COUNTY OF MARIN

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

Item No. F11a

July 10, 2017

Honorable Members of the Coastal Commission
Jeannine Manna, North Central Coast District Supervisor
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

Re: Revised Findings, Item No. F11a
Marin County LCP Amendments LCP-2-MAR-15-0029-1

Honorable Commissioners and Staff,

The County of Marin understands that the purpose of your staff's proposed revised findings and the public hearing is ***only*** to consider whether the draft Findings accurately reflect the Coastal Commission's action on November 2, 2016, and ***not*** to reconsider the merits of the action. For that reason, County staff has reviewed your staff's draft Findings in the context of relevant materials and the video archive of the Commission's deliberations on November 2, 2016. The County is appreciative of the Commission for their insight and wisdom in the action it took that day with respect to supporting ongoing agriculture in Marin's coastal zone. In reviewing the draft Findings, County staff has found that several areas either lack clarity or otherwise fail to reflect the import of the Commission's action. County staff is requesting your Commission consider the attached revised Findings favorably in the interest of providing greater clarity that should benefit our respective agencies, the public and moreover the agricultural producers whose livelihoods are affected by how these regulations are implemented.

Ongoing Agriculture

The Findings should be based on the acknowledgement that a number of routine agricultural production activities, as defined by "ongoing agriculture" (or "Agriculture Ongoing" as shown in the IP definitions, Article VIII, Section 22.130) are allowed to continue subject to specific criteria intended to uphold the Coastal Act. The routine activities include crop rotation, plowing, tilling, planting, harvesting and seeding where such activities are not expanding into areas never before used for agricultural production. The definition of "ongoing agriculture" goes on to provide examples of circumstances under which routine agricultural production activities would not qualify for an exemption, including:

- Development of new water sources (such as construction of a new or expanded well or surface impoundment)

- Installation or extension of irrigation systems
- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis
- Preparation or planting of land with an average slope exceeding 15%

We agree with Commission staff that the above bullet list does not necessarily encompass every criterion that may arise in future decisions about the application of "ongoing agriculture." However, absent any unusual circumstances that may raise legitimate Coastal Act consistency issues, the clear intent of the definition is to allow ranchers and farmers to undertake the limited number of *routine agricultural production activities* and to allow these prerequisites to producing food and fiber when they accommodate a change from one type of crop to another without subjecting the agricultural producer to the unnecessary time, cost and expense of a Coastal Development Permit. This central and overarching goal of reinforcing the Coastal Act's protection of agriculture should permeate the Coastal Commission's findings.

Legally Established Agricultural Use

Concerns about the legality of "ongoing agriculture activities" that have been practiced for decades was an influential factor in the Coastal Commission's deliberation and decision, as reflected by then Commission Chair Kinsey's statement "...our Ag. producers wouldn't be here today if they felt safe." Former Chair Kinsey expounded on this point by stating:

> *"What's key to our producers is they have the ability to respond to the market -* ***they aren't always looking over their shoulder wondering who is going to try to appeal some change of use that they are pursuing*** *- what they want is certainty that their activities are acceptable. And with that regard if our fellow Commissioners look at the list and the distinguishing differences between the staff and the County of Marin, there's just two-* ***this issue of existing legally established, which is language that's been added to the County's position. ... as one of the ranchers and farmers has said five different changes have occurred over the last 40 years on his particular ranch- does he have to prove that each time that that change of activity happened that it was existing legally established? That will be devastating..."***
>
> ***"I will at the appropriate time be asking the Commission to support the elimination of those two language elements..."***

Commissioner Carole Groom elaborated:

> *"...We've got to be flexible or we will lose this farmland to development, and that's exactly what we don't want.* ***So I think that the "existing legally established" should be eliminated, and I think that the Marin County version of that should be accepted..."***

As far as we could determine, no Coastal Commissioner asked or moved that a legality test be retained in the approved modifications, yet the draft Findings add new language that "It is important to note that **existing agricultural production activities are only considered ongoing agriculture if they are**

legal and allowable uses on agricultural land. The Commission's conditionally certified definition is **not intended to allow the continuation of any unpermitted or illegal activity** on agricultural land because it has previously been occurring... **if the extent or legality of agriculture production activities were to be contested**, the Commission's suggested modifications acknowledge that determinations of ongoing agricultural activities may need to be supported with evidentiary information..."

Removing the above statements and replacing them with findings that more accurately reflect the Commission's intent, as explicitly set out by former Commission Chair Kinsey and Commissioner Groom, will make the Commission's action sufficiently clear as to unburden routine production activities on agricultural land from having to meet that test when these routine production activities occur consistent with the accompanying criteria.

As shown in the Commissioner statements above, it was the clear intent of the Commission to "eliminate," not merely reword, language regarding the legality of "ongoing agriculture." The motion to do so passed unanimously. Consequently, the "legally established" language nowhere appears in the LCP section. To try to re-animate it in the draft Findings is simply not consistent with the narrow scope of the Commission's action and may lead to future enforcement and decision-making processes that create uncertainty about the presumption of legality. Again, please keep in mind that what's at stake here are a very limited number of routine agricultural practices on land historically used for agriculture.

On a related historical point, in 1981, the Commission determined that while ***expansion*** of agricultural uses into areas of ***native vegetation*** might require a permit, this applies to "only that vegetation removal which changes the basic use of land from ***essentially natural*** to a ***cultivated agricultural use***. Since Marin's agricultural operations have existed for decades, and in many instances long before the Coastal Act, it is understandable that under the Commission's 1981 policy, the routine agricultural production activities defined by "ongoing agriculture" would be allowed without a Coastal Development Permit and very few agricultural operations would be subject to a permit. At the same time, it is virtually inconceivable that close public scrutiny to land use changes in Marin's Coastal Zone and the Coastal Commission's competent and diligent enforcement program would not have resulted in scores of actions against ranchers and farmers during this period if permit approval had been required for the type of routine agricultural production activities on land historically used for agriculture covered by the definition.

Conversion of Grazing Areas to Row Crops

The conversion of grazing to crop production was the second issue former Commission Chair Kinsey's motion to adopt Suggested Modifications specifically addressed. He explained

> *"...my argument would be it's not necessary... we're not talking about new water sources - if a row crop operation required new water sources it would require a coastal development permit. We're very clear about that...so we're really just talking about in the course of day to day business we don't want these burdens placed upon our agricultural community. And I will at the appropriate time be asking the Commission to support the elimination of those two language elements... [e.g. "Legally established" and "Conversion of Grazing Areas to Row Crops"]*

And Chair Kinsey made precisely such motions. The question of removing requirements for the conversion of grazing areas to row crops was in fact the subject of a separate Motion - only one Commissioner voted to retain it, while all others voted to remove it.

By way of examples noted below, the draft Findings appear to introduce qualifications regarding crop conversion that were not expressed by the Commission itself as part of the motion and arguably depart from the intent of the Commission's action:

- ...there are a number of cases in which the conversion of grazing to row crop would not intensify the use of land...*[implying there are cases that would]*
- ...These examples include ... other crops that would not intensify the use of water *[implying a conditional limit when an existing legal well is in use].*
- ...all forms of agriculture which convert grazing to row crop do not require a CDP, only those conversions that would intensify the use of land or water or require grading not already exempt or excluded...

Neither "intensifying the use of land" or "intensifying the use of water" are defined in the LCP as modified. The list of grading activities and water improvements included in the approved definition of "ongoing agriculture" that trigger the need for a Coastal Development Permit serve to avoid possible ambiguities about the factors that may or may not constitute "intensifying" land or water use. For water, the improvements associated with crop conversions triggering a Coastal Development Permit include:

- Development of new water sources (such as construction of a new or expanded well or surface impoundment)
- Installation or extension of irrigation systems.

For grading activities, a Coastal Development Permit is required for:

- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis
- Preparation or planting of land with an average slope exceeding 15%

These activities are objective, measurable, and verifiable and can be effectively administered. The County enumerated them to assure those concerned that these developments would be subject to full LCP review. At the same time, the description of uses requiring permits provides certainty and predictability to anyone considering proposing such development.

We respectfully ask the Coastal Commission to consider adopting the revised Findings as shown in the attached document. The County's proposed additions are shown in double underline and deletions as ~~struck~~ through.

Sincerely,

Brian C. Crawford
Director

Attachment: Exhibit 1, Revised Findings

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F11a

Marin County EXHIBIT 1

Prepared June 23, 2017 (for July 14, 2017 hearing)

To: Coastal Commissioners and Interested Persons

From: Dan Carl, North Central Coast District Director Nancy Cave, North Central Coast District Manager Jeannine Manna, North Central Coast District Supervisor

Subject: Marin County Local Coastal Program Amendment Number LCP-2-MAR-15-0029-1 Revised Findings (Marin LCP Update Revised Findings).

STAFF NOTE

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action on November 2, 2016 to approve with suggested modifications five of the seven amendments comprising Marin County Local Coastal Program (LCP) Amendment Number LCP-2-MAR-15-0029-1 (also known as the Marin County LCP Update). At the November 2, 2016 Commission hearing, the Commission continued the hearing on the two amendments containing the Land Use Plan (LUP) and the Implementation Program (IP) provisions addressing environmental hazards. In its action on the other five amendments, the Commission approved the entirety of staff's recommendation except for two revisions made by the Commission at the hearing relating to the IP definition of ongoing agriculture. The Commission's two revisions to the staff recommended definition of ongoing agriculture triggered a need for revised findings for Commission consideration and adoption.

The County-proposed definition of ongoing agriculture identified six types of agricultural activities that would require a coastal development permit (CDP). Commission staff agreed with the County that the six enumerated activities would require a CDP. However, Commission staff did not agree that these six enumerated activities comprised the universe of activities requiring a CDP. Commission staff therefore recommended that the Commission both convert the enumerated listing to a listing that was illustrative and add a new example. While the Commission agreed with its staff that the enumerated listings were not exclusive, the Commission simplified the definition recommended by Commission staff by deleting two staff recommended modifications. First, the Commission deleted the per se requirement that every applicant establish that their ongoing agricultural production activities are "existing, legally established" activities as part of a CDP application process. Second, the Commission omitted "conversion of grazing area to row crop" as an example of an activity that would always require a CDP. These changes to the staff recommended definition of ongoing agriculture made by the

Commission were intended to assist the agricultural community by minimizing the upfront burden of proof for farmers seeking permit approvals for agricultural operations and acknowledging that the conversion of grazing areas to row crops will not always require a CDP.

Taking into account the two aforementioned deletions to the staff recommended definition of ongoing agriculture, the Commission-adopted definition of ongoing agriculture reads as follows:

> *Agricultural production activities (including crop rotation, plowing, tilling, planting, harvesting, and seeding) which have not been expanded into never before used areas. Determinations of such ongoing activities may be supported by Marin County Department of Agriculture, Weights and Measures information on such past activities. Examples of activities that are NOT considered ongoing agricultural activities include but are not limited to:*
>
> - *Development of new water sources (such as construction of a new or expanded well or surface impoundment)*
> - *Installation or extension of irrigation systems*
> - *Terracing of land for agricultural production*
> - *Preparation or planting of land for viticulture*
> - *Preparation or planting of land for cannabis*
> - *Preparation or planting of land with an average slope exceeding 15%*
>
> *A Coastal Development Permit will not be required if the County determines the activity qualifies for a de minimis waiver pursuant to the requirements Section 22.68.070, or is categorically excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.*

The motion and the resolution to adopt the revised findings are found on page 8 below, and the proposed revised findings follow starting on page 9. The *only* findings subject to change are those related to ongoing agriculture, as discussed above and found on pages 31-42. The underlined text represents text that has been added to the Commission's adopted findings and the ~~strike-through~~ text represents text that has been deleted from the Commission's adopted findings to reflect the Commission's November 2, 2016 action.

Staff notes that the purpose of these revised findings and the public hearing on July 14, 2017 is ***only*** to consider whether the revised findings accurately reflect the Commission's action on November 2, 2016. The purpose of the hearing is ***not*** to reconsider the merits of any part of that action, and all public testimony will be limited accordingly.

The Commissioners on the prevailing side of the November 2, 2016 action were Commissioners Bochco, Cox, Groom, Kinsey, Luevano, McClure, Mitchell, Shallenberger, Uranga, and Vargas, and these are the only Commissioners eligible to vote on the revised findings.

[The following, corresponding to pages 31-36 of the Commission Staff Report, shows changes in blue, with additions in double underline and deletions as ~~struck~~ through.]

In April 2015, the County's then proposed IP was heard by the Commission. At that time, Commission staff had suggested a series of proposed IP modifications to the proposed IP, and a set of findings supporting those changes (see attached Commission staff IP recommendation in **Exhibit 4**). Except as revised herein, the Commission staff recommended 2015 IP findings are incorporated herein by reference as part of these findings, including as the County's proposed IP is based on the Commission staff's recommended certified version with minor changes. Thus, the findings in this section build upon the referenced and incorporated 2015 IP findings, as modified in this report, while also describing the proposed submittal and analyzing changes now proposed and other comments received.[13]

The IP's agricultural protection policies as proposed are based upon implementing the Land Use Plan *before* it was modified by the Commission with suggested modifications as described above. Therefore, the proposed IP is not consistent with, and is not adequate to carry out, the LUPA with suggested modification and must be denied as submitted. The IP can be approved only with the following suggested modifications that are necessary to carry out the proposed LUP as modified above.

As described above, "farm tract" has been defined to consist of all contiguous legal parcels owned by the applicant. Those identified parcels are then allowed one farmhouse and up to two intergenerational homes, if they meet certain criteria. Thus, suggested modifications are necessary in order to achieve consistency with LUP Policies C-AG-2, -5 and -9 to change the terms 'legal parcel' and 'legal lot' to 'farm tract,' where applicable throughout the IP.[14] Similarly, in order to achieve consistency with C-AG-2, a suggested modification is necessary for IP Section 22.32.062 to clarify that educational tours are considered an agricultural use and are therefore principally permitted if no revenue is generated in excess of the reimbursement costs related to the educational tour, whereas tours that generate a profit are considered a commercial use that require an appealable coastal permit and a use permit.

Permitting of Agricultural Development

~~Proposed IP Section 22.68.030 (Coastal Permit Required) states that a CDP is required for all development in the coastal zone, and provides a list of activities that do or do not fall under the definition of development.~~ Section 30106 of the Coastal Act states that the removal or harvesting of major vegetation for agricultural purposes is not development, but that any change in the intensity of use of land or water is development, as is grading. Consistent with Coastal Act Section 30106, proposed IP Section 22.68.030 (Coastal Permit Required) states that a coastal development permit (CDP) is required for all development in the coastal zone defined, in part, to include grading, a change in the density or intensity of use of land, a change in the intensity of use of water or of access thereto, and the removal or harvesting of major vegetation other than for agricultural purposes, unless the development is categorically excluded, exempt, or qualifies for a de minimis waiver. Proposed IP Section 22.68.050 more specifically lists activities exempt from CDP requirements including "ongoing agricultural activities" (see proposed IP Section 22.68.050 (L)) as further defined in proposed IP Section 22.130.030 (Definitions of Specialized

[13] The County accepted all the Commission staff's 2015 modifications as the underlying "clean" version of their proposed IP, and made changes in cross through and underline to that version showing what they now propose – see **Exhibit 6**.

[14] See **Exhibit 11** for Commission staff build-out analysis.

Terms and Phrases) as "Agriculture, ongoing"). The County proposed definition of "Agriculture, ongoing" identifies six types of agricultural activities that are not ongoing and would require a coastal development permit (CDP). ~~has offered an interpretation of the definition of development prescribed by the Coastal Act such that "development" would exclude any routine agricultural activities which are not expanded into ESHA, ESHA buffers, or never before used areas.~~ The proposed definition also includes conservation practices required by a government agency as "ongoing agricultural activities" not subject to CDP requirements.

The Commission has grappled with the question of what types of agricultural activities constitutes development numerous times, and on March 19, 1981, the Commission issued a policy statement clarifying that it had jurisdiction over *expansion* of agricultural activities located in areas containing major vegetation. The Commission determined that expansion of agricultural uses into areas of native vegetation constitutes a "change in the intensity of the use of land" and is therefore development under the Coastal Act. This determination of jurisdiction, however, concerned "only that vegetation removal which changes the basic use of land from essentially natural to a cultivated agricultural use." New and expanded agriculture on land never before used for agriculture is also a change in the intensity of the use of land and water for a variety of additional reasons, including because preparing the land~~never before used for agriculture~~ for new agricultural use requires clearing the land of existing vegetation, and growing crops and livestock requires a significant amount of additional water, unlike the land's water needs in its natural state. Thus, removal of major vegetation in association with new and expanded agricultural operations on land never before used for agriculture requires a CDP, so such activities cannot be exempted from CDP requirements in the LCP. In addition, because the Coastal Act and LCP definitions of development do not exclude *grading* for agricultural purposes (as they do for the *removal of major vegetation* for agricultural purposes), except for agricultural production activities (including but not limited to crop rotation, plowing, tilling, planting, harvesting, and seeding all grading requires a CDP, unless it is otherwise exempt or excluded.

Commission staff worked diligently with County staff to try to come to agreement on those activities that would constitute "Agriculture, ongoing" not requiring a CDP, and have made much progress. To this effect, suggested modifications conditionally certified by the Commission are in part consistent with the County's proposed definition as it similarly describes "Agriculture, ongoing" to include agricultural production activities (such as crop rotation, plowing, tilling, planting, harvesting, seeding, etc.) that haven't been expanded into never before used areas. As such, ~~tTo the extent the~~ that rotational crop farming or changes, ~~or~~ grazing or ongoing agricultural activities, as defined in IP Section 22.130.30, that have not been expanded into never before used areas ~~has been part of a regular pattern of agricultural practices, rotational changes~~ are ~~it is~~ not a change in intensity of use of the land despite the fact that the grazing and crop growing are ~~rotationally~~ occurring at different times on different plots of land.

~~However, aAs proposed, the IP Update is inconsistent with Section 30106 including because it more broadly exempts agricultural activities which may require a CDP and does not clearly differentiate between different types of agricultural activities (including converting grazing land to row crops such as viticulture) that independently constitute development because they are a change in the intensity of use of land and/or require grading; and does not require that the ongoing agricultural activities be lawfully established. The Commission finds that the six~~

~~County-enumerated activities do not comprise the universe of activities requiring a CDP. Therefore, the Commission has conditionally certified a suggested modification converting the enumerated listing to a listing that is illustrative. In addition, the Commission's suggested modifications retain the necessary CDP requirement for new development,~~ even if it involves conservation practices required ~~agricultural activities being authorized or required~~ by another agency. ~~The sSuggested modifications are therefore required that do not eliminate also ensure that a permit is requiredment for either agricultural activities that would independently require a CDP because they involves grading or a change in intensity of use of the land or agricultural activities that were not lawfully established.~~

~~Further,~~ Both the proposed County definition and the Commission's suggested modifications ~~limit~~ define ongoing agriculture as ~~to existing~~ agricultural production activities that are not expanding into never before used areas. It is important to note that existing agricultural production activities are only considered ongoing agriculture if they are ~~legal and~~ allowable uses on agricultural land. ~~The Commission's conditionally certified definition is not intended to allow the continuation of any unpermitted or illegal activity on agricultural land because it has previously been occurring~~. Instead the definition ~~removes the upfront burden of proof from an individual farmer that all activities must be shown to be legally established as part of a CDP application process in recognition of~~ recognizes the fact that agricultural activities, including cattle grazing, have historically been occurring on properties in Marin for decades.[15] ~~, the Commission's definition acknowledges~~However, if the extent ~~or legality~~ of agriculture production activities were to be contested, the Commission's suggested modifications acknowledge that determinations of ongoing agricultural activities may need to be supported with evidentiary information such as information from the Marin County Department of Agriculture, Weights and Measures, or other historical sources.

~~Further, even if agricultural activities are occurring in existing areas and are legal, allowable uses, if the activity changes the intensity of use of land it would still require a CDP~~. As described further in the Agriculture section of the proposed Land Use Plan, the coastal environment present in Marin County provides for high quality grasslands which support the majority of Marin's animal agricultural industry while other factors such as the steep slopes, hills, non-prime soils, and limited water sources restrict the expansion of intensive row crop cultivation. Recognizing these constraints ~~unique to Marin~~ typical of much coastal agriculture, the County and Commission proposed definition of ongoing agriculture captures types of agricultural activities, including an enumerated list of activities that were ~~currently~~ identified ~~recognized~~ by the Marin County to allay concerns of some members of the ~~agricultural~~ community that ~~would clearly change the intensity of the use of land, and that meet the definition of development~~ certain types of activities should require ~~requiring~~ a CDP. ~~This enumerated list includes, but is not limited to, uses that would intensify water usage and require development of new water sources such as construction or expansion of new or expanded wells, and installation or extension of irrigation systems. This list also captures uses that would fall outside of the scope of routine agricultural practices such as terracing of land, viticulture and activities on steep slopes. Any similar use not enumerated but that still changes the intensity of use of land in a similar manner would also still require a CDP.~~

[15] The Marin County Department of Agriculture, Weights and Measures began preparing Livestock and Crop Reports in the 1930s.

There has been some debate as to whether a change from grazing to row crops (again, not expanding into never before used areas) should be included in this enumerated list as an activity that requires a CDP. The Commission found specifically that such conversion should not require a coastal permit, consistent with the 1981 policy established by the Commission that only that vegetation removal which changes the basic use of land from essentially natural to a cultivated agricultural use requires a coastal permit. ~~Given the particular context of Marin, there are a number of~~ The cases in which the conversion of grazing to row crop ~~would not intensify the use of land or require grading and as such,~~ would not require a CDP. ~~These examples~~ include, but are not limited to the growing of grasses for silage to feed grazing animals or dry farming of potatoes or other crops ~~that would not intensify the use of water~~. The Commission also recognizes the need to provide farmers with the flexibility to adjust their agricultural practices to respond to changing market conditions or environmental factors and should be allowed to do so in a streamlined manner. As such, in Marin, all forms of agriculture which convert grazing to row crop do not require a CDP~~, only those conversions that would intensify the use of land or water or require grading not already exempt or excluded~~. ~~Due to the limited prime soils, steep slopes, and water availability in Marin, activities that convert grazing areas to row crop and increase the intensity of use of land often are captured within other~~ Because there has been much concern by some members of the public, the County enumerated categories of activities in the "ongoing agriculture" definition that will require a coastal permit. These consist of the~~ that require that~~ development of new water sources, expansion of irrigation, terracing of land or planting on a slope exceeding 15%, ~~require a CDP~~. ~~There has also been much public~~ Concern expressed about the conversion of grazing land to viticulture due to ~~the~~ potential water requirements and ~~the~~ visual impact on the landscape, and the unknown consequences of the legalization of marijuana and the subsequent new cannabis industry led the County to also include these as a means of acknowledging the concerns and putting these disputes to rest. ~~To ensure these uses are developed in a manner consistent with the Coastal Act, both the County and the Commission's~~ Persuant to the Commission's action,, the Suggested Modifications' definition includes these uses in the list of activities which require a CDP.

It has been presumed that the suggested modification would institute a *new* coastal permit requirement ~~program~~ for agriculture where one never existed, inconsistent with the Coastal Act and the Commission's own guidance on this point. In fact, as described above, with the ongoing agriculture definition in the suggested modifications adopted by the Commission, the coastal permit requirements remain consistent with the policy the Commission's adopted in 1981. ~~The Commission respectfully disagrees with this characterization and wishes to clarify the record. Since 1982, the County's certified LCP has included agricultural production as the principal permitted use in the Coastal Agricultural Production Zone. However, even development that is designated as principally permitted is not exempt from coastal permitting requirements. Therefore, since certification in 1982, proposed changes in the intensity of the use of agriculturally zoned land, as well as agricultural grading into areas not previously farmed, required County-issued coastal permits. Thus, Commission suggested modifications do not "establish" a new coastal permitting requirement for agricultural production in Marin County. Rather, such a permit process has existed in the C-APZ portion of the County since 1982 (and prior to LCP certification through the Commission). In short, the definition proffered by the Commission recognizes the unique attributes of farming in Marin, and responds appropriately, including to public comments received on this topic. It also respects both the Coastal Act and the Commission's guidance related to agricultural activities over the years.~~

~~Even if an agricultural development is found to require a CDP, the existing LCP~~ . The suggested modifications along with existing Categorical Exclusion Orders offer many tools to streamline the permitting process for the agricultural community. For example, the Commission issued the County Categorical Exclusion Orders E-81-2 and E-81-6, which exclude from coastal permit requirements agriculturally-related development, including production activities, barns and other necessary buildings, fencing, storage tanks and water distribution lines, and water impoundment projects. As defined in these exclusion orders, agriculture means the tilling of soil, raising of crops, horticulture, viticulture, livestock, farming, dairying and animal husbandry including all uses customarily incidental and necessary thereto. These exclusions apply to specified parcels zoned Agriculture ~~C-APZ~~ at the time of the exclusion orders' adoption that are located outside the areas prohibited by Coastal Act Section 30610.5(b) and outside of the area between the sea and the first public road or a half-mile inland, whichever is less. Also, such excludable development must still be found consistent with the zoning in effect at the time of the orders' adoption (meaning the 1981 zoning ordinance). As such, in order for development to be excluded, it would need to meet the 1981 zoning ordinance requirements that development be clustered on no more than five percent of the gross acreage, to the extent feasible; be outside of wetlands, streams and their 100-foot buffers; and have adequate water supply, among other requirements. In addition, intergenerational homes, for example, cannot be excluded because they were not an allowed use on C-APZ lands when the Orders were adopted. Even with these caveats, much of the newly proposed agricultural development within the County's coastal zone can be excluded from coastal permit requirements per the Exclusion Orders.

Public commenters have expressed concern that application of the County Categorical Exclusion Orders E-81-2 and E-81-6 in conjunction with the new expanded definition of agriculture in the proposed LCPA will result in future development of agricultural land with limited oversight potentially leading to scenic and visual resource impacts, intensification of uses, and development of agricultural dwelling units that are not necessary for agricultural production. County Categorical Exclusion Orders E-81-2 and E-81-6, exclude from coastal permit requirements agriculturally-related development, including production activities, barns and other necessary buildings, fencing, storage tanks and water distribution lines, and water impoundment projects. However, these exclusions only apply to parcels zoned Agriculture ~~C-APZ~~ at the time of the exclusion orders' adoption if those parcels are located outside the statutorily proscribed exclusion areas as well as outside of the area between the sea and the first public road or half- mile inland, whichever is less. Also, such excludable development must still be found consistent with the zoning in effect at the time of the orders' adoption.

To ensure that the applicable zoning is applied to such categorically excluded development, the Commission has required the addition of Appendix 7a, Title 22 of the Marin County Code Zoning Ordinance from April 1981. Suggested modifications to 22.68.040 (A) clarify that Appendix 7a represents the zoning in effect at the time of the categorical exclusions adoption and requires that any application for excludable development establish zoning consistency. As such, categorically excluded development must still meet the 1981 LCP's requirements that development be clustered on no more than five percent of the gross acreage, to the extent feasible; be outside of wetlands, streams and their 100-foot buffers; and have adequate water supply, among other requirements. Further, development must be also be consistent with April 1981 zoning requirements which include that dwellings be incidental to the primary and ~~principle~~ principal agricultural use of the land as demonstrated by the applicant and requires design review for agricultural buildings unless they meet certain criteria. Any conversion of an agricultural structure constructed under the categorical exclusion order to a principally permitted

use without a public hearing would need to meet all above-identified statutory and regulatory requirements. These standards in part would address issues related to intensification including

parking standards and the size of the facility.

Additionally, even if an agricultural development is found to require a CDP, the IP as proposed to be modified by the Commission offers new tools to streamline the permitting process. These streamlined procedures include the County's use of the de minimis waiver of CDP requirements process for non-appealable development (IP Section 22.68.070), and public hearing waivers for appealable development (IP Section 22.70.030(B)(5)). With respect to de minimis waivers, as suggested to be modified, any non-appealable development, if it is found to be consistent with the LCP and does not have potential for any adverse effect on coastal resources, can have CDP requirements waived by the Board of Supervisors. The proposed waiver must be noticed to the Executive Director of the Commission, and he/she has the right to request that waiver not be issued and that a regular CDP be obtained, consistent with the process for de minimis waivers specified in the Commissions regulations. The new County IP allowance for a de minimis waiver process stems from Coastal Act Section 30624.7, while the new IP allowance for a waiver of a public hearing for appealable development stems from Section 30624.9. Since all appealable development is required to have one public hearing (and therefore the permit requirement cannot be waived), 30624.9 allows for certain types of development, defined as "minor" development, to be allowed without the otherwise required public hearing if notice is provided and nobody specifically requests such a hearing. Minor development must still be found consistent with the certified LCP, cannot require any other discretionary approval, and cannot have any adverse effect on coastal resources or public access to and along the coast.

The proposed definition as modified by the Commission specifically recognizes the categorical exclusions and waiver process described above and includes language to that effect specifying that even activities listed as requiring a CDP may be waived pursuant to the requirements of Section 22.68.070 or excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.

COUNTY OF MARIN

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July 11, 2017

Honorable Members of the California Coastal Commission
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Re: Revised Findings, Item No. F11a
Marin County LCP Amendments LCP-2-MAR-15-0029-1

Honorable Commissioners and Staff:

As the new 4th District Supervisor for Marin County, which includes all the coastal zone, I recognize the importance of our Local Coastal Plan and the significance of any upcoming updates. We have been fully invested in making sure that the success of our agricultural community and health of our coastline are our guiding principles.

It has come to my attention that my staff has found some changes to your draft Findings that may negatively affect the future of our agricultural community. I have been briefed on these changes and they are detailed in the letter from our Community Development Agency Director, Brian Crawford dated July 10, 2017.

I fully support my staff's recommendation that you maintain the revised draft Findings true to your November 2nd, 2016 approved changes--as shown through your commission's video archive of such date.

I thank you for your consideration and willingness to work with the County of Marin on these upcoming LCP changes.

Sincerely,

Dennis Rodoni
Marin County Supervisor District 4

CC Brian Crawford
Director, Community Development Agency

University of California
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July 7, 2017

Item F11a

California Coastal Commission
45 Fremont Street #2000
San Francisco, CA 94105

Re: Item F11a: Revised Findings for Marin County LCPA No. LCP-2-MAR-15-0029-1

Honorable Commissioners and Staff,

UC Cooperative Extension works closely with the agricultural community in Marin and partners with many organizations throughout the region including Marin's Community Development Agency to support the long-term viability of agriculture in our county. The updates to Marin's Local Coastal Program present an opportunity to honor both the needs of our producers and our mandate to protect coastal areas *in the context of today's world.* Much effort and energy has gone into the process to-date, and it seems we are rapidly approaching conclusion.

Upon reading the Commission Staff's proposed new findings, I wish to raise two concerns about what appears to be some inconsistency between the intent of the Commission during its hearing on November 12, 2016 and the new language which is supposed to manifest this intent.

1. ***"It is important to note that existing agricultural production activities are only considered ongoing agriculture if they are legal and allowable uses on agricultural land." [p.33]***

It is not clear if this language refers to the many past forms of agriculture practiced on a given parcel which would qualify future forms of production as Ongoing Agriculture or if it simply refers to the expectation that future land use must be legal and allowable in the context of the LCP in effect. It is this confusion that threatens to undo one of the changes explicitly called for by the Commission during its hearing on November 2, 2016.

In this hearing, the Commission was clear and unanimous on the removal of language that established a criterian for Ongoing Agriculture as being "legally established". Commissioner Kinsey made plain that this criteria would place producers in jeopardy for activities in the past and each time they make a change to their agricultural practice by requiring them to go back and establish a historical record of permits and compliances. The inclusion of the language "legal and allowable" in the new findings suggests that producers may be put in the very situation that Commissioners had sought to prevent.

2. ***"... all forms of agriculture which convert grazing to row crop do not require a CDP, only those conversions that would intensify the use of land or water or require grading not already exempt or excluded." [p.34]***

While an increase in intensity of land-use is part of the definition of Development, the whole intent behind creating the Ongoing Agriculture concept was to establish clearly that agriculture which does not expand into never before used areas does not qualify as a change in intensity and, as such, does not constitute development. This idea is supported by language from the Commission Staff's document, *Exhibit 4 – Commission Staff Recommendation IP Findings with Addendum, LCP-2-MAR-15-0029-1* which states: *"...Therefore, to the extent the rotational crop farming or grazing has been part of a*

regular pattern of agricultural practices, it is not a change in intensity of use of the land despite the fact that the grazing and crop growing are rotationally occurring on different plots of land."

Both the County Staff and Commission Staff agreed that this understanding of ongoing agriculture required some refining and so exempted from the definition any agriculture that necessitates:

- Development of new water sources (such as construction of a new or expanded well or surface impoundment)
- Installation or extension of irrigation systems
- Terracing of land for agricultural production
- Preparation or planting of land for viticulture
- Preparation or planting of land for cannabis
- Preparation or planting of land with an average slope exceeding 15%

The Commission, however, was wary of overly constricting the definition of Ongoing Agriculture and elected to remove from these criteria the conversion of grazing land to row crops. To hear the Commissioners speak, it is clear that this decision was made to preserve the kind of flexibility required of producers in today's markets and to honor the idea that keeping land in agricultural production is a fluid process that may have boundaries but nonetheless involves frequent change that neither necessitates nor is well-served by the CDP process.

To insert language at this stage implying that there remain some unidentified forms of agriculture which occur within the confines of previously farmed areas but still constitute development defeats the purpose of creating the category of Ongoing Agriculture and puts in its place a new ambiguity.

Given the work by both County and Commission Staff to achieve clarity for the entire community, it would be unfortunate to adopt findings at this stage which reintroduce confusion or compromise the Commission's efforts to provide agricultural producers with the confidence that they can carry on caring for this land into the future.

Thank you for your consideration,

David Lewis
County Director
UC Cooperative Extension, Marin County