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To: Coastal Commissioners and Interested Persons

From: Dan Carl, District Manager
Susan Craig, Coastal Planner

Subject: Santa Cruz County LCP Major Amendment Number 3-03 Part 3 (Second Residential Units on Agricultural Land). Proposed major amendment to the Santa Cruz County certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's December 10, 2008 meeting to take place at San Francisco City Hall, Legislative Chamber Room 250, 1 Dr. Carlton Goodlett Place, San Francisco, CA

Summary

Santa Cruz County is proposing to amend its certified Local Coastal Program (LCP) Implementation Plan (IP, also known as the LCP zoning code) to allow second residential units as a principally permitted use on most agriculturally zoned land in the County. In particular, the amendment allows second units on land zoned Commercial Agriculture (CA) and Agriculture (A); second units would still not be an allowed use in the other agricultural zone district (AP, or Agricultural Preserve). The County also proposes to slightly modify its second unit ordinance to acknowledge second units on agricultural land (since they are not currently so allowed).

The rural coastal zone areas of the County, and in particular the north and south County areas, are mostly zoned CA and A. There are some limited residential enclaves (e.g., Bonny Doon on the north coast) in these mostly rural pastoral areas, and some other zoning districts, but agricultural zoning predominates. The north county area is well known to the Commission as an area of sweeping agricultural fields and mountains, much of this in extensive State Park and other undeveloped public land holdings, traversed by Highway One. Likewise, south County agricultural lands are similarly resource rich, and, near to Watsonville, extend several miles inland from the Monterey Bay to Highway One. Both areas include a myriad of waterways and sensitive habitat areas, and are critical public viewsheds, particularly from Highway One. As a result, the proposed amendment affects some of the more sensitive coastal zone lands within the County.

The County LCP Land Use Plan (LUP) clearly distinguishes between rural lands and urban lands, and directs development to urban areas where it can best be accommodated. The LCP includes an urban services line to define such urban areas, and a rural services line to define certain developed areas located in rural areas outside of urban areas (e.g., the town of Davenport). Urban-rural distinction is a fundamental element of the County's land use framework deriving directly from the Coastal Act.

Within this basic land use framework, the County has a series of land use designations, including



agricultural designations for much of the area outside of urban areas. The LUP specifies that agriculture is the priority use within the County's coastal zone (along with coastal dependent development), and that residential use has the lowest priority within the coastal zone; the LUP prohibits conversion of a higher priority use to a lower priority use.

The proposed amendment will allow additional residential density within these sensitive agriculturally zoned areas. The existing LCP zoning code is already confusing in terms of the amount and type of residential development and density that is allowed on agricultural property. This confusion stems from separate IP agricultural zone provisions allowing different types of residential development (e.g., single family residential, farm worker housing, caretaker's quarters, other dwelling units in "dwelling groups," etc.), what type of projects can qualify for each of these, and the manner in which each can cumulatively be applied to an agriculturally zoned property. To add second units to the mix will only serve to add to that confusion. More importantly, it would provide significant growth incentive for each CA and A zoned property in the coastal zone; in certain cases conceivably doubling the amount of residential density that could be pursued. This in turn increases the likelihood that urban services are extended to serve ever-bourgeoning residential development; if not breaking the urban-rural boundary, ultimately expanding it. It also increases the potential for there to be complaints from additional residents that surrounding agriculture is a nuisance, ultimately making it more difficult for agricultural operators to operate, and decreasing the viability of agriculture in these areas. All of these impacts are also exacerbated on a cumulative level as well. Thus, it is likely that the amendment will lead to future growth in what is now a rural agricultural area to the detriment of those rural agricultural resources inconsistent with certified LUP, and inconsistent with the Coastal Act.

Staff believes that the County LCP needs to be clarified regarding the parameters of residential development on agricultural land. Unfortunately, due to the complicated way in which the LCP is organized in this respect, such an effort would be a significant undertaking requiring substantial time and coordination with the County to perfect language in multiple interrelated sections of the LCP. **Therefore, Staff recommends that the Commission deny the amendment request.** Such a denial would be without prejudice to a future amendment submittal that clarified allowed residential types and residential density on agricultural lands in the coastal zone so that allowed residential uses and maximum potential densities are clear, and that the County's sensitive rural coastal zone lands are protected as directed by the Coastal Act and the LUP.

LCP Amendment Action Deadline: The deadline for Commission action on this LCP amendment (per Coastal Act Sections 30510, 30512, 30513, and 30517) is July 8, 2009.

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I. Staff Recommendation – Motion and Resolution

Staff recommends that the Commission, after public hearing, deny the proposed amendment. The Commission needs to make one motion in order to act on this recommendation.

Denial of Implementation Plan Major Amendment Number 3-03 Part 3

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion. I move that the Commission **reject** Part 2 of Major Amendment Number 3-03 Part 3 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County.

Resolution to Deny. The Commission hereby **denies** certification of Part 3 of Major Amendment Number 3-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are



feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

II. Findings and Declarations

The Commission finds and declares as follows:

A. Proposed LCP Amendment

1. Description of Proposed LCP Amendment

The amendment modifies two sections of the certified LCP zoning code:

First, it adds second units as a principally permitted use in the Commercial Agriculture (CA) and Agriculture (A) zoning districts, subject to a level 4 (i.e., public hearing not required) review. These use changes modify certified LCP Section 13.10.312 (see page 9 of Exhibit C).

Second, it modifies Section 13.10.681 (Second Units) in several subsections to acknowledge second units on agricultural land (since they are not currently so allowed).

See Exhibit A for the Board's resolution, Exhibit B for the Board of Supervisor's staff report, Exhibit C for the proposed changes in highlighted format,¹ and Exhibit I for the maps of agriculturally-zoned land in the County's coastal zone.

2. General Effect of Changes Proposed

The LCP does not currently allow second units on agricultural lands. By making them a principally permitted use in the CA and A zoning districts, second units could be pursued subject to the criteria for second units (Section 13.10.681) and subject to the additional criteria of the LUP and Section 13.10.310 (and related sections) addressing development, including residential development, on agricultural lands. Because of the level 4 review/principal permitted use designation, public hearings will not be required, and such projects will only be appealable to the Commission on location grounds.²

¹ Note that changes to Section 13.10.312 are limited to page 9 of Exhibit C, and changes to Section 13.10.681 begin on page 12 of Exhibit C.

² Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. Only the first 3 criteria would apply to second unit development on CA and A zoned land.



In general, it can be expected that additional residential development will be pursued in the CA and A zoning districts if the proposed amendment is certified. One of the reasons that the County is proposing the change to the LCP is to encourage the development of additional housing stock, particularly affordable housing. Although home prices have dropped in many areas recently, and have dropped by about one-third in Santa Cruz County in the last year, Santa Cruz County remains one of the least affordable housing markets in the entire country, with median home prices now at approximately \$500,000. Allowing second units on agricultural land was deemed by the County to be an appropriate way to help address this problem (see the Board's resolution and staff report – Exhibits A and B).

B. LUP Consistency Analysis

1. Standard of Review

The standard of review for proposed modifications to the County's LUP is consistency with the Coastal Act. The standard of review for proposed modifications to the County's IP is that they must be consistent with and adequate to carry out the policies of the LUP. In general, Coastal Act policies set broad statewide direction that are generally refined by local government LUP policies giving local guidance as to the kinds, locations, and intensities of coastal development. IP (zoning) standards then typically further refine LUP policies to provide guidance, sometimes on a parcel by parcel level. Because this is an IP (only) LCP amendment, the standard of review is the certified LCP LUP.

2. LUP Consistency Requirement

In order to approve an Implementation Plan amendment, it must be consistent with and adequate to carry out the LUP. The County's LUP protects coastal resources, particularly rural, open space and agricultural lands, and specifically visual resources. It also distinguishes between urban and rural development, and directs development to developed areas best able to accommodate it. Overall, these LUP requirements reflect and implement similar fundamental goals of the Coastal Act. Selected LUP policies include:

Urban/Rural Distinction

The LCP is structured to encourage rural lands to stay rural, and to direct development to urban areas of the County better able to absorb such development. LUP policies include:

LUP Objective 2.1 Urban/Rural Distinction. To preserve a distinction between urban and rural areas of the County, to encourage new development to locate within urban areas and discourage division of land in rural areas; and to achieve a rate of residential development which can be accommodated by existing public services and their reasonable expansion, while maintaining economic, social, and environmental quality.

Chapter 5 Open Space Protection Goal. To retain the scenic, wooded, open space and rural character of Santa Cruz County; to provide a natural buffer between communities; to prevent



development in naturally hazardous areas; and to protect wildlife habitat and other natural resources.

Land Use Priorities

The LCP establishes a hierarchy of priority uses, with agricultural use as the highest priority, and a prohibition against replacing a higher priority use with a lower priority use. The LUP states:

LUP Policy 2.22.1 Priority of Uses within the Coastal Zone. *Maintain a hierarchy of land use priorities within the Coastal Zone:*

First Priority: Agriculture and coastal-dependent industry

Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.

Third Priority: Private residential, general industrial, and general commercial uses.

LUP Policy 2.22.2 Maintaining Priority Uses. *Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.*

Agriculture

The LCP is extremely protective of agricultural land. Most of the County's north coast and south county rural coastal zone areas are designated for agriculture in the LUP. LUP policies include:³

LUP Objective 5.13 Commercial Agricultural Land. *To maintain for exclusive agricultural use those lands identified on the County Agricultural Resources Map as best suited to the commercial production of food, fiber, and ornamental crops and livestock and to prevent conversion of commercial agricultural land to non-agricultural uses. To recognize that agriculture is a priority land use and to resolve policy conflicts in favor of preserving and promoting agriculture on designated commercial agricultural lands.*

LUP 5.13.5 Principal Permitted Uses on Commercial Agricultural (CA) Zoned Land. *Maintain a Commercial Agricultural (CA) Zone District for application to commercial agricultural lands that are intended to be maintained exclusively for long-term commercial agricultural use. Allow principal permitted uses in the CA Zone District to include only agricultural pursuits for the commercial cultivation of plant crops, including food, flower, and fiber crops and raising of animals including grazing and livestock production.*

LUP 5.13.6 Conditional Uses on Commercial Agricultural (CA) Zoned Lands. *All conditional uses shall be subject to standards which specify siting and development criteria; including size, location and density. Allow conditional uses on CA zoned lands based upon the following conditions: (a) The use constitutes the principal agricultural use of the parcel; or (b) The use is*

³ See also Exhibit E for LUP Policies 5.13 et seq. (Commercial Agricultural Land) and 5.14 et seq. (Non-Commercial Agricultural Land).



ancillary incidental, or accessory to the principal agricultural use of the parcel; or (c) The use consists of an interim public use which does not impair long term agricultural viability; and (d) The use is sited to avoid conflicts with principal agricultural activities in the area; and (e) The use is sited to avoid, where possible, or otherwise minimize the removal of land from agricultural production.

LUP 5.13.7 Agriculturally Oriented Structures. Allow only agriculturally oriented structures or dwellings on Commercial Agricultural Land; prohibit non-agricultural residential land use when in conflict with the fundamental objective of preserving agriculture.

Visual Resources

The County's LCP is extremely protective of coastal zone visual resources, particularly views from public roads, and especially along the shoreline. This is particularly true as it pertains to maintaining the rugged character of the rural north Santa Cruz coast. LUP policies include:

Objective 5.10.a Protection of Visual Resources. To identify, protect, and restore the aesthetic values of visual resources.

Objective 5.10.b New Development in Visual Resource Areas. To ensure that new development is appropriately designed and constructed to minimal to no adverse impact upon identified visual resources.

LUP Policy 5.10.2 Development Within Visual Resource Areas. Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....

LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.

LUP Policy 5.10.5 Preserving Agricultural Vistas. Continue to preserve the aesthetic values of agricultural vistas. Encourage development to be consistent with the agricultural character of the community. Structures appurtenant to agricultural uses on agriculturally designated parcels shall be considered to be compatible with the agricultural character of surrounding areas.

LUP Policy 5.10.6 Preserving Ocean Vistas. Where public ocean vistas exists, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

LUP Policy 5.10.7 Open Beaches and Blufftops. Prohibit the placement of new permanent structures that would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. Use the following criteria for



approved structures: (a) allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development. (b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.

LUP Policy 5.10.9 Restoration of Scenic Areas. *Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. The type and amount of restoration shall be commensurate with the size of the project for which the permit is issued. Provide technical assistance for restoration of blighted areas.*

LUP Policy 5.10.10 Designation of Scenic Roads. *The following roads and highways are valued for their vistas. The public vistas from these roads shall be afforded the highest level of protection. State Highways: Route 1 – from San Mateo County to Monterey County...*

LUP Policy 5.10.11 Development Visible From Rural Scenic Roads. *In the viewsheds of rural scenic roads, require new discretionary development, including development envelopes in proposed land divisions, to be sited out of public view, obscured by natural landforms and/or existing vegetation. Where proposed structures on existing lots are unavoidably visible from scenic roads, identify those visual qualities worthy of protection (See policy 5.10.2) and require the siting, architectural design and landscaping to mitigate the impacts on those visual qualities. (See policy 5.14.10.)*

LUP Objective 5.11 Open Space Preservation. *To identify and preserve in open space uses those areas which are not suited to development due to the presence of natural resource values or physical development hazards.*

LUP Policy 7.7.1 Coastal Vistas. *Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...*

Cumulative Impacts

The LCP protects against impacts associated with individual projects, as well as the cumulative impact from such projects in relation to current and potentially planned development. The LUP states:

LUP Policy 2.1.4 Siting of New Development. *Locate new residential, commercial or industrial development, within, next to, or in close proximity to existing developed areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on environmental and natural resources, including coastal resources.*

Conclusion

In sum, the County's LUP protects the coastal resources associated with the affected agricultural lands, including their agricultural productivity as well as their rural and open space character, and also the way



in which they define the public viewshed. The County's rural north and south coast areas, mostly agricultural and rural, are explicitly protected against inappropriate structures and development that would impact agricultural viability and visual resources. Overall, these LUP requirements reflect and implement similar fundamental goals of the Coastal Act.

3. Consistency Analysis

Background on Agricultural Lands Involved

The rural coastal zone areas of the County, and in particular the north and south County areas, are mostly zoned CA and A (as shown in Exhibit I). There are some limited residential enclaves (e.g., Bonny Doon on the north coast) in these mostly rural pastoral areas and some other zoning districts, but agricultural zoning predominates. The north county area is well known to the Commission as an area of sweeping agricultural fields and mountains, much of this in extensive State Park and other undeveloped public land holdings, traversed by Highway One. Likewise, south County agricultural lands are similarly resource rich, and, near to Watsonville, extend several miles inland from the Monterey Bay to Highway One. Both areas include a myriad of waterways and sensitive habitat areas, and are critical public viewsheds, particularly from Highway One. As a result, the proposed amendment affects some of the more sensitive coastal zone lands within Santa Cruz County.

Background on LCP's Urban-Rural Distinction and Agricultural Zoning

The County LUP clearly distinguishes between rural lands and urban lands, and directs development to urban areas where it can best be accommodated. The LCP includes an urban services line to define such urban areas, and a rural services line to define certain developed areas located in rural areas outside of urban areas (e.g., the town of Davenport). Urban-rural distinction is a fundamental element of the County's land use framework deriving directly from the Coastal Act.

Within this basic land use framework, the County has a series of land use designations, including agricultural designations for much of the area outside of urban areas. The LUP specifies that agriculture is the priority use within the County's coastal zone (along with coastal dependent development), and that residential development is the lowest priority within the coastal zone; the LUP prohibits conversion of a higher priority use to a lower priority use (see policies above).

Within the agricultural zoning districts, CA-zoned land represents the more valuable land in an agricultural resource context. A-zoned land has been deemed less valuable in this sense. There is also a substantially more limited supply of A-zoned land than CA-zoned land in the coastal zone. LUP and IP policies clearly distinguish between CA versus non-CA land, and place far greater policy protection on CA land (see Exhibits D and E). Other than the park and open space zone district, the CA-zone district is probably the most resource protective of the LCP's zoning districts due to the resource sensitivity associated with this land.

Lack of Clarity Regarding Residential Development Allowed in Agricultural Lands



The LUP is clear that agricultural lands are to be protected for agriculture (see Exhibit E). The LUP does, however, allow for limited residential use on CA and A zoned lands provided that it can be found ancillary to agricultural use of the property, and does not conflict with ongoing agricultural activities on or adjacent to the site; such residential use cannot reduce the farmable portion of the site below a minimum economic farm unit (LUP Policies 5.13.28, 5.13.29, and 5.14 et seq). The County Code has a series of required findings emanating from these requirements (for example, in Section 13.10.314 – see Exhibit D).

The LCP is unclear, however, in terms of the type and absolute density of residential development that would be allowed on an agricultural parcel. Partially, this is an organizational problem because the LCP is extremely complex, with substantial cross-referencing between overlapping requirements, LUP and IP. On request by Commission staff, the County provided an analysis of the number of dwelling units allowed on agriculturally-zoned land, including the number of second units as projected under the proposed amendment (see Exhibit F). The County's analysis specifically focused on the number of single-family dwellings, plus caretaker units, individual farm worker dwelling units, farm work camp dwelling units, and second units (pursuant to the proposed amendment) allowed on agricultural land. However, it is not clear that the County's analysis is inclusive of all potential residential development on agricultural land currently allowed by the LCP. For example, the IP allows: one detached dwelling unit per parcel; one detached dwelling unit for the owner or lessee (or employee of either) for each 40 acres of site area (for AP-zoned parcels only); any number of dwelling units that are accessory to the main dwelling used as agricultural caretakers' quarters subject to the farm worker housing requirements of 13.10.631; any number of dwelling units in dwelling groups (for A-zoned land, at densities established by IP Chapter 13.14 for calculating rural residential densities, and for CA-zoned land one dwelling unit per 40 acres), where dwelling groups are groups of 2 or more detached or semi-detached single- or multi-family dwellings on a parcel under common ownership and sharing a yard or court, where yard refers to setback areas on the parcel; farm worker housing, again subject to 13.10.631, with reference to caretakers housing, mobile homes, travel trailers, farm worker quarters, and camps; foster homes; habitable accessory structures (subject to the accessory structure requirements of 13.10.611); farm worker camps and manufactured homes as farm labor housing for any number of individual units (again subject to 13.10.631); a manufactured home, pursuant to Section 13.10.682 (permanent occupancy of manufactured homes); and manufactured homes for temporary caretaker or watchman quarters, subject to 13.10.631. Each of these is described as "agricultural support and related facilities" in the LCP use code charts, although it isn't clear in each case that that is the case (and that, rather, they are simply residential uses); second units will be placed in this category as proposed (see page 9 of Exhibit C).

Complicating this, the LUP specifies that residential density on agricultural lands is determined by the rural residential density determination matrix (IP Chapter 13.14) which assigns points to different constraint factors to arrive at an allowable density for a site. However, Chapter 13.14 doesn't apply to commercial agricultural land; partially because CA-zoned land isn't allowed to be subdivided (except for exclusive agricultural purposes) and its purpose is not to support any development other than agricultural development (see LUP Policies 5.13 et seq and Section 13.10.312 text – Exhibits E and D).



The matrix calculations arrive at a “minimum average parcel size allowed for development.” Although geared more towards land division than density, this can be interpreted to apply in the reverse to allowed density. The matrix also refers to “overriding minimum acreage maximum density” policies that take precedence over matrix scores. For CA land, the override policies are LUP Policies 5.13.14 and 5.13.19. However, these policies are about land divisions, and the criteria for same (see Exhibit E). Because the LCP doesn’t contemplate subdivision of CA land for other than agricultural purposes, development density isn’t explicitly addressed. For A-zoned land, it refers to LUP policies specifying densities not to exceed one unit per 10-40 acres, depending on the matrix value. On top of all of this, the LCP requires a 200-foot setback requirement between habitable development (like that listed above) and commercial agricultural land. All of these factors affect developable area of an agricultural site, and allowed density within that.

As can be seen from the discussion above, the LCP is unclear regarding allowable residential types and residential densities on these agricultural lands. In addition, the IP is unclear as to whether each of the residential uses (and corresponding units) described above cumulatively apply to the unclear density maximum, or whether they individually apply to that calculation. It isn’t clear, for example, how farm worker housing, mobile homes, and dwelling groups are meant to be calculated in relation to traditional single family residential and site constraints. Because of this, the absolute density that might be allowed in the coastal zone in a full build-out scenario is not clear. To add second units to this mix, particularly to the CA zone districts, is inappropriate without full knowledge of the potential build-out scenarios.

To address this concern, the County attempted to calculate the cumulative build-out if all potentially qualifying residential units on agricultural land were constructed (see Exhibit F). The County determined that there are 302 dwelling units (of a variety of types) on the 539 existing agricultural parcels in the coastal zone. The County further estimates that the maximum number of potential new second residential units under the proposed amendment would equal 395 new second residences, which is more than the total number of dwelling units that currently exist on agricultural land. The County also estimates that the maximum total number of existing and potential new residential units (including the second units proposed under this amendment) would equal 1,258 units. A total of 956 of these 1,258 residential units would be new residential units of varying types (an estimated 395 new second residential units and an estimated 561 new residences of other types, including a mix of primary residences, new caretaker units, and new farm worker dwelling units and camps), which is more than three times as many residences than the County indicates now exist on agricultural land in the coastal zone. Of course there are other methodologies that could be applied to this question (like allotting a second residential unit to each primary unit or each existing parcel identified, leading to even more second units), so the potential residential numbers could be even higher. In addition, these calculations do not appear to include dwelling units that are part of dwelling groups (subject to the provisions of Sections 13.10.313(e), 13.10.313(f), and 13.10.314) or habitable accessory structures (subject to the provisions of Section 13.10.611) or dwelling units that are accessory to the main dwelling used as an agricultural caretaker’s quarters (subject to the provisions of Section 13.10.6310) or second units that may be applied to some of these other unit categories (given the LCP is unclear on how second units



would be allotted in this regard). Thus, the total maximum number of potential residential units could be higher than the number calculated by the County in Exhibit F.

In any event, and whether one uses the County's estimates or applies some other methodology, the amendment would foster significant additional residential development on rural agricultural lands in the County. The LUP clearly directs against this type of use and development on these agricultural lands. It is one thing to allow residential development for agricultural operators, like a family farmhouse, but it is something else entirely to add additional residential development beyond that. The County's CA and A zoned land are designated for agricultural use and development, and not for residential use and development. Adding residential second units for these lands is not appropriate and cannot be rectified with the LUP's agricultural policies, including in light of the LCP's already complicated and ambiguous density parameters related to residential units on agricultural lands.

In sum, the LCP lacks clarity regarding the amount and type of residential density allowed on agricultural lands, particularly CA-zoned lands that are crucially important in the County coastal zone. To date, the Commission is not aware of significant resource impacts due to this lack of clarity. However, in the foreseeable future when County rural coastal zone lands are going to be looked to more and more for residential development (as urban areas become more built out), this lack of clarity could lead to resource degradation. It is not appropriate in this context to add second units as allowed uses for these rural properties. To do so will only serve to add to the density confusion, as indicated above. More importantly, it would provide significant growth incentive for each CA and A zoned property in the coastal zone, conceivably doubling the amount of residential density that could be pursued. This in turn increases the likelihood that urban services are extended to serve ever-bourgeoning residential development in rural areas; if not breaking the urban-rural boundary in each case, ultimately expanding it. It also increases the potential for there to be complaints from additional residential users surrounding agricultural activities that such activities are a nuisance, ultimately making it more difficult for agricultural operators to operate, and decreasing the viability of agriculture in these areas. Thus, it is likely that the amendment will lead to future growth in what is now a rural agricultural area to the detriment of those rural agricultural resources inconsistent with certified LUP, and inconsistent with the Coastal Act.

Residential Development on Agricultural Land Not a Principal Permitted Use

LUP Sections 5.13.5 and 5.13.6 define principal and conditional uses on CA-zoned lands (see policies above). Residential uses are clearly not among the principally permitted uses, and are only a conditional use under certain circumstances, spelled out in such policies as LUP 5.13.28 (Residential Uses on Commercial Agricultural Land) and 5.13.29 (Residential Use Ancillary to Commercial Agriculture - see Exhibit E). For A-zoned land, the LUP is not explicit regarding principal versus conditional uses, but the LUP objective for non-commercial agricultural land (i.e., A-zoned) is clearly not for residential development. With very limited exceptions, all residential uses described above are conditional uses on



agricultural land in the coastal zone (see Exhibit C).⁴ Even the first single-family dwelling on a CA-zoned agricultural parcel is a conditional use.

The proposed amendment inserts second units under “agricultural support and related facilities” in the LCP use code charts, and makes them a principally permitted use on CA and A zoned lands (see page 9 of Exhibit C). The way in which it does this is by specifying a level 4 review. The way that the County LCP specifies principally permitted uses in the code is by review level; level 4 or below is principally permitted (see LCP code section 13.10.312(a)(2) on page 1 of Exhibit C).⁵ The review levels correspond to the types of information that must be submitted with an application, the types of hearings required, and, for CA-zoned land, the types of additional findings required per Section 13.10.314(a). Actions by the County to approve non-principally permitted uses are also appealable to the Coastal Commission (in addition to those County actions taken to approve any use when located in an appealable zone).

There are multiple issues with designating second units a principally permitted use. First, second units do not meet the LUP criteria for a principally permitted use on CA land, and do not appear consistent with the LUP use objectives for non-CA land (i.e., A zoning). Likewise, the proposed listing of them as “agricultural support and related facilities” is inconsistent with the LUP’s agricultural policies. Residential units such as these are not what the LUP envisions for agricultural lands, and it is inappropriate to define them as a principally permitted use on agricultural land; if anything, and similar to the existing IP text, such units are more aptly described by the LUP as conditional discretionary uses. As described above, even the initial house on a CA-zoned property is a conditional use; the same should translate to second units.

Second, a level 4 review means that second units would not require a public hearing, and would have lesser noticing requirements. Again, since such units should not be considered principally permitted, this use, if allowed, is more aptly considered a conditional use. A conditional use requires a discretionary approval; a discretionary approval requires a public hearing at the Zoning Administrator level or above, and not at a ministerial staff level.⁶

Third, a level 4 review level means that the required findings for conditional uses on CA-zoned lands would not have to be made for second units (Section 13.10.314(a)). These findings are critical for ensuring that inappropriate non-agricultural development does not occur on CA land, and implements LUP policies to this effect. To except second units from these findings would be inconsistent with the

⁴ Principally permitted residential development on agricultural land includes: foster homes with 6 children or less, habitable accessory structures of 640 square feet or less, temporary manufactured homes, and a detached single-family unit on A-zoned lands (see Exhibit C).

⁵ Note that this methodology applies to all zone districts, not just the agricultural zone districts.

⁶ Note that AB 1866, that amended Government Code Section 65852.2 et seq regarding second units, provides that second unit applications received after July 1, 2003 be considered by local governments “ministerially without discretionary review or a hearing” (Section 65852.2(a)(3)). However, this requirement is specific to residential zoning districts. As a result, it does not apply to agricultural districts such as the ones in question in this amendment, and the County code can continue to require public hearings for second units on agricultural lands.



LUP.

Fourth, level 4 review conflicts with other LCP specified review levels that would continue to apply. For example, LCP Section 13.20.100(a) requires a level 5 approval for all development in the coastal zone. Thus, the use code changes set up an internal inconsistency between them and Section 13.20.100(a) as to what review level applies. As seen above (and below) the review level is critical to protecting agricultural lands.

Fifth, as a principally permitted use (via a level 4 review), actions to approve second units in the coastal zone would not be categorically appealable to the Coastal Commission. This safeguard was put in place precisely to ensure adequate review for development outside of the scope of what the LCP principally envisions for property. As discussed above, this is critically important for agricultural property for which growth pressure can be exceedingly high as urban areas reach build-out, and where statewide perspective can be particularly relevant in light of local development pressures.

In sum, it is inappropriate to designate second units on agricultural land as principally permitted uses. It is inconsistent with the LUP's agricultural policies, and will lead to inadequate review and scrutiny of such applications. The lesser protection in this regard is expected to lead to more such development than might otherwise be allowed, and exacerbate the growth inducement issues detailed above relating to urban-rural boundaries, and the protection of rural agricultural resources as directed by the LUP, and the Coastal Act.

4. Conclusion

The rural coastal zone areas of the County, and in particular the north and south County areas, are mostly zoned CA and A. There are some limited residential enclaves in these mostly rural pastoral areas (e.g., Bonny Doon on the north coast), and some other zoning districts, but agricultural zoning predominates. The north county area is well known to the Commission as an area of sweeping agricultural fields and mountains traversed by Highway One. Likewise, south County agricultural lands are similarly resource rich, and extend several miles inland from the Monterey Bay to Highway One. Both areas include a myriad of waterways and sensitive habitat areas, and are critical public viewsheds, particularly from Highway One. As a result, the proposed amendment affects some of the more sensitive coastal zone lands within the County.

The LCP clearly distinguishes between rural lands and urban lands, and directs development to urban areas where it can best be accommodated. The LCP includes an urban services line to define such urban areas, and a rural services line to define limited rural developed areas outside of urban ones (e.g., the town of Davenport). Urban-rural distinction is a fundamental element of the County's land use framework deriving directly from the Coastal Act.

Within this basic land use framework, the County has a series of land use designations, including agricultural designations for much of the area outside of urban areas. The LUP specifies that agriculture is the priority use within the County's coastal zone (along with coastal dependent development), and



that residential has the lowest priority within the coastal zone; the LUP prohibits conversion of a higher priority use to a lower priority use.

The proposed amendment will allow additional residential type and density within these sensitive agriculturally zoned areas. The existing LCP zoning code is already confusing in terms of the amount and type of residential development and density that is allowed on agricultural property. This confusion stems from separate IP agricultural zone provisions allowing different types of residential uses (single-family residential, farm worker housing, caretaker's quarters, other dwelling units in "dwelling groups," etc.), what type of projects can qualify for each of these, and the manner in which each can cumulatively be applied to an agriculturally zoned property. To add second units to the mix will only serve to add to that confusion. More importantly, it would provide significant growth incentive for each CA and A zoned property in the coastal zone; conceivably doubling the amount of residential density that could be pursued. This in turn increases the likelihood that urban services are extended to serve ever-bourgeoning residential development; if not breaking the urban-rural boundary, then ultimately expanding it. It also increases the potential for there to be complaints from additional residents that surrounding agriculture is a nuisance, ultimately making it more difficult for agricultural operators to operate, and decreasing the viability of agriculture in these areas. Because the amendment makes second units principally permitted, it makes it relatively easier for this category of development to be approved, and excepts such approvals from Coastal Commission review in most cases.

Thus, it is likely that the amendment will lead to future growth in what is now a rural agricultural area to the detriment of those rural agricultural resources inconsistent with certified LUP, and inconsistent with the Coastal Act.

The Commission must determine whether the zoning code changes proposed are consistent with and adequate to carry out the LUP. In this case, and as detailed above, the changes proposed are not consistent with the LUP and inadequate to carry it out. Therefore, the amendment is denied as submitted.

In many cases, the Commission suggests modifications to address inconsistencies that result in denial of a submittal. In this case, however, due to the complicated way in which the LCP is organized in this respect, and the magnitude and complexity of the modifications that would be necessary to clarify the LCP regarding the parameters of residential development on agricultural land, the Commission doesn't believe that such an effort would be the best use of its limited staff resources at this time. Rather, the Commission encourages the County to pursue such modifications independently. Commission staff will be available to assist in such an effort, but the initial steps, including the initial conceptualizing regarding an appropriate LCP organizational framework to resolve issues related to non-agricultural density and allowed development on agricultural land, must first be undertaken by the County. The Commission's denial is thus without prejudice to a future amendment submittal that clarified residential uses and density on agricultural lands in the coastal zone so that maximum potential densities are clear, and that the County's sensitive rural coastal zone lands are protected as directed by the Coastal Act and the LUP. A future amendment submittal could also address other related issues like: ensuring that such



non-agricultural development (e.g., second residential units) would be considered conditionally permitted (via a level 5 review) so that actions to approve second units in the coastal zone would be categorically appealable to the Coastal Commission; and ensuring that agricultural lands were protected and used for agriculture (e.g., “right to farm” conditions, affirmative agricultural easements over the remainder of the property, etc.). Also, and separate from that type of potential amendment, there may be some areas within the County that are currently designated for agriculture but that are not best designated as agricultural land because agricultural use is not viable or appropriate for some reason (e.g., steep slopes, surrounding development patterns, etc.).⁷ In some cases, such areas may be made up of smaller parcels in which agricultural operations may not even be feasible. As a general rule, the Commission recognizes such refinement and LCP updating as appropriate, and it is clear that this is an area that the County could also explore to the extent there are valid arguments to be made that other designations (e.g., Rural Residential) would be more appropriate for certain properties.

C. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Sections 21080.9 and 21080(b)(5), and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

Public Resources Code (CEQA) Section 21080.9. Local coastal programs or long-range land use development; university or governmental activities and approvals; application of division. [Relevant Portion.]...certification of a local coastal program...by the...Commission...shall be subject to the requirements of this division.

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ...(b) This division does not apply to any of the following activities: ...(5) Projects which a public agency rejects or disapproves.

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.

CEQA provides that actions to certify LCPs (and LCP amendments) are projects subject to CEQA. This

⁷ When the LCP was first certified some 25 years ago, certain areas were designated for agricultural use on a fairly broad landscape scale, including CA zoning, and it is possible that there may be enclaves or areas for which such a designation isn't ideal or even the most appropriate consistent with the Coastal Act. In other words, it may be possible that the land use designations for certain areas could and should be refined based on a more focused analysis of facts specific to them. That is not to say that agricultural lands should not be protected for agricultural use and development, rather that it is possible that some such lands don't warrant such designation based on the facts and circumstances that apply to them.



staff report has discussed the relevant Coastal Act and LUP conformity issues with the proposal. All above Coastal Act and LUP conformity findings are incorporated herein in their entirety by reference. All public comments received to date have been addressed in the findings above. As detailed in the findings above, the proposed LCP amendment would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the LCP amendment were approved as proposed. Accordingly, the Commission’s denial of this LCP amendment represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

