by farming and ranching.

22.32.027 – Agricultural Retail Sales and Facilities (Coastal)

A. Limitations on use:

1. Retail sales must be conducted:
(a) Without a structure (e.g. using a card table, umbrella, tailgate, etc.); or
(b) From a structure or part of a structure that does not exceed 500 square feet in size and does not exceed 15 feet in height.
2. Items sold must be principally unprocessed produce grown in Marin County or at a site outside Marin County that is operated by the operator owner or lessee of the sales facility.

For purposes of this section, "principally" shall mean at least 75% by dollar volume of sales. The operator of the sales facility must be directly involved in the agricultural production on the property on which the sales facility is located.
3. Sales of consigned produce grown in Marin County (or grown at a site outside of Marin County that is operated by a consignor whose principal agricultural activities are within Marin County) shall be allowed as part of the principal permitted use, provided that all produce being sold satisfies the criteria for the principal permitted use findings.
4. A Use Permit is required for picnic or recreational facilities. A Use Permit is also required for onsite consumption other than informal tastings at no charge of product offered for sale.
5. Sufficient parking is provided

CCA sees that there are several incongruent policies contained within the various provisions of this section. First and foremost, this year, the legislature passed, and the Governor signed a bill that encourages cottage industries and sets certain regulations to standardize these operations. The above language seeks to limit the viability of these industries and discourage local farmers and ranchers from participating in ever-growing local food movements.

To determine that the building from which these local products are sold must be a structure which does not exceed 500 square feet and does not exceed 15 feet in height, seems to be without reason, and seriously limits a landowner's ability to sell from existing structures. Should a farmer or rancher wish to sell a product out of his barn, he would likely be unable, as barns traditionally exceed the aforementioned height restrictions. It is equally unreasonable to assume that such products could be adequately sold from a " card table, umbrella, or a tailgate." If the language is intended to mean that producers may set up a table with shade provided by an umbrella, then this clarification is patronizing, at best, and reads as though instructions are being given on the proper setup of a childhood lemonade stand, not the formal retail sale of agricultural products. These restrictions prohibit any type of refrigeration, or the sale of any product that might exceed the size of a card table. The Board should reject this proposal for being both ridiculous and completely untenable.

This language is further restrictive as it only permits the sale of produce; excluding all meat and cheese products and producers. If the Board wishes to exclude these members of the agricultural community, then a reason for this delineation should be made.

Despite the strict regulations put forward under this section, it seems incongruent that there should also be a concern for adequate parking, as expressed in number 5. If producers must comply with the preceding measures, then having to accommodate sufficient parking is unlikely to be a problem, as landowners are unlikely to pursue any of these activities that might otherwise bring support to the local agricultural community and dollars to the County.

There have certainly been positive changes made to the LCPA, and CCA would like to reiterate our thanks to the staff and members of the agricultural community who have contributed so much time to the improvement of this document. While we fully recognize and appreciate the difficult task of putting together such a document and working with all affected parties, CCA would encourage the Board to look seriously at the sections mentioned in this letter.

While working in the micro world of regulations, it is often forgotten that a macro perspective is also necessary to ensure that proposed rules and regulations make sense in a larger context. CCA would

encourage the Board to take a macro perspective while reviewing these changes, and keep in mind that famers and ranchers are in the business of protecting their agricultural ground and ensuring its continued productivity. In so doing, they are likely to make decisions that promote both the health of the land, and the sustainability of their businesses. When considered from this perspective, the County and the agricultural community both are desirous of the same end goal and share the same values of open space and continued agricultural production. Although both the County and the agricultural community share a very similar vision, many of the aforementioned regulations prohibit farmers and ranchers from continuing to manage the land and provide the habitat, open space, and agricultural products that we all love. CCA suggests that the Board of Supervisors consider the ramifications of these micro regulations on agriculture and the larger goal of open space maintenance, and perhaps put a bit of faith in these land stewards who want nothing more than to see their land thrive and their grandchildren take over the family ranch when the current generation is no longer able.

Thank you for your consideration of these matters.

Sincerely,

Margo Parks
Associate Director of Government Relations

Marin County BOS October 2, 2012

Mr Chairman, members of the Board,
We, The West Marin Sonoma Coastal Advocates, are confused by some of the changed wording relative to "agricultural accessory structures".

For example on page 5 of Attachment #5, Sec. 22.130.030, Definitions, Agriculture(coastal) describes land use as"agricultural production and facilities that are "accessory and incidental to, in support of, and compatible with the properties agricultural production, including accessory structures and activities". In previous permutations of the agricultural section of the LCPA, wind turbines are included as " agricultural accessories". But in this report, reference is made only to "utility facilities" and as a Principal Permitted Use. Please clarify exactly what uses are included in the term "utility facility". On page 6, Amendment #2, D CCC Issues, last paragraph, CCC staff question the adequacy of the proposed provisions to "insure that the agricultural accessory structures and uses do not adversely affect long-term agricultural productivity".

Please comply with the CCC staff request to see additional requirements that specificly address the number, size and location of such facilities, bearing in mind that "utility facilities" are considered "accessory agricultural structures"(see BOS Attachment 6, policies, C-AG-2, second line).

Again we reiterate our request that the term "utility facility" be clearly defined throughout the document. Clarity is very important in public documents and there fore it is imperative that such documents be understandable in order to be applied to the public review of development proposals and/or permit applications within Marin's coastal Zone.

Respectfully,

Beverly Childs McIntosh

Beverly Childs McIntosh

West Marin Sonoma Coastal Advocates