



MARIN COUNTY FARM BUREAU

P.O. Box 219, Pt. Reyes, CA 94956

September 28, 2012

The Marin County Board of Supervisors
Via e-mail c/o Kristin Drumm: kdrumm@marincounty.org

Re: Local Coastal Program Amendments: October 2nd hearing

Dear President Kinsey and members of the board,

The Marin County Farm Bureau respectfully submits its comments and concerns on the Local Coastal Program Amendments (LCPA). Our letter will use staff report to address staff's recommendations, and we will use language from the Land use plan to address issues that we feel are not adequately addressed in the staff report.

To begin, Farm Bureau would like to recognize all the hard work by staff on this Local Coastal Plan update, they have done an incredible job working with so many different organizations and individuals.

Our first comment will be to offer support for the new section titled, **Policies for Interpretation of the Land Use Plan (INT)**. This will be beneficial for future staff for interpreting the policies. **C-INT-1 Consistency with Other Law** is very important, however, the language is inadequate. It does not inform the public of their constitutional rights. The language should be specific and clear about the property owner's rights and the government's obligations, so that if a landowner consults the Land Use Plan, he/she is able to respond effectively to unlawful attempts to burden or violate his/her property rights. Please refer to Attachment 3 where we offer a constitutionality clause that would fit nicely into your **Policies for Interpretation of the Land Use Plan (INT)**.

Policy C-AG-2

*...For the purposes of the C-APZ, the principal permitted use shall be...horticulture, ~~viticulture~~,
vermiculture...*

Viticulture is a permitted use. Conditional uses in the C-APZ zone include...

§22.68.030 – Coastal Permit Required

A Coastal Permit is required for development in the Coastal Zone ...unless the development is categorically excluded, exempt, or qualifies for a De Minimis Waiver.

Development is defined in Article VIII of this Development Code and is interpreted to include ... the significant alteration of landforms.... On-going agricultural operations including cultivation, crop and animal management and grazing are not considered to be a significant alteration of land forms development.

Discussion

Currently viticulture is listed as a principally permitted use. As agriculture is the primary use of the land and viticulture is agriculture, it should clearly stay as a principally permitted use and not be changed to a permitted use as staff is recommending.

Farm Bureau supports the changes to section 22.68.030 of the development code.

III. Intergenerational Housing

- *LCPA Land Use Plan: Policy C-AG-5*
- *LCPA Development Code: Section 22.32.024; Land Use Table 5-1-a*

In order to support the viability of agriculture in the Coastal Zone and support Marin's existing family farms, the Planning Commission-recommended LCPA includes provisions to allow up to two "intergenerational homes" on agricultural properties in the Coastal Agricultural Production Zone (C-APZ) district, subject to density requirements. Coastal Commission staff and representatives of environmental groups have expressed concerns regarding the concept of intergenerational housing, which are addressed by staff in Part B. However, a brief summary of staff's responses is provided below.

- Agriculture in Marin County overwhelmingly consists of family farms. The ability of a family to live on the farm and to manage agricultural operations is essential.
- Intergenerational homes support multi-generational family farm operation and succession and should be considered part of the agricultural use of the property.
- All intergenerational homes would be subject to Coastal Permit review and extensive development standards related to issues such as access, clustering, and density requirements as well as criteria such as the applicant's history of and financial commitment to long term commercial agricultural production.
- Restrictive covenants would be required to ensure that intergenerational housing units are continuously occupied by the owner or operator's immediate family.
- Intergenerational homes would be subject to the total residential size limit for agricultural properties which would tend to encourage several smaller homes rather than one large estate home on a given property.

Discussion

Farm Bureau strongly supports the concept of intergenerational housing as it is absolutely necessary to the survival of our family farms. However, limiting development to only two intergenerational homes is prejudicial against larger farm families, many of whom have been

stewards of the land for generations. Limiting their economic viability further, if even one additional home was needed for that larger family, they would then be forced to dedicate a conservation easement, which would not only eliminate all development rights but eliminate the family's ability to grow in the future. Development rights have value to both the government (in the form of taxes) and landowners (as proven by MALT purchases over the last 27 years). Development rights must be purchased, not taken. Farm Bureau asks that you allow additional intergenerational homes, beyond the first two, with a Use Permit (U), up to the zoning density. In addition, the "total residential size limit" needs to be removed. This aggregate cap was removed during the Countywide Plan Update and should be removed here as well.

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.

Discussion:

The word "enhance" is subjective. Also, the definition assumes the agricultural operation can be "enhanced," when that may not be case. Nor should it be required in order to have a successful operation. The words "and enhanced" should be removed. We should be striving to maintain agriculture, not force someone to "enhance" it. Enhancing agriculture requires a major investment of time and money, therefore this policy would de facto be discrimination. In fact, construction of additional infrastructure on the property may be needed to maintain the operation. This policy is further problematic because it does not define "maintain" or say how one would demonstrate how long-term productivity would be maintained.

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

Discussion

This new language in C-AG-7.A.1 is trying to make sure that development does not occur on productive agricultural land. But the way it reads is confusing since it says that the facilities shall be sited to avoid agricultural Land, but all of our facilities on our ranches are going to have to be on our agriculture land. This can easily be fixed by inserting the word “productive” in front of the words agricultural Land. Please make this change in the development code as well,

22.65.040 – C-APZ Zoning District Standards

C. Development standards

1. Standards for agricultural uses:

a. Permitted development....

Farm Bureau does not support the new language in C-AG-7.A.4. Please see our discussion below regarding the 5% of gross acreage.

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 non-agricultural 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.~~

Discussion:

- We appreciate that the County recognizes that best management practices on a ranch might dictate that development may be allowed within more than one "group." However, we have a strong concern about limiting all non-agricultural development to 5% of the gross acreage. First and foremost, such a limitation might legally be construed as a taking, since the policy makes no mention of compensating a landowner for the 95% of

that land where no development would be allowed. Compare this percentage with thresholds in Williamson Act or conservation organization policies. If the infrastructure supports the feasibility of the operation it should be allowed. Additionally, there are variations of what is compatible with ag (e.g. supporting infrastructure, water development infrastructure, worker housing, etc.)

- When you start adding all the ranch roads existing and proposed, their cumulative square footage could be quite sizable. Ag roads should be deleted from this policy.
- Are the scenic protection areas already mapped or can anyone just claim that it should be a scenic protection area at the time of permit approval and halt someone from getting a permit? A person's view of our ranch should not be allowed to prevent us from building where we need to. A viewshed should not take precedence over agriculture viability, and sometimes the placement of non-agricultural structures in a "scenic area" could reflect a best management practice for ag viability.

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.

Discussion:

The language "consistent with state and federal laws" is ambiguous and subject to misinterpretation. There are two major issues here. First, requiring a conservation easement (CE) without showing that it's proportionate and that a nexus exists, or paying just compensation for valuable lost development potential, is not only illegal but devalues the land, impacting a rancher's ability to get loans, build infrastructure and increase economic viability, or even sell the land.

Secondly, requiring the execution of a covenant not to divide in the same way eliminates valuable development potential and could also be construed as a taking without just compensation. It also hamstring a farmer who may need to obtain financing and is forced to encumber his entire property, rather than a portion of it. We are not advocating for non-agricultural development or subdivisions, only that the development potential be justly compensated as guaranteed by our Constitution. In the LUP's Introduction, which references Coastal Act Section 30010, the County acknowledges that it cannot "grant or deny a permit in a manner that would take or damage private property for public use, without the payment of just compensation." The draft policy language of C-AG-7.B.3, violates Coastal Act Section 30010 and our Constitution

A mandatory one-size-fits-all CE limits the property owner's rights not only on development but certain ag activities. This should be a choice to participate—otherwise property owner commitment to adhering to, or even understanding CE requirements, can be an issue and can ultimately result in violations. In Sonoma County, no CE is entered into unless there is a willing seller. Ultimately, willing participation equals higher CE compliance, which results in a successful land protection program for the Marin Agricultural Land Trust and the County.

Also, in deliberations during the public processes, many people advocated for using the word "may" instead of the word "shall," including MALT Executive Director Bob Berner in his July 27, 2009 letter to the Planning Commission. The policy should allow for using a Williamson Act Contract to promote long-term preservation, as it does in C-AG-9.

C-AG-8 Agricultural Production and Stewardship Plans.

1. ~~A master plan may require~~ Submission of an Agricultural Production and Stewardship Plan (APSP). ~~An APSP shall also be required for approval of land division or non-agricultural development of Agricultural Production Zone (C-APZ) lands when the master plan requirement has been waived,~~ except as provided for in (3) below.

Discussion:

Farm Bureau supports the changes in C-AG-8.

C-AG-9 Residential Development Impacts and Agricultural Use. Ensure that lands designated for agricultural use are not de facto converted to residential use, thereby losing the long-term productivity of such lands.

3. In no event shall a single-family residence subject to these provisions exceed 7,000 square feet in size. Where one or two intergenerational residence units are allowed in the C-APZ zone, the aggregate residential development on the subject legal lot shall not exceed 7,000 square feet.

Discussion:

- To suggest that the aggregate residential development on a subject legal lot shall not exceed 7,000 square feet is preposterous. The “aggregate cap” was removed by the Supervisors during the Countywide Plan update. To allow the same total square footage on a 60 acre parcel as you do a 1,300 acre parcel illegally changes the zoning of each ranch to a different density. This cap would also trigger a conservation easement if the addition of one more home for a family member who wanted to get involved in the operation would exceed the 7,000 square feet limit.

Delete #3 entirely. Related language in Development Code Section 22.62.060 should also be revised or deleted accordingly.

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*)

Discussion

- There are many instances where fences have been constructed to protect the ESHA by keeping livestock out yet are conducive to wildlife connectivity. This is a problem for agriculture. The same is true for agricultural roads. Agricultural roads have little traffic, are generally not located in environmentally-sensitive areas, and are closed to the public and pose no real threat to an ESHA.

Please Categorically Exclude agricultural activities, delete “fences” and add “paved public” before roads.

...

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).

Discussion

Farm Bureau understands the need for a site assessment, but we believe the County should pay for it. If the County wants the assessment to see exactly where the boundaries of an ESHA may be, then they should be paying for that assessment.

C-BIO-9 Stinson Beach Dune and Beach Areas. Prohibit development that would adversely impact the natural sand dune formation, sandy beach habitat and potential prescriptive rights in the areas west of the paper street Mira Vista and the dry sand areas west of the Patios. Prohibit development west of Mira Vista, including erection of fences, signs, or other structures, to preserve the natural dune habitat values, vegetation and contours, as well as the natural sandy beach habitat, and to protect potential public prescriptive rights over the area.

Discussion:

Although this policy specifies particular non-agricultural lands, the concept could be applied to any private property, and is not legal. Landowners have a right to protect their properties from illegal trespassing. If the government prohibits landowners from being able to protect their properties by not allowing fences or signage the government is de facto taking the property without just compensation. We are shocked to see policy language that encourages future trespassing on *any* private property. Please remove the language about potential prescriptive rights.

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).

Discussion

Just to make sure we understand this. In "3" above, if grazing exists prior to the certification of this new LCP in an area it will be allowed to continue. Please confirm this.

Farm Bureau strongly supports and appreciates the addition of "4" above.

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

Discussion

While we appreciate the language that allows for setbacks to be under 100 feet, the new language would force us to have at least a 50 foot buffer. If the site assessment shows that only 25 feet is necessary we should be allowed to use that land to within 25 feet of the wetland. This minimum of 50 feet will eliminate a great deal of productive agricultural land. Please remove this new language beginning with “ A wetland buffer...”

C-BIO-25 Stream and Riparian Buffer Adjustments and Exceptions. Consider granting adjustments ~~and exceptions~~ to the ~~coastal~~ stream buffer standards in policy C-BIO-24 in certain limited circumstances for projects that are undertaken in the least environmentally damaging manner. An adjustment ~~or exception~~ may be granted in any of the following circumstances:

1. The County determines that the applicant has demonstrated that a ~~100/50-foot~~ stream buffer (see Policy C-BIO-24.3) is unnecessary to protect the resource because any significant disruption of the habitat value of the resource is avoided by the project and specific proposed protective measures are incorporated into the project. A stream buffer may be adjusted to a distance of not less than 50 feet from the top of the stream bank if such a 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 stream buffer may be granted only where:

Discussion

The same argument applies here to the stream buffers as it did in C-Bio-20. Please remove the new language starting with “A stream buffer...”

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.~~

Discussion

Farm Bureau has concerns about the “75% by dollar volume”. The county has no way to enforce this without seeing every dollar made by the farmer, that is not the county’s business, the IRS doesn’t even ask us to separate out which goods sold are from where. We understand and support the notion that our products sold should be principally from Marin, but the definition given for “principally” is not an acceptable one. Please remove the definition in parentheses in number 2 above and remove number 5 in its entirety.

In addition we have a concern about number 4 above. The need for a conditional use permit for educational tours of our facility if it is “open routinely to public visitation or if public tours are conducted of the processing facility more than 24 times per year” makes no sense to us. We should be commended for opening our doors and educating the public about where their food comes from. This could prevent us from being able to have a tour for you the Supervisors because we scheduled 24 school visits already, do you want us to turn the children away! Please remove number 4.

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

Discussion

1b. Existing buildings should not have to be under 15 feet, most barns that may be used for sales are taller than 15 feet, this is extremely low.

2. Our same concern exists here about the 75% by dollar volume. Please at the very least remove the definition of “principally”. In addition, why must the product being sold be “unprocessed”. This would disallow all of our cheese makers from being able to sell their cheese. On farm sales should be categorically excluded consistent with the agricultural sales use for the A zoning district in the Marin County Development Code.

22.70.030 – Coastal Permit Filing, Initial Processing

A. Application and filing.

2. Documentation of the applicant's legal interest in all the property upon which work is proposed to be performed. The area of the subject Coastal Permit shall include at least all contiguous properties under the same ownership. The area covered by a proposed project may also include multiple ownerships;

Discussion

The new language proposed here is of some concern. It appears to us that a coastal permit on any property would be as if the proposed development was occurring on all contiguous parcels under same ownership. Does this mean that if a farmer owns two contiguous ranches, they would only be allowed 1 farmhouse and two intergenerational homes total, essentially eliminating all potential from one ranch completely? If this is the case, Farm Bureau strongly opposes this new language.

There are some definitions in the development code that we would also like to make some suggestions for. Bold and underlined will be new language and strikethroughs would be suggested deletions.

Agricultural Accessory Activity (land use) (coastal). This land use consists of accessory activities customarily incidental to agricultural operations, and which involve agricultural products produced only on site or elsewhere in Marin County, including but not limited to:

Agricultural Accessory Structures (land use) (coastal). This land use consists of an uninhabited structure for the storage of farm animals, implements, supplies or products, that contains no residential use, is not accessory to a residential use, and is not open to the public, including but not limited to:

Agricultural Production (land use) (coastal). This land use consists of the raising of animals used in farming or the growing and/or producing of agricultural commodities for commercial purposes, including **but not limited to** the following and substantially similar uses of an equivalent nature and intensity:

1. Livestock and poultry - cattle, sheep, **hogs**, poultry, goats, rabbits, **llamas**, and horses provided that horses are accessory and incidental to, in support of, and compatible with the property's agricultural production.
2. Livestock and poultry products (such as milk, wool, eggs).
3. Field, fruit, nut, and vegetable crops - hay grain, silage, pasture, fruits, nuts, seeds, and vegetables.
4. Nursery products - nursery crops, cut plants.
5. Aquaculture and mariculture
6. Viticulture
7. Vermiculture
8. Forestry

9. Commercial gardening
10. Beekeeping
- 11. Greenhouses**

Certificate of Compliance. A Certificate of Compliance is a document recorded by the County Recorder, which acknowledges that the subject parcel, which was typically created prior to current subdivision map requirements, **was determined** ~~is considered~~ by the County **to comply with the requirements of the State Subdivision Map Act Section 66499.35(a)** to be a legal lot of record. A Conditional Certificate of Compliance is issued ~~used instead of a Certificate of Compliance~~ to validate a **parcel that does not comply with the provisions of this division of the State Subdivision Map Act Section 66499.35(b)** ~~was not legally subdivided~~. Procedures for Certificates of Compliance may be found in Chapter 22.96 (Certificates of Compliance) of this Development Code.

Proposed new definition:

Conservation easement (land use). A legally drafted and recorded agreement between a landowner and the County, land trust, or other qualified organization in which the owner agrees to place certain restrictions over all or portions of his/her land in perpetuity to retain it in a predominantly natural, scenic, agriculture or other open space condition. Except for the specific restrictions contained in the easement document, the owner retains all other rights in the property. The easement stays with the land and is therefore legally binding on present and future owners.

Development. On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511 of the Public Resources Code). **Some activities involving a change in the density or intensity of use of land, or a change in the intensity of use of water, for agricultural production purposes, are Categorically Excluded.**

Historic Public Use (~~coastal~~). **Potential** use of private land as if it were public land in a manner that is substantial (rather than minimal) and continual, although not necessarily continuous, over a long period of time. **Potential historic use does not equate to prescriptive rights, which shall only be determined by a judge in a court of law. See Prescriptive Rights.**

Livestock Operations, Sales/Feed Lots, Stockyards (land use). This land use consists of specialized and intensive commercial animal facilities including animal sales yards, stockyards,

and cattle feedlots. Feedlots are any site where cattle are held or maintained for the purposes of feeding/fattening, for market ~~or milking~~, and where at least 60 percent of the feed is imported or purchased. Does not include slaughterhouses or rendering plants; see "Slaughterhouses and Rendering Plants." See also, "Dairy Operations."

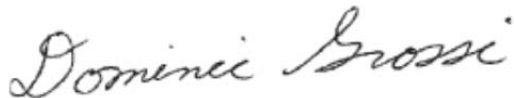
Discussion:

Dairy operations are a distinct Land Use category in Table 5-1-a, so milking should not be included in this definition. This is an easy change and **very** important.

Prescriptive Rights (~~coastal~~). **A decision by a Judge in a Court of law, that** ~~Public rights have been~~ **that are acquired over private lands, through use as defined by California law. Preventing the creation or ripening of public prescriptive rights is achieved by posting signs containing the language set forth in Civil Code Section 1008, "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code", and renewing the same, if they are removed, at least once a year; or by annually publishing such language in a newspaper of general circulation in the county in which the land is located. As another method to prevent the creation of public rights by implied dedication, the landowner may record in the office of the recorder of the county in which the land is situated a notice of consent to public use as provided in Civil Code Section 813. Landowners should refer directly to the statutes for details.**

In addition to our above comments, we would like to offer suggested revisions to the development code tables as attachment 2. There are many suggestions that stem from discussion previously mentioned in this comment letter. Please note though, that we are asking for cottage industries to be a principally permitted use. Governor Brown just signed into law AB 1616 into law that expressly allows the sale of cottage industry products for farmers.

Thank you for your time and considerations,



Dominic Grossi,
President Marin County Farm Bureau



MARIN COUNTY FARM BUREAU

P.O. Box 219, Pt. Reyes, CA 94956

October 2, 2012

Attachment # 3

Re: Recommended new "Constitutionality of Conditions" Clauses in LUP and Development Code

Recommended Revisions to Applicable Development Code Sections and Analysis

Issue: There are a number of proposed policies and Development Code sections in the Local Coastal Program Proposed Amendments dealing with permits conditioned upon the exaction of easements and other impacts on private property rights. The Planning Commission Recommended Drafts contain language that is often internally inconsistent, and which does not adequately lay out the requirement for consistency with state and federal law.

Intent: To incorporate language that is internally consistent by creating a new clause that would be incorporated as both a LUP Policy and a Development Code Section entitled the "Constitutionality of Conditions" and then reference that clause in all policies and codes related to it (i.e. "...consistent with Policy/Section XX..."). This approach would also simplify and clarify much of the LCP language by preventing redundancy. Specificity of the new clause will bring transparency necessary for applicants, the public, and government agencies, thereby reducing ill-advised and expensive appeals and lawsuits.

Analysis and Discussion:

The Fifth Amendment of the Federal Constitution limits the extent to which the County may demand that property owners comply with certain requirements in exchange for a County-issued permit. These requirements include but are not limited to: public access easements; non-agricultural development in C-APZ and C-ARP zones; open space easements; agricultural conservation easements and subdivision. For the County to legally condition the grant of a permit upon a property owner's acceptance of an easement condition or other limitation on land use, it must comply with the U.S. Supreme Court's holdings in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. *Nollan*, 438 U.S. 825 (1987); *Dolan*, 512 U.S. 374 (1994). Under these cases, the burden falls on the County to make an individualized determination that a proposed land use will adversely impact public access, public infrastructure or other public good. The County must then also demonstrate (1) a nexus between the impact of the proposed land use and the condition; and (2) proportionality between the impact of the proposed land use and the condition, such that the condition directly mitigates for the adverse impacts of the proposed land use.

Recommendation: In order to ensure such consistency, clarity and transparency, we propose an additional clause in both the Development Code and the Land Use Plan that sets forth the circumstances under which the County may impose requirements on property owners as a condition of obtaining a permit. We urge that this statement of the law be incorporated by reference into all the applicable sections of the Development Code and also into the corresponding policies in the Land Use Plan. Our

recommended additions are in **bold and underlined** and recommended deletions in ~~strike through~~.

Policy XX & Development Code Section XX - Constitutionality of Conditions

Where the County seeks to impose conditions on a property owner's proposed land use, the County bears the burden of demonstrating—on an individualized, case-by-case basis—that the proposed use will create an adverse impact on public access, public infrastructure or other public good. The County must then also demonstrate: (1) a nexus between the impact of the proposed land use and the condition; and (2) proportionality between the impact of the proposed land use and the condition, such that the condition directly mitigates for the adverse impacts of the proposed land use.

Recommended Revisions to Applicable Development Code Sections and Analysis

The following proposed amendments to the Development Code, with reference to corresponding LUPA Policies, directly impact private property rights and therefore require consistency with state and federal law.

Conservation Easement and other land exactions and takings

22.65.030 - Planned District General Development Standards (Policy C-AG-7)

D. Building location:

1. Clustering requirement. Structures shall be clustered in a geologically stable, accessible location on the site where their visual prominence is minimized, consistent with needs for privacy. Clustering is especially important on open grassy hillsides; however, a greater scattering of buildings may be preferable on wooded hillsides to save trees. The prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography.

In the C-APZ and C-ARP agricultural zones, non-agricultural development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use. **Consistent with Policy/Section XX**, non-agricultural development, including division of agricultural lands, shall only be allowed upon demonstration that long-term productivity of agricultural lands would be maintained and enhanced as a result of such development. **Consistent with Policy/Section XX**, non-agricultural 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, and shall not require new road construction or improvements resulting in significant impacts on agriculture, significant vegetation, significant scenic resources, or natural topography of the site. Proposed development shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. Any new parcels created shall have building envelopes outside any designated scenic protection area.

Analysis and Discussion

The imposition of an affirmative agricultural easement is subject to the requirements of *Nollan* and *Dolan* as outlined in Policy/Section XX. Recently, a trial court struck down a similar requirement because there

was no nexus or proportionality between the easement requirement and the impact of the proposed development. *See Sterling v. California Coastal Commission*, No. CIV 482448 (Cal. Sup. Ct., Jul. 22, 2011).

2. Development near ridgelines. **Consistent with Policy/Section XX**, no construction shall occur on top of, or within 300 feet horizontally, or within 100 feet vertically, of visually prominent ridgelines, whichever is more restrictive, unless no other suitable locations are available on the site or the lot is located substantially within the ridgeline area as defined herein. If structures must be placed within this restricted area because of site constraints or because siting the development outside of the ridgeline area will result in greater visual or environmental impacts, they shall be in locations that are the least visible from public viewing areas.

E. Land Division of Agricultural Lands. Land divisions affecting agricultural lands shall be designed consistent with the requirements of this Article. In considering divisions of agricultural lands in the Coastal Zone **and consistent with Policy/Section XX**, 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.

G. Open space areas:

1. Dedication required. Land to be preserved as open space, **consistent with Policy/Section XX** may be dedicated by fee title to the County or an agency or organization designated by the County before issuance of any construction permit or may remain in private ownership with appropriate scenic and/or open space easements or other encumbrances acceptable to the County. The County may require **consistent with Policy/Section XX** the reasonable public access across lands remaining in private ownership, consistent with federal and state law.

3. Open space uses. Uses in open space areas shall be in compliance with policies of the Marin County Open Space District. Generally, uses shall have no or minimal impact on the natural environment. **Consistent with Policy/Section XX**, Pedestrian and equestrian access shall be provided where possible, and reasonable. The intent is to serve the people in adjacent communities, but not attract large numbers of visitors from other areas.

22.65.040 - C-APZ Zoning District Standards (Policy C-AG-2)

A. Purpose. This Section provides additional development standards for the C-APZ zoning district that are to preserve productive lands for agricultural use, and ensure that development is accessory and incidental to, in support of, and compatible with agricultural uses.

B. Applicability. The requirements of this Section apply to proposed development in addition to the standards established by Section 22.65.030 (Planned District General Development Standards) and Chapter 22.64 (Coastal Zone Development and Resource Management Standards), and all other applicable provisions of this Development Code.

C. Development standards. Development permits in the C-APZ district shall also be subject to the following standards and requirements in addition to section 22.65.030:

1. Standards for agricultural uses:

a. **Consistent with Policy/Section XX**, permitted development shall protect and maintain

continued agricultural use, and contribute to agricultural viability.

b. Development shall be permitted only where adequate water supply, sewage disposal, road access and capacity and other public services are available to support the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies including Tomales Bay, either individually or cumulatively.

c. Permitted development shall have no significant adverse impacts on **environmentally sensitive habitat areas as delineated in the LCP maps,** ~~environmental quality or natural habitats,~~ and shall meet all other applicable policies, consistent with the LCP **and with Policy/Section XX.**

2. Standards for Non-Agricultural Uses

Consistent with Policy/Section XX, non-agricultural uses, including division of agricultural lands or construction of ~~two or more dwelling units (excluding agricultural worker or~~ **and** intergenerational housing) shall meet the requirements of Section 22.65.040C above and the following additional requirements:

a. Conservation easements. Consistent with state and federal laws **and Policy/Section XX,** the approval of nonagricultural uses, a subdivision, or construction of two or more dwelling units, excluding agricultural worker and intergenerational housing, shall include measures for the long-term preservation of lands proposed or required to remain undeveloped. Preservation shall be accomplished by permanent conservation easements or other encumbrances acceptable to the County. Only agricultural uses shall be allowed under these encumbrances. In addition, the County shall require the execution of a covenant prohibiting further subdivision of parcels created in compliance with this Section and Article VI (Subdivisions), so that each is retained as a single unit.

See analysis following D1.

Public Access

22.64.180 - Public Coastal Access (Policy C-PA-2)

A. Application requirements.

1. Site Plan. Coastal permit applications for development on property located between the shoreline and the first public road shall include a site plan showing the location of the property and proposed development in relation to the shoreline, tidelands, submerged lands or public trust lands. ~~Any evidence of historic public use should also be indicated.~~ **It is the County's burden to demonstrate evidence of prescriptive rights in favor of the public. Only a court may declare the existence of prescriptive rights.**

Analysis and Discussion

While the County may consider evidence of historic public use, it is improper to ask a permit applicant to produce that evidence. The burden falls on the County to establish a prescriptive right; it may not coerce

a permit applicant into assisting in that process. Moreover, only a court may declare prescriptive rights in favor of the public. *See LT-WR, LLC v. Cal. Coastal Comm'n*, 152 Cal. App. 4th 770 (2007).

B. Public Coastal Access standards.

1. Public coastal access in new developments. New development located between the shoreline and the first public road shall be evaluated for impacts on public access to the coast per Land Use Plan Policy C-PA-2. Where a nexus exists **and consistent with Policy/Section XX**, the dedication of a lateral, vertical and/or bluff top accessway ~~shall~~**may** be required per Land Use Plan Policy C-PA-9, unless Land Use Plan Policy C-PA-3 provides an exemption.
2. Direct dedication of public coastal access. **Consistent with Policy/Section XX and** if feasible, direct dedication of an easement or fee title interest for a required coastal accessway is preferred per Land Use Plan Policy C-PA-4.
3. Acquisition of new public coastal accessways. The acquisition of additional public coastal accessways shall be pursued through available means per Land Use Plan Policy CPA-6 **and consistent with Policy/Section XX**.
4. Protection of prescriptive rights. New development shall be evaluated to ensure that it does not interfere with **the public's prescriptive rights that have been adjudicated and confirmed by a court of law.** ~~the public's right of access to the sea where acquired through historic use per Land Use Plan Policy C-PA-7.~~

Analysis and Discussion

It is unacceptable to base permitting decisions on potential public prescriptive rights that have not been adjudicated and confirmed by a court of law. *See LT-WR, LLC v. Cal. Coastal Comm'n*, 152 Cal. App. 4th 770 (2007). To burden a landowner with a public access easement condition because of "any evidence of historic public use" impermissibly usurps the role of the judiciary in adjudicating interests in real property. Only courts are competent to declare prescriptive rights. They are bound by procedural safeguards that are designed to assess the credibility of evidence and to ensure fairness. Those same safeguards are absent from County proceedings which therefore do not adequately protect property owners.



MARIN COUNTY FARM BUREAU

P.O. Box 219, Pt. Reyes, CA 94956

Attachment #2

Recommendations

Development Code Tables 5-1.a, b, c and d

Key to MCFB's Recommendations:

Only the C-APZ-60 column has been edited

Added text = **bold and underlined**

Deleted from original = ~~Strikethrough~~

✕ = Deleted original symbol for Use not allowed (-)

! = New column added at left to indicate where proposed changes made

(No changes recommended for Table 5-1.e)

FARM BUREAU RECOMMENDS:
TABLE 5-1-a - ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE-RELATED DISTRICTS

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
	AGRICULTURE, MARICULTURE				
	Agricultural accessory activities	PP, E	PP, E	PP, E	22.32.021
	Agricultural accessory structures	PP, E	PP, E	PP, E	22.32.022
	Agricultural homestays, 3 or fewer guest rooms	PP(10)	PP(10)	--	22.32.023 22.32.115
	Agricultural homestays, 4 or 5 guest rooms	U(10)	U(10)	--	22.32.023 22.32.115
!	Agricultural Intergenerational Home (first and second)	PP	--	--	22.32.024
!	Agricultural Intergenerational Home (third and up to maximum zoning density allowance)-second	U	--	--	22.32.024
	Farmhouse	PP (8)	PP	--	22. 32.025
!	Agricultural processing uses ≤5,000 sqft	PP	U	--	22.32.026
!	Agricultural processing uses >5,000 sqft	U P	U	--	22.32.026
!	Agricultural production, except viticulture	PP, E (11)	PP, E	P	22.32.030
!	Agricultural product sales ≤500 sqft	PP	PP	U	22.32.027
!	Agricultural product sales > 500 sqft	U P	U	U	22.32.027
!	Agricultural worker housing	PP, E	U	22.32.028	
	Commercial gardening	PP, E	P	P	
	Dairy operations	PP, E	P	P(4)	22.32.030
	Educational tours (non-profit or owner/operator)	PP	PP	PP	22.32.062 22.32.115
!	Fish hatcheries and game reserves	U P	P	P	
	Livestock operations, grazing	PP, E(5)	P(5)	P	22.32.030
	Livestock operations, large animals	PP, E(5)	P(5)	--	22.32.030
!	Livestock operations, sales/feed lots, stockyards	P(3 ,5)	P(3,5)	--	22.32.030
	Livestock operations, small animals	PP, E(5)	P(5)	--	22.32.030
	Mariculture/aquaculture	PP	PP	--	22.32.105
	Plant nurseries	PP	PP	--	
!	Raising of other food and fiber producing animals not listed under "agricultural production"	U PU	--	22.32.030	
!	Viticulture	PP, E (11) P	P	--	

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirements
E	Certain uses may be exempt or Categorically Excluded from permit requirements.
PP	Principal permitted use. (2)
P	Permitted use. (2)
U	Conditional use, Use Permit required. (2)
--	Use not allowed. (See 22.02.020.E regarding uses not listed.)

Notes:

- (1) Listed land uses must be consistent with definitions in Article VIII (Development Code Definitions).
- (2) See Chapter 22.42 (Design Review) for separate, non-coastal permit Design Review requirements for all uses.
- (3) * **Footnote missing**
- (4) Dairy operations allowed only on a site of 50 acres or larger.
- (5) Permit requirements are determined by Section 22.32.030 (Animal Keeping).
- (8) ~~Only one single-family dwelling per legal lot allowed.~~ **One Farmhouse per legal lot as a Principal Permitted Use (PP).** Does not include intergenerational homes or agricultural worker housing. **Additional dwelling units up to the C-APZ-60 zoning density, without a land division, may be permitted as a Conditional Use (U), when all applicable standards and requirements have been met.** To create additional parcels and additional single-family homes, see also 22.86 (Subdivisions).
- (10) Only allowed when the primary use of the property is for agriculture; see Section 22.32.115 (Non-Agricultural Uses). The non-agricultural standards contained in Section 22.32.115 do not apply to C-ARP zoned properties with an assigned density of one unit per 1-5 acres.
- (11) Viticultural operations must comply with the Marin County Grading Ordinance.**

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal Permit Requirements).

Discussion:

- Please note that we have added -60 to the C-APZ zoning designation in all the tables.
- During the Planning Commission hearings, the commissioners convened a working group of experts to discuss reasonable size requirements and limitations for agricultural processing and sales facilities, whose recommendations were summarily dismissed. For example, it was pointed out that manufacturers of cheeses would need ample storage space for aging their products, and storage needs were likely to increase when producers wanted to diversify their cheese varieties to meet market and economic demands. Additional permitting requirements and regulatory burdens threaten producers' economic viability.
- The language in Footnote (8) "Only one single-family dwelling per legal lot allowed..." indicates that people are still confused about the difference between "allowed" and "permitted." Please see the Marin County Local Coastal Program Unit II , page 100, where "One single-family dwelling..." is listed as one of the "b. Permitted uses" in the APZ. If only one single-family dwelling was *allowed*, how would one explain the fact that there are a number of ranches containing more than one house, or that MALT continues to purchase development rights in the Coastal Zone?

FARM BUREAU RECOMMENDS:
TABLE 5-1-b ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE - RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultura 1 Production	C-ARP Agricultura 1 Residential Planned	C-OA Open Area	
MANUFACTURING AND PROCESSING USES					
!	Cottage industries	PP ✕	U	--	22.32.060
!	Recycling Facilities - Scrap and dismantling yards	--	U	--	
RECREATION, EDUCATION, AND PUBLIC ASSEMBLY USES					
	Campgrounds	U	U	U	
	Educational Tours (for profit)	U	U	P	22.32.115
!	Equestrian facilities (Stables used for animals used in agricultural activities are exempt)	P ⊕	P (9)	U	22.32.030
	Golf courses/country clubs	--	--	U	
!	Horses, donkeys, mules, ponies (Animals used in agricultural activities are exempt)	P /U(5)	P/U(5)	U(5)	22.32.030
!	Hunting and fishing facilities (Private)	P ⊕	P	U	
	Hunting and fishing facilities (Public)	U	U	U	
	Libraries and museums	--	U	U	
	Off-road vehicle courses	--	U	--	
!	Private residential recreational facilities	P ⊕	U	U	
	Public Parks and playgrounds	U	U	P	
	Religious places of worship	--	U	U	
!	Rural recreation	U ✕	U	U	
!	Schools (excluding home schools)	--	U	U	

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirements
E	Certain uses may be exempt or Categorically Excluded from permit requirements.
PP	Principal permitted use. (2)
P	Permitted use. (2)
U	Conditional use, Use Permit required. (2)
--	Use not allowed. (See 22.02.020.E regarding uses not listed.)

Notes:

- (1) Listed land uses must be consistent with definitions in Article VIII (Development Code Definitions).
- (2) See Chapter 22.42 (Design Review) for separate, non-coastal permit Design Review requirements for all uses.
- (4) Dairy operations allowed only on a site of 50 acres or larger.
- (5) Permit requirements are determined by Section 22.32.030 (Animal Keeping).
- (9) Equestrian employee housing is permitted with Use Permit approval (See Chapter 22.48 Use Permits)

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal Permit Requirements).

Discussion:

- Regarding Cottage Industries, it is absurd to not allow someone in a farm family to supplement their income by engaging in any of these enterprises. Many agricultural families must take off-farm jobs to pay the bills. Governor Brown recently signed into law AB 1616 which makes cottage industries legal. Please update Table 5-1-b and Section 22.32.060 to reflect that this is a Permitted Use for our lands in the C-APZ-60 zone.
- Please see the definitions of Private Recreational Facilities and Rural Recreation, which exclude commercial facilities and public commercial enterprises. A literal interpretation could prevent a farm family from putting a target on a hay bale to use for target practice, placing a hot tub on their back porch, building an indoor lap pool for physical therapy, or erecting a basketball hoop where their kids can play without going through a cumbersome permitting process. These should be Permitted uses.

FARM BUREAU RECOMMENDS:
TABLE 5-1-c ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE - RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural 1 Production	C-ARP Agricultural 1 Residential Planned	C-OA Open Area	
	RESIDENTIAL USES				
!	Affordable housing	<u>P</u> U	P	U	Chapter 22.22
	Group homes, 6 or fewer residents	P	P	--	22.32.080
	Group homes, 7 or more residents	U	U	--	22.32.080
!	Guest houses	<u>P(6,10)</u> X	P(6)	P(6)	22.32.090
	Home occupations	P(10)	P(10)	P(6)	22.32.100 22.32.115
	Religious residential retreats	--	U	--	
	Residential accessory uses and structures	P(6)	P(6)	P(6)	22.32.130
	Residential care facility, 6 or fewer individuals	P	P	--	22.32.080
	Residential care facility, 7 or more individuals	U	U	--	22.32.080
!	Residential second units	<u>P(6, 10)</u> X	P(10)	--	22.32.140 22.32.115
	Room rentals	P	P	--	
	Single-family dwellings, attached or detached	U(8)	U	U(7)	22.62.060 Chapter 22.65
!	Tennis and other recreational uses, <u>private</u>	<u>P</u> U	U	U	22.32.130

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirements	Procedure is in Section:
E	Certain uses may be exempt or Categorically Excluded from permit requirements.	Chapter 22.68
PP	Principal permitted use. (2)	
P	Permitted use. (2)	
U	Conditional use, Use Permit required. (2)	Chapter 22.48
--	Use not allowed. (See 22.02.020.E regarding uses not listed.)	

Notes:

- (1) Listed land uses must be consistent with definitions in Article VIII (Development Code Definitions).
- (2) See Chapter 22.42 (Design Review) for separate, non-coastal permit Design Review requirements for all uses.
- (6) Only allowed where a single-family dwelling is first approved.
- (7) Only dwellings for teachers or custodial staff, or dwellings clearly accessory to the primary use of the site for agricultural purposes allowed.

- (8) ~~Only one single family dwelling per legal lot allowed.~~ **Additional single-family dwelling units up to the C-APZ-60 zoning density, without a land division, may be permitted as a Conditional Use (U), when all applicable standards and requirements have been met.** Does not include intergenerational homes or agricultural worker housing. To create additional parcels and additional single-family homes, see also 22.86 (Subdivisions).
- (10) Only allowed when the primary use of the property is for agriculture; see Chapter 22.32.115 (Non-Agricultural Uses). The non-agricultural standards contained in Section 22.32.115 do not apply to C-ARP zoned properties with an assigned density of one unit per 1 – 5 acres.

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal Permit Requirements).

Discussion:

- Guest houses are allowed in every other zoning district. It is not only discriminatory and a violation of equal protection, but also insulting to assume that farmers and ranchers won't ever have out-of-town guests for whom they want to provide overnight accommodations from time to time without impacting the family's private space.
- Please see our discussion of Footnote (8) in Table 5-1-a.
- Regarding Second Units: The state encourages development of second units to increase the availability of low income housing by reducing government regulation. Second-unit law applies to localities in the Coastal Zone so Marin's LCP cannot make an exclusion for the C-APZ-60 zone. According to Government Code 65852.2(j), second-unit law shall not supersede, alter or lessen the effect or application of the California Coastal Act (Division 20 of the Public Resources Code), except that local governments shall not be required to hold public hearings for coastal development permit (CDP) applications for second-units. As stated in correspondence, dated January 13, 2003 from the California Coastal Commission to all coastal communities, local governments in the coastal zone should amend their Local Coastal Program (LCP) to not require a public hearing in the consideration of second-unit applications. Further, local appeals should be handled in an administrative manner. Source: B1866, Government Code Section 65852.2 State Second Unit Law http://www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf.

FARM BUREAU RECOMMENDS:
TABLE 5-1-d ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL
AGRICULTURAL & RESOURCE – RELATED DISTRICTS (Continued)

Chg. !	LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See Standards in Section:
		C-APZ-60 Agricultural Production	C-ARP Agricultural Residential Planned	C-OA Open Area	
RESOURCE, OPEN SPACE USES					
	Mineral resource extraction	U	U	--	Chapter 23.06
	Nature preserves	U	P	P	
!	Water conservation dams and ponds	P(10) -U	P	P	
	Timber and tree production	U	U	--	23.04
	Wind energy conversion systems (WECS), Small Roof-mounted	PP	PP	PP	22.32.190
	Wind energy conversion systems (WECS), Small Freestanding, and Medium (coastal)	P	P	P	22.32.190
	Wind energy conversion systems (WECS), Large (coastal)	--	--	--	22.32.190
	Water wells or septic systems to serve development on adjoining land	U	U	U	
	Solar energy systems (coastal), roof-mounted	PP	PP	PP	22.32.161 22.42.055(2)
	Solar energy systems (coastal), free-standing	P	P	P	22.32.161
RETAIL TRADE USES					
	Building materials stores	--	U	--	
	Commercial storage and sale of garden supply products	U	U	--	
!	Sales of agricultural products	P(8,10)	P(8,10)	U	22.32.027
	Bed and breakfast inns, 3 or fewer guest rooms	P(10)	P(10)	--	22.32.040 22.32.115
	Bed and breakfast inns, 4 or 5 guest rooms	U(10)	U(10)	--	22.32.040 22.32.115
	Child day-care centers	U	U	--	22.32.050
	Child day-care - Large family day-care homes	U	U	--	22.32.050
	Child day-care - Small family day-care homes	P	P	--	22.32.050
	Cemeteries, columbariums, mausoleums	--	U	U	
	Kennels and animal boarding	U	U	--	
	Public safety/service facilities	U	U	U	
	Public utility facilities	U	U	U	
	Storage, accessory	P	P	P	
!	Veterinary clinics and animal hospitals	<u>U</u> ✕	U	--	
	Waste disposal sites	U	U	--	

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirements	Procedure is in Section:
--------	---------------------	--------------------------

E	Certain uses may be exempt or Categorically Excluded from permit requirements.	Chapter 22.68
PP	Principal permitted use (2)	
P	Permitted use. (2)	
U	Conditional use, Use Permit required. (2)	Chapter 22.48
--	Use not allowed. (See 22.02.020.E regarding uses not listed.)	

Notes:

- (1) Listed land uses must be consistent with definitions in Article VIII (Development Code Definitions)
- (2) See Chapter 22.42 (Design Review) for separate, non-coastal permit Design Review requirements for all uses.
- (4) Dairy operations allowed only on a site of 50 acres or larger.
- (5) Permit requirements are determined by Section 22.32.030 (Animal Keeping).
- ~~(8) Only one single family dwelling per legal lot allowed (does not include intergenerational homes or agricultural worker housing). To create additional parcels and additional single family homes, see also 22.86 (Subdivisions).~~
- (10) Only allowed when the primary use of the property is for agriculture; see Chapter 22.32.115 (Non-Agricultural Uses). The non-agricultural standards contained in Section 22.32.115 do not apply to C-ARP zoned properties with an assigned density of one unit per 1 – 5 acres.

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal) Permit Requirements.

Discussion:

- Water conservation dams and ponds for agricultural use should be Permitted Uses (P).
- Retail sales facilities for the sale of agricultural products are either a PP or a P in Table 5-1-a, depending on their size. Sales of agricultural products should also be a PP. This is redundant to Table 5-1-a; the entire line should be removed here.
- What better place for veterinary clinic or animal hospital than within an agricultural zone? It should be allowed with the proper use permit.
- Footnote (8) is irrelevant to this table.