

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



# W3

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**TO:** Commissioners and Interested Persons

**FROM:** Charles Lester, Executive Director  
Jack Ainsworth, Senior Deputy Director  
Elizabeth Fuchs, *AICP*, Manager, Statewide Planning Unit  
Rick Hyman, Senior Planner, Statewide Planning Unit

**SUBJECT: Background Report for Workshop on Agriculture in the Coastal Zone: Implementation of Coastal Act Provisions Related To Agriculture**

## Executive Summary

The Coastal Act requires the protection of agricultural lands within the coastal zone. It does so by requiring that the maximum amount of prime agricultural land be maintained in production to protect the agricultural economy and by requiring that conflicts between agricultural and urban uses be minimized through the application of development standards that ensure that new development will not diminish agricultural productivity. These development standards include establishing stable urban-rural boundaries, providing agricultural buffers, ensuring that non-agricultural development is directed first to lands not suitable for agriculture, restricting land divisions and controlling public service expansions.

The purposes of this workshop are to familiarize the Commission with current topics relevant to the protection of agricultural lands and production and to foster communication between agricultural parties and the public about these topics. The workshop agenda is focused on the topics that the Commission encounters most often in the review of permits, appeals and local coastal program (LCP) amendments.

This report presents background on four topics related to the implementation of Coastal Act agricultural policies. Each section first presents the relevant Coastal Act provisions, then details how the Commission implements those provisions (primarily through approving LCP provisions that are then carried out by local governments issuing coastal permits) and concludes by describing some trends that may have bearing on the future implementation of those provisions.

The first topic is agricultural land preservation. Commission implementation of the Coastal Act over four decades reveals that significant sprawl of new urban development into agricultural lands in the coastal zone of counties has not occurred; urban-rural boundaries have remained stable. Sizable agricultural conversions primarily have been limited to areas located around the periphery of urban areas.

The second topic covers Commission actions taken on proposed new developments on agricultural land. These decisions address whether agricultural productivity will be maintained and whether the proposed development will be a permissible conversion of agricultural land for a non-agricultural use. In order to ensure that productivity is maintained and that an impermissible conversion of agricultural land does not occur, LCPs and Commission actions employ a variety of development standards. These development standards can include modifying project design and siting, clustering development, buffering agriculture, and implementing legal restrictions and other modifications to protect the agricultural land and use over the long term.

The third topic involves regulatory requirements. The Coastal Act contains a definition of development that includes agricultural structures and facilities. Some agricultural operations, such as those that expand into wetlands or riparian corridors, also fall under this definition. Development, as defined by the Coastal Act, must be authorized through coastal permits, unless the development falls under an exemption or a categorical exclusion. The Commission has approved several exclusions from permit requirements for certain types of agricultural development in specified geographic areas. For proposed agricultural development requiring coastal permits, local governments with certified LCPs are in most cases the issuing entities. Local coastal permit procedures must follow minimum noticing and hearing requirements, but otherwise permitting can occur pursuant to local practices consistent with the certified LCP. Where appropriate, these permit procedures can allow for development to be authorized without a project specific public hearing by waiver, administrative permit, or by approval as minor development.

The final topic addresses the Coastal Act's mandate to protect other coastal resources, such as public accessways, sensitive habitats and scenic views. Any development must be consistent with these Coastal Act policies or certified LCP provisions implementing them. Some LCPs have provisions specifically addressing the interplay between agricultural and other resource protection to guide how the various Coastal Act mandates are carried out.

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## I. PROTECTION OF AGRICULTURAL LAND

### A. COASTAL ACT REQUIREMENTS

Coastal Act policies<sup>1</sup> require that the maximum amount of prime agricultural land be maintained in agricultural production. Coastal Act Section 30241 provides:

*The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:*

*(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*

*(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*

*(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*

*(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*

*(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*

*(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

Other lands suitable for agricultural use and productivity of soils and timberlands are to be protected as well, with certain exceptions. Section 30242 of the Coastal Act provides:

*All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

These requirements are implemented in order to protect an area's agricultural economy and concentrate development in and around existing developed areas. A memo to the Commission

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<sup>1</sup> The Coastal Act policies that address protection of agricultural lands include Definitions (Sections 30100.2, 30113, 30106) and Agricultural related Policies (Sections 30222, 30241, 30241.5, 30242, 30243, and 30250) as well as other public access and resource protection policies that apply to projects on agricultural lands (please see Attachment A for text of some key policies).

emphasized these points, noting that operations on non-prime land enlarge and strengthen the market area for agricultural services and assure their availability for all uses.

*In addition non-prime lands often physically buffer the more valuable prime lands from conflicts with other uses. Thus protection of non-prime agricultural lands also serves to protect agricultural production on prime lands. Conversion and fragmentation of any agricultural land not only diminishes opportunities for economies of scale, but also increases the exposure of the remaining farm operations to conflicts with nearby urban users over such matters as noise, odor, pesticide use, smoke, and animals.*

*Under the Coastal Act, then, protecting prime agricultural land is not only an objective in itself, but is also the means of achieving the larger objective of protecting the agricultural economy. It is not, however, the only means to be used. The subparts of Section 30241 state several other standards which are to be applied to protect the agricultural economy and to further the other overriding objective of minimizing urban-agricultural conflicts. In terms of their sense as well as their wording, these standards –with one exception [subpart f] – apply to prime and non-prime lands alike.<sup>2</sup>*

Conflicts between agricultural and urban uses are to be minimized by establishing stable urban/rural boundaries, buffers (where necessary) between uses and ensuring that adjacent development does not diminish agricultural productivity.

Conversions of agricultural lands to non-agricultural uses are only allowed under limited circumstances, such as when they are surrounded by urban uses. Conversions of agricultural lands around the periphery of urban areas may occur only where the viability of agricultural is severely limited or where conversion would complete a logical and viable neighborhood and contribute to a stable urban limit. Conversions of other lands suitable for agricultural use are allowed only when continued or renewed agricultural use is infeasible, when they would preserve prime land or where they would concentrate development.

Finally, Coastal Act section 30250, cited in sections 30241 and 30242, also works to protect rural agricultural lands by directing that new development be located in existing developed areas and that land divisions outside of urban areas, other than for agricultural leases, not result in parcel sizes that can compromise agricultural viability:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted*

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<sup>2</sup> “Interpretation of Coastal Act Agricultural Policies in Relation to Proposed Conversion of Agricultural Lands Through Amendment of Mendocino County Land Use Plan,” May 1, 1987.

*only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

*(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.*

*(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

## **B. COASTAL COMMISSION ACTIONS**

The California Coastal Commission has a strong record of protecting agriculture both through certification of LCPs and through coastal development permit decisions. It appears there has been little urban expansion into unincorporated agricultural land area since passage of the Coastal Act, based on Commission staff review of available aerial photographs and coastal permit decisions, and an academic report.<sup>3</sup> Coastal Act policies have been applied to protect coastal agricultural lands primarily through certification of LCPs that confine urban growth and include limitations on conversions of agricultural land to non-agricultural uses.

### **1. URBAN-RURAL BOUNDARIES**

Much of the coastal zone from Mendocino through Ventura Counties (with the exception of interspersed cities like San Francisco and rugged recreational lands like most of Big Sur) is agricultural land that is now protected pursuant to the Coastal Act. And, most of this agricultural land is grasslands used for grazing.<sup>4</sup> There are also substantial areas of agricultural land in the northernmost Del Norte County, around Humboldt Bay and the lower reaches of the Eel River in Humboldt County and in southernmost San Diego County. Statistics are not available that segregate out agricultural lands in the coastal zone, but the value of agricultural production in all coastal counties combined for 2010 was \$11,351,655,000.<sup>5</sup> By far the top coastal county crop in terms of dollar value is berries with a value of \$2,304,982,000, followed by lettuce

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<sup>3</sup> Gail Osherenko, Jeff Onsted Keith, Clarke Noëlle Boucquey, Kristin N. Hart. *Retaining California's Coastal Agricultural Land Through Economic Incentives, Regulation, and Purchase*, at [http://ocpc.msi.ucsb.edu/pdfs/CalRep/hi-res/CalRep\\_all.pdf](http://ocpc.msi.ucsb.edu/pdfs/CalRep/hi-res/CalRep_all.pdf).

It was beyond the scope of preparing this brief report to quantify agricultural acreage lost or gained in the coastal zone. California Department of Conservation. *Important Farmland Data Availability*, at: [http://redirect.conservation.ca.gov/dlrp/fmmp/product\\_page.asp](http://redirect.conservation.ca.gov/dlrp/fmmp/product_page.asp) does show that, nine out of ten surveyed coastal counties have less agricultural land now than existed about 25 years ago.<sup>3</sup> However, the data do not distinguish land in the coastal zone, do encompass operational changes (e.g., temporary fallowing of land, not necessarily permanent conversions) and may reflect methodological differences in different years. But it does underscore the need for the strong protection policies contained in the Coastal Act to ensure that coastal agricultural lands remain protected.

<sup>4</sup> In 1975 over 3.5 million acres of land in coastal counties was in agricultural use; over 90% in grazing. California Coastal Zone Conservation Commissions. *California Coastal Plan*, 1975, p. 55. Aggregate figures for just the coastal zone agricultural lands were not and are still not available. As an example, however, 77% of San Luis Obispo County's 160,916-acre coastal zone is zoned for agriculture per email communication from John Kelly to Charles Lester, June 5, 2009. And, of the approximate 88,000 acres in the San Mateo County coastal zone, nearly 70% (approximately 61,000 acres) is zoned *Planned Agricultural District* (PAD). This land is either in active agricultural use or has the potential for such use.

<sup>5</sup> California Department of Food and Agriculture. *California Agricultural Statistics Review 2011-2012*, p. 14, at [http://www.cdfa.ca.gov/Statistics/PDFs/ResourceDirectory\\_2011-2012.pdf](http://www.cdfa.ca.gov/Statistics/PDFs/ResourceDirectory_2011-2012.pdf)

(\$1,314,949,000), nursery products (\$1,191,589,000) and wine grapes (\$ 912,782,000). Some locally significant crops include artichokes and Brussels sprouts in San Mateo and Santa Cruz Counties, berries and lettuce in the Pajaro Valley, flowers and avocados in the Carpinteria Valley and flowers and strawberries in northern San Diego County.

Agricultural lands were mapped during LCP preparation, and land use designations and zoning ordinances for rural areas encompassing the agricultural lands were adopted and approved by the Commission.<sup>6</sup> Most county agricultural land was placed under such protective designations. In the Humboldt Bay LCP segment of Humboldt County's coastal zone, for example, "[a]pproximately 10,600 acres within the planning area are planned for agricultural use, which includes all land currently in agricultural production except for" three areas no longer feasible for agricultural production.<sup>7</sup> Most important agricultural land, including that defined as "prime," is under a very protective agricultural designation. For example, in Santa Cruz County "Commercial Agricultural" is applied over mapped agricultural resource lands; in Marin County a "Coastal Agricultural Production Zone" is applied over prime farmland, farmland of statewide importance, farmland of local importance and grazing lands; and, in North Monterey County "Agricultural Preservation" is applied over prime and productive soils and other land in cultivation of less than 10% slope.<sup>8</sup> Other areas of existing or potential agricultural lands are for the most part under other agricultural designations (and/or rural designations allowing agriculture) that allow for a greater range of uses; e.g., "Non-commercial Agriculture" in Santa Cruz County and "Agricultural Conservation" in North Monterey County.

Correspondingly, urban land use designations were placed over developed areas and approved by the Commission. In most county LCPs, such as Santa Cruz and North Monterey, defined urban

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<sup>6</sup> The Coastal Act does not contain a definition for "agriculture." The Guidelines for developing General Plans define agriculture as:

*Use of land for the production of food and fiber, including the growing of crops and/or the grazing of animals on natural prime or improved pasture State of California General Plan Guidelines 2003, p. 256, at: [http://opr.ca.gov/docs/General\\_Plan\\_Guidelines\\_2003.pdf](http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf). Note: Coastal Act Section 30100.2 defines aquaculture as a form of agriculture.*

<sup>7</sup> *Humboldt County General Plan Vol. 2 Humboldt Bay Area Plan of the Humboldt County Local Coastal Program, 3.24.A Ch. 3 page 32. The three areas omitted were:*

- 1. Arcata fringe (north of Samoa Blvd.): This area is surrounded on three sides by development, and due to its small size and interference from adjacent land uses is no longer feasible for agricultural production.*
- 2. Indianola: Several parcels at the north end of the area planned for rural residential development also contain agricultural bottomland that will be protected by conservation easements. Concentration of development on the upland areas of these easements will serve to protect agricultural uses on the bottomlands.*
- 3. Spruce Point: Several small parcels in this area are currently in agricultural use, although these uses are severely restricted by the wet nature of these parcels. This area has been proposed for a Resource-Dependent designation so that a unified wetland restoration plan can be prepared that would consolidate upland areas for development purposes.*

<sup>8</sup> The policy says that "emphasis is placed on including large contiguous areas in this designation." As a result there are scattered prime soils in North Monterey County not included under Agricultural Preservation. So, too, in Del Norte County prime soils on parcels less than 20 acres are not under Agricultural Prime designation. These smaller, scattered parcels are under other rural designations that do allow agricultural uses.

limit lines were established conterminous with urban designation boundaries.<sup>9</sup> Their purpose is to concentrate development and protect rural lands from the physical and economic impacts of adjacent urban growth by restricting expansion of urban services.

As a result of the establishment of these urban and village limit lines, urban enclaves adjacent to rural agricultural lands such as those from Jenner in Sonoma County, Olema and Point Reyes Station in Marin County, Pescadero in San Mateo County, Moss Landing, Los Lomas and Castroville in North Monterey County and San Simeon Acres in San Luis Obispo County have retained their boundaries over the last four decades.

In some limited cases the Commission has allowed land designated for urban development to convert to agriculture. In Cambria for example, 32 acres surrounding Camp Ocean Pines were converted from Residential Suburban (RS) land use category to Agriculture (AG). Also in Cambria and under the same LCP amendment action, 15.5 acres of land zoned for residential development was converted to Agriculture (AG) land use category and removed from the URL boundary.<sup>10</sup>

The Commission has denied some LCP amendments that proposed urban expansion into county agricultural lands. For example, a proposed redesignation of 294 acres from rangeland to residential and relocation of the urban-rural boundary south of Irish Gulch in Mendocino County was denied by the Commission as being inconsistent with the Coastal Act.<sup>11</sup> So too was a proposed redesignation of 16 acres from agricultural to residential and relocation of a rural neighborhood boundary in the Toro Canyon area of Santa Barbara County.<sup>12</sup> Also denied was a redesignation of 177.5 acres to commercial and public facility use in San Luis Obispo County.<sup>13</sup>

## **2. CONVERSIONS OF AGRICULTURAL LANDS TO NON-AGRICULTURAL USES**

There are some cases where the Commission approved LCP amendments allowing the conversion of agricultural land to a non-agricultural use because the conversions could be found consistent with the limitations on conversions contained in sections 30241-30242 of the Coastal Act. For example, approximately 60 acres of non-prime agricultural land just north of the City of Eureka was permitted to convert to a rural residential use pursuant to Coastal Act sections 30241 and 30242.<sup>14</sup> The Commission found the conversion consistent with the Coastal Act because development of the non-prime land would serve to establish a stable boundary between rural agriculture and low density residential uses and would complete a logical extension of rural

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<sup>9</sup> Santa Cruz County also has rural service lines drawn around developed rural enclaves. In Marin County they are called “village limit lines.” San Luis Obispo County also has “village reserve lines” (VRL) drawn around developed rural enclaves in San Simeon Acres near Hearst Castle in north SLO County and in Callendar-Garrett in south SLO County.

<sup>10</sup> San Luis Obispo County LCP Amendment SLO-MAJ-1-06.

<sup>11</sup> County of Mendocino Land Use Plan Amendment 1-87-Major.

<sup>12</sup> Santa Barbara County Local Coastal Program Amendment 3-02.

<sup>13</sup> San Luis Obispo County LCP Amendment 1-97.

<sup>14</sup> Humboldt County LCP Amendment #1-88 (Mid-City Ranch).

residential use along Walker Point Road; other available lands had already been developed; and the site was not suitable for continued agricultural use.

However, most approved conversions of agricultural lands to non-agricultural uses have been for development within incorporated areas. For the few coastal cities that contained substantial agricultural land, such as the cities of Half Moon Bay, Oxnard, Carlsbad and Carpinteria, LCPs were approved that authorized permissible conversions of agricultural land. These LCP decisions were based on provisions of Coastal Act Sections 30241 and 30242 which allow for some conversion for areas surrounded by urban uses, or where the conversion would complete logical and viable neighborhoods, concentrate development and contribute to a stable limit to urban development. In each case, the Commission made findings of consistency with the Coastal Act based on the individual jurisdiction's circumstances. For example, in the City of Half Moon Bay, 125 acres of agricultural land was designated as urban reserve for eventual development and 295 acres of vacant prime soils were designated for urban uses based on finding their viability was compromised by conflicts with urban uses.<sup>15</sup>

In the City of Watsonville, a 42 acre agricultural field outside of the developed portion of the city was allowed to convert to a school if it could do so consistent with conditions that, among other things, required establishing a tight urban-rural boundary around it so there would be no further intrusions into agricultural land.<sup>16</sup>

A few conversions of agricultural land in counties have been allowed for specific public projects, each with its unique circumstances, because such conversions could be found consistent with the limitations on conversions contained in sections 30241-30242 of the Coastal Act. For example, an approximately 15 acre portion of a 532-acre site designated for agriculture on the periphery of an urbanized area near Cambria was allowed to be used for a school.<sup>17</sup> A 53 acre non-prime agricultural parcel was allowed to be used as an expansion of the Watsonville landfill.<sup>18</sup> And, the Commission approved a recycled water facility next to a wastewater treatment plant in Santa Cruz County in order to provide farmers with a source of water.<sup>19</sup> In other cases involving public

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<sup>15</sup> Additionally, agricultural land in the cities of Arcata and Port Hueneme, bounded on all sides by urban uses and/or a highway use, were allowed to convert.

<sup>16</sup> City of Watsonville LCP Amendment WAT-MAJ-1-99 (PVUSD high school).

<sup>17</sup> County of San Luis Obispo LCP Amendment SLO-MAJ-2-01. In a follow-up LCP amendment, the URL/USL was redrawn tightly around the school site to prevent any further intrusions into surrounding agricultural lands (County of San Luis Obispo LCP Amendment SLO-MAJ-1-06). The Commission also allowed 10 acres near Cambria to convert for a wastewater plant; but since the plant was not built, the land reverted to its agricultural designation (County of San Luis Obispo LCP Amendment SLO-1-90).

<sup>18</sup> Santa Cruz County LCP Major Amendment #1-87. The subject site was redesignated to Agriculture. Landfills are allowed as interim uses on agricultural land with the anticipation that when filled and closed, they will revert to agricultural use. This provision was added under Santa Cruz County LCP Major Amendment #1-85 which facilitated an expansion of the County's nearby landfill.

<sup>19</sup> Santa Cruz County LCP Amendment SCO-MAJ-2-05 Part A. This amendment did not actually redesignate the property, it allowed for recycled water facilities to be permitted on agricultural lands in a manner that had the effect of being a site-specific amendment for this one project.

projects, the Commission found the proposed conversion of agricultural land more protective of coastal resources overall. For example, in Humboldt County two related Caltrans' highway projects were allowed to convert 45 acres of agricultural land because they were essential to allow for continued public access to and along the coast.<sup>20</sup>

### **C. FUTURE IMPLEMENTATION**

The general urban/rural land use pattern of the coastal zone appears fairly well-established and accepted after four decades. Some local citizen initiatives, LAFCO decisions and public and non-profit organization land and easement acquisitions have reinforced maintaining stable-urban rural boundaries. However, given development pressures, the Commission may be faced with an occasional proposal in the future for urban expansion onto agricultural land.<sup>21</sup> On the other hand given the movements toward locally sourced food, sustainable development and small-scale family farms, there may also be proposals to allow agricultural use of some land previously designated for only urban uses.<sup>22</sup>

Given that LCPs have been the primary method under the Coastal Act to stabilize urban boundaries and protect outlying agricultural land any change would have to occur through an LCP amendment. As discussed below, LCPs also include development standards that can help strengthen the stability of the urban limit lines discussed above.

## **II. USES OF AGRICULTURAL LAND**

### **A. COASTAL ACT REQUIREMENTS**

Coastal Act Sections 30241 and 30242 direct when it is and is not permissible to convert agricultural lands to non-agricultural uses. Agricultural production is to occur on prime agricultural land. Urban type uses are not to occur on agricultural lands. Uses on prime land shall assure the protection of the area's agricultural economy. Public service facilities and nonagricultural development must not impair agricultural viability. Land divisions of prime agricultural land shall not diminish the productivity of prime agricultural lands.

### **B. COASTAL COMMISSION ACTIONS**

Coastal Commission actions have generally sought to limit non-agricultural intrusion onto prime and other productive agricultural land, minimize conflicts with on and off-site agricultural operations and otherwise ensure that agricultural land stays in agricultural use pursuant to the Coastal Act. These objectives have been accomplished through actions on LCPs, coastal permits

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<sup>20</sup> Related Coastal Development Permits 1-07-038 and 1-07-013. A \$2 million dollar in lieu fee was required for agricultural purposes as an endowment for the benefit of the Shively Education Center (Shively Farm) and to fund a full-time teaching position for the purpose of agricultural education at the College of the Redwoods.

<sup>21</sup> For example, facing a staff recommendation of denial, Monterey County withdrew a proposed LCP amendment to expand the urban community of Castroville into 289 acres of agricultural land, but could resubmit it in the future. (MCO-MAJ-2-07 Part 1).

<sup>22</sup> For example, agricultural uses continue on some parcels in the City of Half Moon Bay that are designated for urban uses in the LCP. And, pending is a proposed City of San Diego LCP Amendment to allow for urban farms.

and appeals that address allowed uses on agriculturally designated land, development standards protective of agricultural land and limitations on divisions of agricultural land.

### **1. ALLOWABLE USES**

The Commission has certified county LCPs that each contain lists of allowable uses in agricultural zoning districts (please see Section III.B.3 for a discussion of principal permitted and conditional uses). Although there are differences among the counties, all such districts in general allow: a range of uses that are agricultural in nature; at least some farmer-occupied residential use that is essential to, or supportive of, continued agricultural use of the property; and various other uses that have been deemed appropriate or compatible with agricultural uses.

The Commission has approved some LCP provisions that are tests to determine if the listed use can actually be allowed on a certain parcel. For example to allow any of the uses in the Commercial Agricultural district that require a coastal permit in Santa Cruz County, findings must be made:

- That the establishment or maintenance of this use will enhance or support the continued operation of commercial agriculture on the parcel and will not reduce, restrict or adversely affect agricultural resources, or the economic viability of commercial agricultural operations, of the area.
- (a) That the use or structure is ancillary, incidental or accessory to the principal agricultural use of the parcel, or (b) that no other agricultural use is feasible for the parcel, or (c) that the use consists of an interim public use which does not impair long-term agricultural viability or consists of a permanent public use that will result in the production of recycled wastewater solely for agricultural irrigation and that limits and mitigates the impacts of facility construction on agriculture.; or
- That single-family residential uses will be sited to minimize conflicts, and that all other uses will not conflict with commercial agricultural activities on-site, where applicable, or in the area.
- That the use will be sited to remove no land from production (or potential production) if any nonfarmable potential building site is available, or if this is not possible, to remove as little land as possible from production.<sup>23</sup>

In Marin County, some specified uses are defined in a manner that requires they be essential to, or supportive of, the continued agricultural use of the land – if the proposed use does not meet that specific definition it is not allowed.<sup>24</sup> As an example, mobile homes are allowed as conditional uses in Agricultural Production Zones only “so long as they are used exclusively for employees of the owner who are actively and directly engaged in the agricultural use of the land.”<sup>25</sup> In the San Luis Obispo County LCP, supplemental non-agricultural uses can only be permitted on designated Agricultural lands where it can be demonstrated that no alternative building site exists, that the least amount of prime soil possible is converted and that the use will

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<sup>23</sup> *Santa Cruz County Code*, Section 13.10.314

<sup>24</sup> *Marin County Local Coastal Program Unit 2 Land Use Plan*, Agriculture Policy 4.

<sup>25</sup> *Marin County Local Coastal Program Unit 2 Land Use Plan*, Agriculture Policy 6.c.

not conflict with surrounding agricultural lands and uses.<sup>26</sup> Additional development standards also are required to be followed in conjunction with the approval of the supplemental non-agricultural uses including a limitation on: (1) further land division; (2) the total area of the site allocated to supplemental non-agricultural uses (no more than two percent of the gross site area); and (3) uses which interfere with the productive agricultural use of the site.<sup>27</sup>

The Commission has approved LCPs that allow, if consistent with the limitations of Coastal Act sections 30241-30242, uses of agriculturally designated land that effectively result in a conversion to non-agricultural use. This means that the land in question retains its agricultural designation as opposed to being rezoned through a corresponding LCP amendment. For example, in the San Mateo County LCP, conditional uses that would convert prime agricultural land can only be approved if, in addition to their compliance with other applicable agricultural policies, no alternative site exists for the use, the productivity of any adjacent agricultural land will not be diminished, and public service and facility expansions and permitted uses will not impair agricultural viability.<sup>28</sup> Clearly defined buffer areas must be established between agricultural and non-agricultural uses.

The Commission has expressed concern about non-agricultural uses on agricultural lands. In reviewing an LCP amendment to update the Del Norte County Land Use Plan, the Commission suggested modifications to the LCP that would ensure conversion occurred consistent with Sections 30241-30242 of the Coastal Act.<sup>29</sup> Non-agricultural uses proposed on lands on or near the urban periphery could only be approved if conflicts between agricultural and urban land uses would be minimized by specified development limitations, including establishing stable urban-rural boundaries. If such uses were proposed elsewhere on agricultural land or land suitable for agriculture, then they could only be approved if continued or renewed agricultural use were not feasible, if prime agricultural land would be preserved or development would be concentrated in areas with adequate services and if the new use would be compatible with continued agricultural use on surrounding lands.<sup>30</sup>

In a periodic review of the implementation of the San Luis Obispo County LCP, the Coastal Commission expressed concern over the amount of non-agricultural uses approved on agricultural lands, citing findings made in an earlier LCP amendment: “the introduction of non-agricultural uses in an agricultural zone ... initiates... new conflicts between incompatible uses that often set in motion a domino effect of conversion of surrounding agricultural lands.”<sup>31</sup>

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<sup>26</sup> *San Luis Obispo County Code* Section 23.040.050.b(4).

<sup>27</sup> *San Luis Obispo County Code* Section 23.040.050.b(6).

<sup>28</sup> San Mateo County. *Local Coastal Program Policies*.

<sup>29</sup> [County Of Del Norte LCP Amendment No. DNC-MAJ-2-03](#).

<sup>30</sup> Additionally, proposed non-agricultural development would all be considered conditional uses subject to a use permit and appealable to the Coastal Commission.

<sup>31</sup> The Coastal Commission conducted a periodic review of the implementation of the San Luis Obispo County LCP’s agricultural provisions. Issues covered included “Incremental Impacts to Agricultural Lands through Land Divisions, Lot-line Adjustments, and Development on Nonconforming Parcels” and “Effect of Non-Agricultural

The Commission has approved a number of appeals of locally approved coastal permits for new development on agricultural land.<sup>32</sup> The majority of appeals appear to involve homes and land divisions (discussed below); agricultural, visitor-serving and public works uses are among the subjects of the other appeals. The Commission did deny on appeal at least two permits for uses on agricultural land not deemed as consistent with the LCP in question: one was for wedding facilities and one was for a golf course.<sup>33</sup> In another appeal, the Commission approved a winery with public tasting and retail sales in Cambria but prohibited tours and special events.<sup>34</sup> The site in question was a 53.3-acre parcel consisting mostly of prime soils used for pasture and some crop growing and designated for agricultural use in the San Luis Obispo County LCP. Consistent with Coastal Act policy 30241, the LCP does allow for wineries under certain conditions. The Commission found that this winery, which would process grapes grown on-site, would facilitate agricultural viability overall. Also, as designed and conditioned, it would avoid adverse agricultural impacts. On the other hand, the Commission also found that staging tours and special events would bring significant amounts of traffic to the area, more akin to urban type uses, and inconsistent with LCP criteria requiring location of such uses within one mile of an arterial or collector road. Therefore, these uses in the rural agricultural area were denied.

For coastal development permit proposals where the result could be a conversion of the agricultural land to non-agricultural uses, the Commission reviews whether all tests for conversion are fully met, including whether continued or renewed agricultural use of the land is infeasible. Sometimes this has required a report of the parcel's economic viability for agriculture. For example, there were two recent appeals of Mendocino County coastal permits where proposed residences were of concern. In one case, the Commission approved a home and guest cottage on a 58 acre parcel conditioned to remain in agricultural use. The agricultural analysis concluded that the property was not economically viable as an independent grazing operation but would be viable for producing crops.<sup>35</sup> In the other case, the Commission approved a home and guest cottage on a 4.17 parcel zoned for Range Lands as a permissible conversion of agricultural

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Uses on Agricultural Lands.” The preliminary evaluation, which contains background data, is at: <http://www.coastal.ca.gov/recap/slo/slo-ch5.pdf>. The final report is at: <http://www.coastal.ca.gov/recap/slo/slo-ag.pdf>. Recommendations are at: <http://www.coastal.ca.gov/recap/slo/slo-intro.pdf>, beginning on page 33. This quotation is from San Luis Obispo County LCP Periodic Review. Preliminary Report, February 2001. Chapter 5: Agriculture page 233.

<sup>32</sup> Due to lack of access to specific post-certification data, this report did not quantify the extent to which agricultural lands have been developed and the corresponding extent that the parcel in question went out of agricultural use. This would require identification and review of mostly county coastal permits for agriculturally designated lands over the last three decades and a comparison of current parcel use. This type of information is not comprehensively captured in any data base. .

<sup>33</sup> Wedding facility denials were [A-3-98-25 \(Scoggins\)](#) and A-3-SLO-98-025. In another wedding facility on agricultural land case the Commission found no substantial issue (hence allowing it): Appeal No. A-1-HUM-03-37 (Penrod, Humboldt Co.).

<sup>34</sup> Coastal Development Permit #A-3-SLO-07-35 (Stolo).

<sup>35</sup> Coastal Development Permit Appeal No. A-1-MEN-09-52 (Blue Port, L.L.C., Mendocino Co.), at: <http://documents.coastal.ca.gov/reports/2011/10/W10a-10-2011.pdf>. The applicant intended to use the site as an organic farm.

land based on a feasibility study concluding that the property was not considered economically viable for agricultural use.<sup>36</sup>

## **2. DEVELOPMENT STANDARDS PROTECTIVE OF AGRICULTURAL LAND**

The Commission has certified county LCPs that each contain standards to apply to development allowed on agricultural lands – some standards apply to all development; others apply to conditional uses, others apply to just individual types of development. As discussed, some uses are allowed only if they meet certain standards. Thus, if such standards are not part of a project design, they must be required through permit conditions in order for the proposal to be approved.

In reviewing appeals of local approvals, the Commission analyzes whether all applicable LCP standards have been followed. The Commission generally looks to ensure that any development envelope is located off of agricultural land (as much as possible) and that the land (outside of any immediate development envelope) will stay in agricultural production. Typical factors that are analyzed include:

- will the structure, driveway, landscaping, etc., cover productive agricultural land;
- will the siting interfere with or reduce agricultural use over the remaining land on site;
- will the use of the site for a farmer-occupied residence be essential to, or in support of, continued use of the site for agricultural purposes;
- will cumulative homebuilding in an area adversely impact continued agricultural uses due to loss of agricultural support businesses, increased complaints about farm noise/dust/vehicles or other changes?

The Commission often imposes revised or additional conditions on those permits approved on appeal. Most protective measures employed in LCPs and in Commission permit and appeal actions fit into one of three categories: requirements on the developments permitted on agricultural lands; measures to reduce or eliminate conflicts and measures to keep the land in agricultural use.

Requirements placed on permitted development can encompass size, location, design and/or use in order to eliminate or minimize any conflicts with, or reductions in, existing or potential agricultural use. One example that the Commission approved on appeal with additional conditions was for a new house on a 60-acre Planned Agricultural District zoned property in San Mateo County.<sup>37</sup> The planned house site was moved from a portion of the site being farmed to a non-farmed already disturbed location. The maximum building envelope was reduced to 10,000 square feet. An existing road would be used to access the house instead of a new planned driveway. The Commission found that an affirmative easement (proposed by the applicant) was

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<sup>36</sup> Coastal Development Permit Appeal No. A-1-MEN-09-034 (Michael Marr and Judith Malin), at: <http://documents.coastal.ca.gov/reports/2012/12/F10a-12-2012.pdf>

<sup>37</sup> Appeal No. A-2-SMC-06-021 (Chan), at: <http://documents.coastal.ca.gov/reports/2007/10/F5a-10-2007.pdf>

consistent with LCP requirements to maintain the maximum amount of agricultural land in production and to minimize conflicts with other land uses as required by the LCP.<sup>38</sup>

Measures to address potential adverse impacts on remaining agricultural uses emanating from the permitted development can encompass, for example: runoff controls, recontouring and landscaping, setbacks and buffers, and right to farm agreements.<sup>39</sup> As noted above, one example of an approval was for a necessary public project (a school) on agricultural land within the City limits, where the Commission was able to make findings that the criteria for conversion under the Coastal Act could be met.<sup>40</sup> These findings could only be made, however, if the result was a stable urban-rural boundary (Coastal Act Section 30241(a) & (b)) where there were defined buffer areas (Section 30241(a)) and with the assurance that public service and facility expansions and non-agricultural development would not impair agricultural viability (Section 30241(e)). Therefore, the Commission imposed a range of measures to accomplish these objectives, including future annexation prohibitions, agricultural buffer requirements, and limitations on future utility extensions beyond the school site. Since then, non-profit organizations and the Coastal Conservancy have worked to actually acquire the surrounding agricultural land or easements over it.

Measures to retain the subject site (or, the balance of the site or, if not possible, other land) in agriculture include deed restrictions or easements. For example, in the Marin County LCP, land divisions and non-agricultural development require permanent affirmative agricultural easements over the portion of property not used for physical development or services.<sup>41</sup> In the Santa Cruz County LCP, division of agricultural land requires an enforceable covenant that prohibits non-agricultural uses of the subject parcel.<sup>42</sup> And in the Estero Area Plan of the San Luis Obispo

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<sup>38</sup> Appeal No. A-2-SMC-06-021 (Chan), at: <http://documents.coastal.ca.gov/reports/2007/10/F5a-10-2007.pdf>. Affirmative agricultural easements include provisions that require the restricted land to be actively farmed. See also, Appeal No. A-2-SMC-04-002 (Polacek) and Appeal No. A-2-SMC-04-009 (Waddell).

<sup>39</sup> The following is an example of a right to farm condition used in Chan, cited above:

*By acceptance of this permit, the Permittees acknowledge and agree: (a) that the permitted residential development is located on and adjacent to land used for agricultural purposes; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittees and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural lands against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any issues that are or in any way related to the property that is the subject of this permit.*

<sup>40</sup> City of Watsonville LCP Amendment WAT-MAJ-1-99 (PVUSD high school).

<sup>41</sup> *Marin County Local Coastal Program Unit 2 Land Use Plan*, Agriculture Policy 5b.

<sup>42</sup> *Santa Cruz County Code* Section 13.10.315.D.2

County LCP, affirmative agricultural easements are required, where appropriate.<sup>43</sup> While traditional agricultural easements assure that land is available to continue to be farmed, affirmative agricultural easements require land to be kept in active agricultural production. San Mateo County LUP Policy 5.16, which also requires agricultural easements for specified land divisions, allows for such agricultural easements to be converted to open space easement: (a) where evidence establishes that changed circumstances beyond the control of the owner or operator have rendered the land unusable for agriculture; and (b) upon approval by the Commission of an LCPA changing the land use designation to Open Space.

The Commission has to date protected approximately 1,048 acres of agricultural lands through 12 Offers to Dedicate open space and conservation easements for agricultural purposes.<sup>44</sup> These easements range in size from 1.5 acres to 343 acres in size, and the accepting entities include: the Ag Land Trust (formerly, the Monterey County Agricultural and Historical Land Conservancy), Humboldt County, San Mateo County, Santa Cruz County, Monterey County, and the State Coastal Conservancy.<sup>45</sup> These recorded conditions ensure that the land is permanently protected for agriculture even after the property is sold to a subsequent purchaser.

### **3. LAND DIVISIONS**

The Commission has certified county LCPs that each allow for some divisions of land in agricultural zoning districts. Maximum residential densities generally are low. Minimum parcel sizes are correspondingly large – e.g., 20 or 40 acres ranging up to 320 acres for non-prime lands in Santa Barbara County and 640 acres for grazing lands in Sonoma County. Additional tests are sometimes required to be met in order for proposed land divisions to be approved on agricultural lands. In cases where a proposed land division would result in residential building envelopes, LCP standards may require that development be clustered, such as in Marin and Santa Barbara Counties.

In 2009, the Commission reviewed a proposed amendment to update the Del Norte County LCP. It found the County's land division criteria inconsistent with the Coastal Act and suggested adding an agricultural viability analysis and a management plan requirement.<sup>46</sup> The San Luis Obispo periodic review noted that "the potential for additional subdivisions and associated residential development throughout the County's coastal zone may be significant."<sup>47</sup> It also recommended a more thorough viability analysis. The periodic review also noted a discrepancy between the County's 320 acre minimum parcel size for grazing and economic analysis suggesting minimum sizes of 700 to 1,800 acres. The County has proposed revised parcel sizes

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<sup>43</sup> San Luis Obispo County LCP Amendment SLO-MAJ-2-04 (Part 2) (Estero Area Update).

<sup>44</sup> There are likely a number of Deed Restrictions recorded to protect agricultural resources but those figures are not currently available.

<sup>45</sup> Information from Coastal Commission Open Space and Conservation Easement Program, March 20, 2013.

<sup>46</sup> [County Of Del Norte LCP Amendment No. DNC-MAJ-2-03, at: http://documents.coastal.ca.gov/reports/2009/10/W17b-10-2009.pdf](http://documents.coastal.ca.gov/reports/2009/10/W17b-10-2009.pdf)

<sup>47</sup> San Luis Obispo County LCP Periodic Review. Preliminary Report, February 2001. Chapter 5: Agriculture page 209.

based on crop type and clustering of residential development to retain large open space areas that could continue being farmed. But this response has still raised concerns under the Coastal Act policies regarding whether; (a) prime land would be built on; (b) conflicts between residential and agricultural uses would occur; and (c) some resultant parcel sizes would be too low to be in keeping with the character of the area and for retaining economic viability.<sup>48</sup>

Also of concern to the Commission is whether standards that apply to lot line adjustments are adequate to ensure that reconfigured parcels will not threaten agricultural viability, will not contribute to conversion of agricultural land nor result in development otherwise inconsistent with other resource protection policies. As the Commission found in the San Luis Obispo County periodic LCP review, the resultant new parcel sizes from proposed lot line adjustment standards could compromise agricultural viability. LCPs may lack standards to determine whether the resultant parcel sizes proposed by a lot line adjustment compromises the long-term viability of agricultural lands.<sup>49</sup> One example was a proposed lot line adjustment between two parcels going from 318 and 1.1 acres to 316.5 and 2.6 acres respectively in an area designated for agricultural use in the San Luis Obispo County LCP.<sup>50</sup> The larger parcel contained equestrian facilities, agricultural accessory structures and other development. The smaller parcel had a house with a designated buffer to the adjacent agricultural land. The Commission denied expanding that smaller parcel because it facilitated conversion of suitable agricultural land to non-agricultural residential use that adversely would impact agriculture both individually (loss of 1.5 acres) and cumulatively (potentially lead to further residential development in the area). The result was found to be inconsistent with LCP policies that follow Coastal Act section 30241 and 30242's prohibitions on conversions except under defined circumstances.

### **C. FUTURE IMPLEMENTATION**

The Commission and local governments will continue to confront topics related to appropriate land uses and development criteria on agricultural land because of the following major pressures: demand for alternative renewable energy and major public works, affordable housing requirements, demand for residential development and farm economics.

It is a state and national priority to develop alternative renewable energy sources, and agricultural lands can be used as potential sites for new alternative energy facilities such as wind turbines.

Also, population growth may result in future proposed expansions of highways and other infrastructure that abut or traverse agricultural land. For example, a proposed expansion of Highway 156 currently being considered in North Monterey County would result in converting

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<sup>48</sup> San Luis Obispo County LCP Major Amendment No 1-08 (Agricultural Property Subdivision/Cluster Ordinance) subsequently withdrawn.

<sup>49</sup> San Luis Obispo County LCP Periodic Review. Preliminary Report, February 2001. Chapter 5: Agriculture. The County actually has a standard that says this, but the periodic review found it had not always been used. The Periodic Review cites appeal cases the Commission acted on to support its conclusions.

<sup>50</sup> Coastal development permit A-3-SLO-10-028 (Warren LLA), at: <http://documents.coastal.ca.gov/reports/2010/11/Th14a-11-2010.pdf>

85 acres of agricultural land.<sup>51</sup> And a proposed expansion of Interstate 5 would convert 10.9 acres of agricultural land in Encinitas and Carlsbad.<sup>52</sup> Proposals for flood control might necessitate using agricultural land for protective structures or as overflow (which could wipe out crop production in rainy years). Flooding associated with climate change may similarly affect farmland in the future.<sup>53</sup>

Goals for furthering affordable housing and residential support facilities may create development pressures. Several recent state laws have directed local governments to address affordable housing needs in part through such measures as incentives for second units,<sup>54</sup> encouraging higher density housing,<sup>55</sup> and through related uses such as family day care homes,<sup>56</sup> homeless shelters<sup>57</sup> and the like. None of these laws mandate that more development must occur on agricultural lands and most such proposals to date have generally been located within urban areas.<sup>58</sup>

And a variety of factors, including demand for “estate” homes in rural areas and growth pressures from adjacent urban areas, may continue to give rise to more proposals to expand urban and other non-agricultural uses on agricultural land. In addition to the immediate loss of land for new housing, the concern is that high value estate development can drive up land costs “beyond agriculture’s ability to pay, thus discouraging maintaining agricultural use.”<sup>59</sup>

Finally and most significantly, agricultural economics and other needs are likely to result in continuing proposals for new development on agricultural lands. Agricultural land owners are likely to continue to propose supplemental uses in order to generate income if needed to keep the remainder of their land in agricultural use.<sup>60</sup> For example, an article in the New York Times

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<sup>51</sup> This matter is anticipated to come before the Commission as a proposed LCP amendment.

<sup>52</sup> Caltrans. Draft *Interstate 5 North Coast Corridor Project*, Section 5.9 – Agriculture. This matter is anticipated to come before the Commission as a proposed public works plan.

<sup>53</sup> *California’s Flood Future Recommendations for Managing the State’s Flood Risk*, Public Review Draft April 2013, at: [http://www.water.ca.gov/sfmp/resources/PRD\\_FFR\\_4-3-13MainRPT.pdf](http://www.water.ca.gov/sfmp/resources/PRD_FFR_4-3-13MainRPT.pdf)

<sup>54</sup> Government Code § 65852.2.

<sup>55</sup> Government Code § 65915.

<sup>56</sup> Health and Safety Code §§ 1597.30-1597.621.

<sup>57</sup> SB2 2007 codified in Government Code §§ 65582, 65583 and 65589.5.

<sup>58</sup> Health and Safety Code §§ 17021.5-6 requires that agricultural employee housing be an agricultural use. However, it may be subject to the requirements placed on other agricultural uses. Thus, for example, if an LCP requires agricultural structures, such as barns or processing facilities, to be located off of prime land or land in production, if at all possible, such requirements could apply to employee housing as well.

<sup>59</sup> Strong Associates. *Marin County Agricultural Economic Analysis*, November 2003, at: [http://www.co.marin.ca.us/depts/cd/main/pdf/planning/Ag\\_Report\\_with\\_appendix.pdf](http://www.co.marin.ca.us/depts/cd/main/pdf/planning/Ag_Report_with_appendix.pdf)

<sup>60</sup> San Mateo County Agricultural Workshop of November 29, 2012.

entitled, “Small U.S. Farms Find Profit in Tourism,” noted the trend toward promoting agrotourism.<sup>61</sup> Supplemental uses can vary widely and include such activities as:

- uses proposed to enhance agricultural income by making use of the harvest – e.g., processing facilities, retail sales, tastings, farm dinners;
- uses proposed to make production more efficient, such as onsite windmills and methane generators to fuel the farm, housing and support facilities for farm owners and workers and their families;
- uses proposed mainly to generate additional income by using the farmland setting-- e.g., farmstays, corn mazes and similar agriculturally-related recreational and educational attractions.

Agricultural economics and related factors also dictate decisions on which crops to plant. Changes in cropping patterns occur often, as emphasized at a recent agricultural forum in San Mateo County.<sup>62</sup> For example, a farmer for 25 years observed for the Springfield Terrace area of north Monterey County’s coastal zone, “When I was a kid this was all 100 percent artichokes and sprouts,” .... “Now it's all going to lettuce and strawberries. Lotta strawberries.”<sup>63</sup> Such crop changes are not defined as new development requiring coastal permits, but it is possible that, associated with such a change, a farmer either may need some new structure or wish to expand into previously unfarmed areas, development activities that would require a permit.

The forum in San Mateo County and local public hearings on the Marin County LCP Update reveal that some agricultural interests are concerned about the restrictions and conditions placed on approved projects, in particular those requiring easements.<sup>64</sup> Because some non-profit organizations, like Marin Agricultural Land Trust, currently purchase easements from farmers, farmers are concerned that the requirement to grant an easement as a permit condition will deprive them of compensation. Also expressed were concerns about unintended future effects of easement provisions or other restrictions (e.g., dwellings have to be occupied by agricultural operators or workers) that could interfere with the ability of the parties to carry out agricultural operations.<sup>65</sup>

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<sup>61</sup> Neuman, William, “Small U.S. Farms Find Profit in Tourism,” *New York Times*, June 9, 2011, at: <http://www.nytimes.com/2011/06/10/business/10tourism.html?pagewanted=all&r=0> . See also, Hixson, Kate, “Growing Tourists—A New “Crop” for the New Farm,” *Green Living Journal*, Summer 2011, p. 27.

<sup>62</sup> San Mateo County Agricultural Workshop of November 29, 2012.

<sup>63</sup> Spicuzza, Mary, “With talk of a Pajaro Valley water emergency, the water management agency is beefing up conservation programs,” *Metro Santa Cruz*. September 15, 1999, at: <http://www.metroactive.com/papers/cruz/09.15.99/water-9937.html>

<sup>64</sup> “San Mateo County Agricultural Workshop Keeping Land in Agriculture, Most important potential outcomes.” (Summary of public comments made at November 29, 2012 workshop sponsored by San Mateo County; distributed under cover of January 18, 2013 by Don Horsley, President of the Board of Supervisors); Marin County Local Coastal Program: Public Workshops, Meetings, And Hearings, at: <http://www.co.marin.ca.us/depts/CD/main/lcp/meetings.html>

<sup>65</sup> However, see San Mateo County LUP Policy 5.16, which allows for agricultural easements to be converted to open space easements: (a) where evidence establishes that changed circumstances beyond the control of the owner

Since LCPs dictate what can occur under what circumstances on agricultural land, any changes in allowed uses or standards applied to those uses would have to occur through an LCP amendment.<sup>66</sup> This workshop is an opportunity to exchange ideas on these topics and how best to prepare for the future. For example:

- what are appropriate uses on agricultural lands in light of economic conditions and farm practices;
- how can allowable uses be defined in a way to ensure that they are either agricultural uses or supportive of continued agricultural uses and will not result in conversion of agricultural land;
- what alternative mechanisms are available to protect and promote agricultural viability?

### III. REGULATION OF AGRICULTURAL ACTIVITIES

#### A. COASTAL ACT REQUIREMENTS

In addition to the certification of LCPs, Coastal Act policies are carried out through the regulation of development. Development, as defined in the Coastal Act, requires a coastal permit issued either by the California Coastal Commission or by a local government that has a certified Local Coastal Program.

The definition of development is:

#### **Section 30106 Development**

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).*

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or operator have rendered the land unusable for agriculture; and (b) upon approval by the Commission of an LCPA changing the land use designation to Open Space.

<sup>66</sup> Pending state legislation would require mitigation for conversions of agricultural land under the California Environmental Quality Act. AB823 at:

[http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB823&search\\_keywords](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB823&search_keywords)

*As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.*

In order to undertake development, a coastal development permit is required, unless it is exempt. Under the definition, the removal of major vegetation for agricultural purposes is not considered development. Beyond this, there are several categories of exemptions and regulations on when exemptions do and do not apply. Exemptions that would be most applicable to agriculture include:

- Improvements to most structures;<sup>67</sup>
- Most repair and maintenance activities.<sup>68</sup>

Another type of statutory exemption is the categorical exclusion. A categorical exclusion can exempt from coastal development permit requirements development otherwise requiring a coastal permit. These can be granted for specific categories of development in specific geographic areas that have “no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast.”<sup>69</sup> The Coastal Act and California Code of Regulations establish a process for the Commission to grant these exclusions in certain geographic areas.<sup>70</sup>

Certified local coastal programs must contain a definition of development and exemptions consistent with the Coastal Act and California Code of Regulations. Questions of whether certain agricultural activities fall under the definition of development or within an exemption category would be initially directed to and answered by local planning staff. Disputes about a determination may be resolved by the Commission pursuant to procedures in its regulations.<sup>71</sup>

Local governments issue coastal permits pursuant to certified LCPs. LCPs must contain certain procedures for processing the permits, including noticing and holding public hearings on projects appealable to the Coastal Commission. Beyond these minimum standards, local governments have discretion in procedural matters, such as, application forms to use, any fees to charge, processing times, hearing bodies and the like. Even if a coastal development permit is required, LCP procedures can allow for development to be authorized without a project specific public hearing by waiver, administrative permit, or by approval as minor development.<sup>72</sup>

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<sup>67</sup> California Code of Regulations Title 14, Division 5.5 Section 13253.

<sup>68</sup> California Code of Regulations Title 14, Division 5.5 Section 13252

<sup>69</sup> California Public Resources Code Section 30610(e).

<sup>70</sup> California Code of Regulations Title 14, Division 5.5 Sections 13240-49.

<sup>71</sup> California Code of Regulations Title 14, Division 5.5 Section 13569.

<sup>72</sup> California Public Resources Code sections 30624, 30624.7 and 30624.9.

## **B. COASTAL COMMISSION ACTIONS**

### **1. COASTAL DEVELOPMENT PERMIT REQUIREMENTS**

The Commission and local governments with certified LCPs have a long history of acting on coastal permits for new agricultural structures. The definition of development unambiguously applies to the construction or erection of agricultural structures, such as barns. However, from time to time questions have been raised about how the definition of development applies to certain agricultural operations on the land, i.e., whether that particular operation would require a coastal permit. These operational aspects include:

- vegetation removal;
- change in intensity of use of land;
- change in intensity of use of water;
- grading.

Early in the implementation of the Coastal Act, the Commission raised these questions because of reported instances of agricultural operations comprising riparian and wetland vegetation removal. In 1981 the Commission issued a statement in support of requiring coastal permits for grading or removal of major vegetation, such as riparian or wetland habitats, for the purpose of expanding agricultural uses, while harvesting or removing such vegetation for ongoing operations did not.<sup>73</sup> The Commission adopted this statement because the Commission found that Section 30106 also provides that development includes a “change in the density or intensity of use of land” and the strong resources protection policies contained in Section 30233 and 30240 would be thwarted if wetlands and other sensitive habitats could be destroyed for expanding agricultural land uses. The Commission believed the language of 30106 intended to relieve only ongoing agricultural operations from coastal permit requirements, rather than creating a loophole for expanding or initiating such operations into sensitive habitats. Since then, in accordance with the Commission’s direction, staff has proceeded judiciously and has asserted jurisdiction where it is clear that significant coastal resources are threatened and where expansion or intensification of agricultural operations are involved.

Since most agricultural land fell under the jurisdiction of certified county LCPs soon after the statement was adopted, Commission agricultural permit determinations were mostly limited to areas remaining under its original permit jurisdiction, federal consistency cases and enforcement activities.<sup>74</sup> For example, the Commission has investigated reports of riparian vegetation removal for expanded or intensified agricultural pursuits as alleged violations.

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<sup>73</sup> Commission Statement On Jurisdiction of Expansion of Agricultural Activities into Previously Non-Farmed Areas Containing Major Vegetation, March 19, 1981.

<sup>74</sup> Therefore, most questions of what activities need coastal permits would have been directed to local government staffs. Negative responses might not be in writing and even if written, they would not be readily retrievable. Affirmative answers that a permit was required would result in the county issuing one, but these are not archived nor coded in any way to easily discern if an agricultural operation were covered. Until more recently the Commission did not enter permit determinations into a data base. Accordingly, responses to questions to staff regarding whether certain agricultural operations required coastal permits may not be in writing; and even if written, they are not readily retrievable.

Although Commission enforcement actions involving the failure to obtain a permit for agricultural activities are rare, two of these cases were litigated and the resulting court opinions provide useful analysis and discussion of the Commission's permit jurisdiction. One series of cease and desist and restoration orders issued by the Commission involved removal of major vegetation in an environmentally sensitive habitat area for the creation and expansion of commercial vineyards; grading, including cut and fill, disking, terracing and road making; and placement of debris piles without a coastal development permit. A trial court reaffirmed the Commission's determination that this work constituted development, finding that grading for the vineyard represented a change in intensity of use. It also affirmed that the removal of major vegetation for agricultural purposes is a limited exception to the general rule that removal or harvesting of major vegetation constitutes development and stated that this limited exception is confined to situations where the removed vegetation is either the agricultural product itself or is removed as part of the operation of existing agriculture.<sup>75</sup>

A second court case involved a challenge to a prohibition on grading in environmental sensitive habitat area. The violator alleged that the Commission had no authority if the grading was for agricultural purposes. Again, the Commission successfully defended its position that activities such as grading or changing the intensity of use are not exempt just because those activities may be related to agriculture.<sup>76</sup>

Most recently, the Commission required a coastal development permit for grading resulting in wetland fill that was purportedly related to farming activities.<sup>77</sup> The Commission determined that the unpermitted fill of wetlands was development requiring a coastal permit because the "agricultural purposes" exception in Section 30106 of the Coastal Act only applies to removal of major vegetation, not to grading or other types of development. During the certification process for the applicable local government's LUP, the Commission also rejected the notion that grading that results in wetland fill could be considered a "normal farming activity."<sup>78</sup>

## **2. EXEMPTIONS FROM COASTAL PERMIT REQUIREMENTS**

As noted above, certain categories of development defined in Sections 30610(b) and (d) and sections 13250-13253 of the Commission's regulations are exempt from coastal development permit requirements. If a proposed agricultural project falls within one of these statutorily

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<sup>75</sup> Cease and Desist Order To Stefan & Kathryn Hagopian: CCC-10-CD-07; Restoration Order To Stefan & Kathryn Hagopian: CCC-10-RO-06; Cease and Desist Order To Stefan & Kathryn Hagopian and Rahel Hagopian: CCC-10-CD-08; Restoration Order To Stefan & Kathryn Hagopian and Rahel Hagopian: CCC-10-RO-07. The Hagopian trial court decision is pending on appeal.

<sup>76</sup> Tuna Ridge, LLC et al. v. CCC (City of Malibu, RPI); Tuna Ridge LLC. et. al. v. Superior Court of the State of California for the County of Los Angeles. There is not a published appellate court decision.

<sup>77</sup> Consent Cease and Desist Order to Shea Homes: CCC-12-CD-10; Consent Restoration Order to Shea Homes: CCC-12-RO-10.

<sup>78</sup> Huntington Beach LCPA HNB-MAJ-1-06.

defined exemption categories, no coastal development permit is required from either the Commission or the certified local government.

### **3. CATEGORICAL EXCLUSIONS**

Even though an activity may come within the definition of development, a coastal permit is not always required. For some new agricultural developments that would require coastal permits (i.e., they are defined as development and are not exempt), the Commission has streamlined review by determining that a specific activity in a specific geographic area will not result in individual or cumulative impacts and can be excluded from permit requirements.

The following counties requested and subsequently obtained Commission certification of categorical exclusions after certification of their LCPs: the Counties of Del Norte, Humboldt, Sonoma, Marin, San Mateo, Santa Cruz, San Luis Obispo and Ventura.<sup>79</sup> Santa Cruz County amended their exclusion to cover soil-dependent greenhouses in 1996.<sup>80</sup> In general these exclusions cover basic structures and utilities used for agricultural purposes, including fences, barns, other agricultural buildings, wells, storage tanks, water distribution lines, electric utility lines and water pollution control facilities in defined areas of most coastal counties (such as, outside of environmentally sensitive habitat areas and within prescribed agricultural zones; but there are some variations as well. For example, Central Coast categorical exclusions exclude agriculturally-related development if within a certain size or clustered location and confined within agricultural zones. Categorical exclusions vary between local governments because an activity in one geographic location may not adversely impact coastal resources at all and be excludable. The identical activity, however, may not be excludable from coastal development permit requirements in another geographic location. For example, agricultural wells may not be affected by a water shortage in a Northern California location with significant amounts of annual rainfall. A severe water shortage in a southern California location could make an exclusion for agricultural wells inapplicable.

### **4. MINOR DEVELOPMENT PROCESSING**

In 1995 the Coastal Act was amended by adding Section 30624.9 to allow for some minor developments to be processed without a public hearing.<sup>81</sup> The Commission has since approved

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<sup>79</sup> Categorical Exclusions E-86-5, E-86-4, E-81-5, E-81-2 and E-81-6, E-81-1, E-82-4, E-89-1 and E-83-1 respectively.

<sup>80</sup> Categorical Exclusions E-82-4A5 and related Santa Cruz County LCP Amendment SCO Major No. 3-96 Part B.

<sup>81</sup> Coastal Act Section 30624.9 provides:

*(a) For purposes of this section, "minor development" means a development which a local government determines satisfies all of the following requirements:*

*(1) Is consistent with the certified local coastal program, as defined in Section 30108.6.*

*(2) Requires no discretionary approvals other than a coastal development permit.*

*(3) Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.*

*(b) After certification of its local coastal program, a local government may waive the requirement for a public hearing on a coastal development permit application for a minor development only if both of the following occur:*

some minor or de minimis LCP amendments incorporating these expedited procedures. While this procedure does not reduce public notification requirements, it does offer local government a vehicle to streamline the hearing process.

## **5. OTHER STREAMLINED PERMIT PROCESSING**

For those situations where coastal permits are required for agricultural developments, the Commission has approved LCPs that each establish local coastal permit processing procedures. These procedures can vary depending on the type, magnitude and location of development; i.e., procedures can be streamlined for certain categories of development. For those matters that remain under Coastal Commission jurisdiction, similar streamlined procedures are sometimes available and used.

Once an LCP is certified, a local government issues coastal development permits for most proposed projects in its jurisdiction. Only certain locally issued permits are appealable; when they are not appealable, the permit process ends with the final local decision. Permits issued for developments in defined areas, such as near or in wetlands and riparian corridors, are appealable.<sup>82</sup> Also, in counties, permits issued for other than the principal permitted use in each zoning district are appealable. If a locally issued coastal permit is appealed to the Coastal Commission, the Commission must first determine whether a substantial issue is raised as to conformity with the LCP and the Coastal Act's public access policies. If the Commission determines that no substantial issue exists, then, again, the permit process is over and the local decision is final.

The Commission has approved different coastal permit processing levels for different uses or magnitudes of those uses to reflect that smaller-scale projects can be processed more simply. Many counties divide allowable uses in each agricultural zoning district into principal and conditional uses. Processing principal permitted uses involves a more streamlined process than processing conditional uses, which require action on use or similar permits. Although for purposes of appeal to the Coastal Commission there can be only one principal permitted use, for purposes of determining whether or not a conditional use permit is required, there can be many other permitted (non-conditional) uses.<sup>83</sup>

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*(1) Notice that a public hearing shall be held upon request by any person is provided to all persons who would otherwise be required to be notified of a public hearing as well as any other persons known to be interested in receiving notice.*

*(2) No request for public hearing is received by the local government within 15 working days from the date of sending the notice pursuant to paragraph (1).*

*(c) The notice provided pursuant to subdivision (b) shall include a statement that failure by a person to request a public hearing may result in the loss of that person's ability to appeal to the commission any action taken by a local government on a coastal development permit application.*

<sup>82</sup> Coastal Act Section 30603.

<sup>83</sup> The Commission suggested the following text to distinguish these use categories in [County Of Del Norte LCP Amendment No. DNC-MAJ-2-03](#):

*For the purposes of ... Public Resources Code 30603(a)(4), the agriculture exclusive district uses listed under the principal permitted use section herein shall be considered as the principal permitted use in the California Coastal Zone.*

Counties can combine their local permits with coastal development permits as long as certain procedures are followed. For example, stand-alone grading in San Luis Obispo County is authorized through a Grading Permit that serves as the coastal permit as well.<sup>84</sup> San Luis Obispo County also has a Plot Plan approval (a ministerial permit approved by the Planning Director that again serves as the coastal permit as well) process for some smaller-scale developments, such as agricultural structures if they are less than 2,500 square feet in size and are not appealable to the Coastal Commission.<sup>85</sup> Pursuant to Coastal Act Sections 30624, coastal permits (or their equivalents) processed by local governments need not be subject to public hearings if specified procedures are incorporated into the certified LCP.<sup>86</sup> Similarly, for specified types of development, a coastal permit waiver process may be incorporated into the certified LCP.<sup>87</sup>

The Commission has also streamlined review through use of its consistency certification authority.<sup>88</sup> The Natural Resources Conservation Service submitted a general consistency determination for a program to simplify the permit process for landowners as they participated in projects to reduce sedimentation of impaired waterways and enhance habitat in Humboldt County. The Commission reviewed general types of activities rather than a specific project pursuant to the federal regulations implementing the Coastal Zone Management Act (CZMA), 15 CFR §930.36(c).<sup>89</sup>

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*Other principally permitted uses.*

*Other principally permitted uses not requiring securement of a conditional use permit but which are appealable to the California Coastal Commission pursuant to Section 21.52.020(A) (3) and Public Resources Code (PRC) Section 30603(a)(4) entail:*

*Uses permitted with a use permit.*

*Uses permitted with a use permit and appealable to the California Coastal Commission pursuant to Section 21.52.020(A) (3) and Public Resources Code (PRC) Section 30603(a)(4) shall be as follows:*

<sup>84</sup> *San Luis Obispo County Code* Section 23.05.025.

<sup>85</sup> *San Luis Obispo County Code* Section 23.02.030.

<sup>86</sup> Under Section 30624 the following categories of development can be processed administratively: improvements to any existing structure; any single-family dwelling; any development of four dwelling units or less within any incorporated area that does not require demolition and any other developments not in excess of one hundred thousand dollars (\$100,000) other than any division of land, and any development specifically authorized as a principal permitted use and proposed in an area for which the land use portion of the applicable local coastal program has been certified.

<sup>87</sup> Under Coastal Act section 30624.7, a proposed development is de minimis if it involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and will be consistent with the policies of Chapter 3.

<sup>88</sup> For example, Consistency Determination No. CD-085-06 (NRCS) for Humboldt County. Similar approvals covered the Elkhorn Slough, Salinas River and Morro Bay watersheds.

<sup>89</sup> These regulations provide that: In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal

### **C. FUTURE IMPLEMENTATION**

Agricultural regulation under the Coastal Act arises as a topic of discussion in various contexts. Concerns about the regulation of agricultural activities can vary widely and include concerns about time, costs, application requirements and processing difficulties. The desire to streamline coastal development permitting was a frequent comment at a recent agricultural forum in San Mateo County and local public hearings on the Marin County LCP Update.<sup>90</sup>

The Commission reviews LCP update amendments to ensure that they conform to Coastal Act requirements. This review can encompass ensuring that the definition of development (e.g., grading) is consistent with the Coastal Act and is consistently defined within the various sections of the LCP (e.g., the coastal permit ordinance or the grading ordinance). Similarly, this review can assure that the various regulatory procedures in the LCP are internally consistent (e.g., that coastal development permit and grading permit procedures don't conflict) – and conform to the Coastal Act and Code of Regulations. Since this review can uncover problems, the earlier it can occur in the LCP Amendment process, the more time will be available for public and local government response and collaborative remedies. For example, some submittals can be structured for processing as a minor or de minimis LCPA. As discussed in the Local Government Workshop, the Commission staff is supportive of early coordination to the extent resources allow.<sup>91</sup>

Beyond ensuring that LCP definitions of development and corresponding coastal permit requirements follow the Coastal Act, approaches to streamline the regulatory process can be adopted or further refined by local governments in their certified LCP. This workshop is an opportunity to exchange information and ideas about streamlining, and how to anticipate future agricultural needs.

## **IV. PROTECTION OF COASTAL RESOURCES**

### **A. COASTAL ACT REQUIREMENTS**

Coastal Act policies call for protection of other resources in addition to agricultural land, notably public access, environmentally sensitive habitats and scenic resources. For example, existing public access is to be protected. Similarly, new non-resource dependent development is not to intrude on and should be buffered from wetlands and other sensitive habitats. There is also an affirmative requirement for some new development to provide for new public access (unless it will adversely affect agriculture).

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agency and State agency may mutually agree on a general consistency determination for de minimis activities (see §930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

<sup>90</sup> “San Mateo County Agricultural Workshop Keeping Land in Agriculture, Most important potential outcomes.” (Summary of comments of November 29, 2012 workshop); Marin County Local Coastal Program: Public Workshops, Meetings, And Hearings, at: <http://www.co.marin.ca.us/depts/CD/main/lcp/meetings.html>

<sup>91</sup> “Report On The Local Government – Coastal Commission Workshop of December 12, 2012 – Improving the Local Coastal Planning Process,” at: <http://documents.coastal.ca.gov/reports/2013/4/F9b-4-2013.pdf>

## B. COASTAL COMMISSION ACTIONS

### 1. RESOURCE PROTECTION

The Commission has approved LCP provisions that carry out the Coastal Act resource protection policies. Such measures include, for example, locating new development out of resource areas, buffering new development from resource areas, and preventing runoff, traffic and other impacts from adversely affecting the resource areas. Generally, such measures apply to any type of new development, including agricultural uses.

Some LCPs contain policies to specifically address how agriculture interfaces with other coastal resource protection. For example, the City of Malibu LCP explicitly prohibits the conversion of vacant environmentally sensitive habitat land to new crop, orchard, vineyard or other agricultural uses.<sup>92</sup> The Mendocino County LCP provides an example regarding an ESHA (seasonal wetlands) that has traditionally been farmed:

*3.2-7 Current agricultural use of seasonal wetlands shall be recognized and allowed to continue. In instances where existing agricultural practices have a detrimental effect upon wetland areas, every attempt shall be made by the concerned property owner and responsible public agencies to mitigate the impact. Expansions of existing agricultural operations involving cultivation or construction of drainage systems into wetlands shall not be permitted.*<sup>93</sup>

The Commission has similarly addressed these topics in their actions on coastal development permits and appeals. Each action was specific to the case in question, but in general the Commission has required that wetlands and ESHA be buffered from the development envelope containing new agricultural development.<sup>94</sup> In certain cases, the Commission has allowed agricultural land to be restored as wetlands, finding after examination of the site specific constraints that continued agricultural use was infeasible due to the scope and intensity of management actions that would be required to maintain the agricultural lands as a functioning operation<sup>95</sup> or that it was more protective of coastal resources.<sup>96</sup> The Commission has also

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<sup>92</sup> *Malibu Local Coastal Program Land Use Plan*, Policy 3.67.

<sup>93</sup> *Mendocino County Coastal Element*. Policy 3.2-7. Humboldt County has a similar policy for what is defined as Transitional Agricultural Land. *Humboldt County General Plan Vol. 2 Humboldt Bay Area Plan of the Humboldt County Local Coastal Program*, Policy 3.3.0.B.2, p. 43.

<sup>94</sup> See for example. Coastal Development Permit A-2-MAR-10-022 (Magee and Brader), at: <http://documents.coastal.ca.gov/reports/2013/3/W9a-3-2013.pdf>. The Commission approved agricultural operations on 150-acre parcel consisting of sheep grazing, vegetable and fruit production, and a vineyard to supply on-site brandy distillery; construction of a brandy barn and equipment barn with attached shed, an open-sided hopyard shelter, two open-sided sheep shelters, and a greenhouse; a 3,165 sq. ft. farmhouse with attached 648 sq. ft. garage; infrastructure including five water tanks, a water well, septic system and leach field, fire hydrants, propane tanks, and sewer, water, and power lines subject to the following setbacks: a 100-foot buffer from wetlands and riparian habitats, a 150-foot buffer from the blue-line stream, and a 300-foot buffer from the stock pond.

<sup>95</sup> In CD-048-07, the Commission agreed with the National Park Service that conversion of the Giacomini Ranch to wetlands and open space would not adversely affect the viability of agricultural lands within Marin County.

required relocation and/or redesign of structures on agricultural land that is also designated for scenic protection.<sup>97</sup>

## 2. PUBLIC ACCESS PROVISION

The Commission has approved LCPs that provide for new public access, consistent with Coastal Act mandates. For example, the Monterey County LCP for the North County segment provides:

*Where public agencies develop accessways or trails through or adjacent to land in agricultural use, these uses should be fully protected from disturbance. A full range of mitigation measures as identified in a management plan should be used including buffer strips, barns, fences and periodic closures.*<sup>98</sup>

The Commission has been supportive of trails coexisting with agriculture in its rare actions on permits or appeals for any such trails. No evidence of conflict has been found for the trails that have been built. One permit was approved on appeal that involved dedication of a 10-foot wide vertical pedestrian access from Highway 1 to the coastal bluff at the edge of grazing land in Mendocino County.<sup>99</sup> Commission approval of the Wilder Ranch Public Works Plan resulted in a 3.3 mile bluff-top trail adjacent to agricultural fields on public land.<sup>100</sup> As another example, the Commission required public access on PG&E property in San Luis Obispo County in conjunction with permitting power plant improvements.<sup>101</sup> The 3.8 mile Point Buchon trail was opened on agricultural land where rotational grazing has now been established in electrically fenced paddocks.<sup>102</sup> Five years of monitoring have shown no conflicts between the public access

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<sup>96</sup> For examples: Application No. 1-08-012 (Northcoast Regional Land Trust, Humboldt Co.); Application No. 1-09-20 (City of Arcata). Application No. 1-10-032 (Humboldt County Resource Conservation District).

<sup>97</sup> Coastal development permit A-2-MAR-10-022 (see above footnote), for example, was conditioned for the design and appearance of all above ground and visible development to reflect a rural agricultural theme (i.e., simple and utilitarian lines and natural materials, including use of boards and bats, corrugated metal, muted earth tone colors, Corten steel, etc.) and blend with the surrounding environment. Exterior materials had to appear natural and non-reflective, including through the use of wood, stone, brick, and earth-tone colors. All exterior lights had to be low-wattage, non-reflective, shielded, and have a directional cast downward.

As another example, the Commission, on appeal, approved residential ridgetop development on a large ranch in Mendocino County because, in part, one less visible alternative site would have compromise a valuable portion of the site used for agriculture. Similar to A-2-MAR-10-022, the house was redesigned and conditioned to minimize visual impacts, including from lighting. Coastal Development Permit A-1-MEN-08-009 (Hoechstetter-Shea), at: <http://documents.coastal.ca.gov/reports/2008/5/F16a-5-2008.pdf>.

<sup>98</sup> *North County Land Use Plan*, Policy 6.4.H.3.

<sup>99</sup> Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.), at: <http://documents.coastal.ca.gov/reports/2010/7/W10a-7-2010.pdf>. This trail has not yet been constructed.

<sup>100</sup> Public Works Plan PWP-2-82 (Wilder Ranch State Park).

<sup>101</sup> Coastal Development Permit A-3-SLO-04-035 (PG&E).

<sup>102</sup> Hiking is by permission only. One of the Rules to follow is: "Respect the existing agricultural operations; keep a safe distance from private residences, fences, gates, equipment, water areas, livestock and working animals. Do not feed or pet the working animals," at: <http://pge.modwest.com/pgereservations/BuchonRules.pdf>. Impacts of the

use and the adjacent grazing activities. Similarly, the Commission approved a new pathway system on former grazing land in the City of Santa Cruz. Grazing will return under a required management plan in order to promote survival of the endangered tar plant. However, because the grassland is sensitive habitat it will be fenced from the trail.<sup>103</sup>

#### **FUTURE IMPLEMENTATION**

Episodes of *E. coli* contamination and the resultant heightened awareness of food safety have led to concerns about how to maintain sanitary agricultural fields; such as:

- a. How can the protection of streams and other sensitive habitats and buffer zones from runoff and activities on adjacent farmland be accomplished in a manner that does not introduce or facilitate contamination of crops;
- b. How can public access be sited, designed or managed in a manner that prevents contamination of farm fields?<sup>104</sup>

Public and non-profit acquisition of farmlands also raises concerns about how public access may affect compatibility with continued agricultural operations. Such concerns were raised, for example, at a recent agricultural forum in San Mateo County and in local public hearings on the Marin County LCP Update.<sup>105</sup> Also, acquisitions may lead to wetland or other habitat restoration that may reduce acreage available for agricultural production. Changing farming practices, temporary land fallowing or updated scientific investigations may reveal or identify environmentally sensitive habitats on agricultural land that then warrant protection at the expense of agricultural production.

This workshop offers an opportunity to hear public input about these concerns and possible responses, such as:

- a. collaboration with agricultural interests in planning the location of the California Coastal Trail;
- b. locational, temporal, design and other criteria for any public access in or adjacent to agricultural lands;
- c. supportable measures to protect natural resources on working farms.

## **V. CONCLUSION**

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grazing and public access activities on each other and on biological resources are being monitored, pursuant to PGE. *North Ranch Managed Access: 2007 Access Monitoring Plan Pt. Buchon Loop Trail*, January 2008.

<sup>103</sup> Coastal Development Permit No. 3-11-074 (City of Santa Cruz Arana Gulch Master Plan), at: <http://documents.coastal.ca.gov/reports/2011/12/Th22a-12-2011.pdf>

<sup>104</sup> Although outside of the coastal zone, see, for example, “Ventura County farmers seek new protections along bike path,” at: <http://www.vcstar.com/news/2013/mar/28/ventura-county-farmers-see-new-protections-bike/#ixzz2PtoeJIOf>. Also see, University of California Agriculture and Natural Resources Cooperative Extension, “Balancing Food Safety and Sustainability: Opportunities for co-management,” at: <http://ucfoodsafety.ucdavis.edu/files/150364.pdf>.

<sup>105</sup> “San Mateo County Agricultural Workshop Keeping Land in Agriculture, Most important potential outcomes.” (Summary of comments of November 29, 2012 workshop); Marin County Local Coastal Program: Public Workshops, Meetings, And Hearings, at: <http://www.co.marin.ca.us/depts/CD/main/lcp/meetings.html>

The Coastal Commission has a successful history of protecting agricultural land. This report provides background on four topics – agricultural land preservation, uses of agricultural land, regulation of agricultural development and resource protection -- that the Commission has addressed in its decision-making over time, that are likely to be of interest to the agricultural community and other parties and that are anticipated to remain relevant in future Commission deliberations.

This agricultural workshop is an opportunity for invited speakers and the public to convey how agricultural and other operations, developments, needs and trends interface with these topics. This forum provides the Commission the benefit of hearing information and concerns outside of its regulatory decision-making agenda. The input will hopefully provide useful context when the Commission then acts on coastal permits, appeals of local permits, federal consistency determinations and proposed LCP amendments in the future. This input may also suggest how other tools available to the Commission and staff– such as, periodic reviews of local coastal program implementation, early participation in the local LCP amendment process, education and outreach, coordination with other entities or regulating agricultural land and review of possible exclusion requests – can be utilized to advance the Coastal Act goal of agricultural protection.

## **VI. ATTACHMENTS**

- A. COASTAL ACT POLICIES ON AGRICULTURE AND RELATED GOVERNMENT CODE PROVISION**
- B. WORKSHOP AGENDA AND SPEAKER BIOGRAPHIES**

**ATTACHMENT A: COASTAL ACT POLICIES ON AGRICULTURE AND RELATED GOVERNMENT CODE PROVISION**

**Section 30100.2 Aquaculture; aquaculture products**

"Aquaculture" means a form of agriculture as defined in Section 17 of the Fish and Game Code. Aquaculture products are agricultural products, and aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit-issuing decisions governed by this division.

**Section 30106 Development**

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

**Section 30113 Prime agricultural land**

"Prime agricultural land" means those lands defined in paragraph (1), (2), (3), or (4) of subdivision (c) of Section 51201 of the Government Code. [please see below for text]

**Section 30212 New development projects**

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

- (1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.
- (2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach. As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

(Amended by: Ch. 1075, Stats. 1978; Ch. 919, Stats. 1979; Ch. 744, Stats. 1983.)

### **Section 30222 Private lands; priority of development purposes**

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

### **Section 30241 Prime agricultural land; maintenance in agricultural production**

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

(Amended by: Ch. 1066, Stats. 1981; Ch. 43, Stats. 1982.)

**Section 30241.5 Agricultural land; determination of viability of uses; economic feasibility evaluation**

(a) If the viability of existing agricultural uses is an issue pursuant to subdivision (b) of Section 30241 as to any local coastal program or amendment to any certified local coastal program submitted for review and approval under this division, the determination of "viability" shall include, but not be limited to, consideration of an economic feasibility evaluation containing at least both of the following elements:

(1) An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.<sup>39</sup>

(2) An analysis of the operational expenses, excluding the cost of land, associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.

For purposes of this subdivision, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal program or in the proposed amendment to a certified local coastal program.

(b) The economic feasibility evaluation required by subdivision (a) shall be submitted to the commission, by the local government, as part of its submittal of a local coastal program or an amendment to any local coastal program. If the local government determines that it does not have the staff with the necessary expertise to conduct the economic feasibility evaluation, the evaluation may be conducted under agreement with the local government by a consultant selected jointly by local government and the executive director of the commission.

(Added by Ch. 259, Stats. 1984.)

**Section 30242 Lands suitable for agricultural use; conversion**

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

**Section 30243 Productivity of soils and timberlands; conversions**

The long-term productivity of soils and timberlands shall be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their division into units of noncommercial size shall be limited to providing for necessary timber processing and related facilities.

**Section 30250 Location; existing developed area**

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been

developed and the created parcels would be no smaller than the average size of surrounding parcels.

- (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.
- (c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

**Government Code Section 51201(c) (1-4) Prime Agricultural Land (referenced in Coastal Act Section 30113)**

(c) "Prime agricultural land" means any of the following:

- (1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications.
- (2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.
- (3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.
- (4) Land planted with fruit- or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

**ATTACHMENT B: WORKSHOP AGENDA: AGRICULTURE IN THE COASTAL ZONE**

**Date: May 8, 2013**

**Location: Board of Supervisors Chamber, Marin Civic Center, 3501 Civic Center Drive,  
San Rafael, CA 94903**

**Estimated duration: 3 1/2 hours; 8:30 a.m. – noon; times are approximate**

**Purpose: Public education and discussion of topics related to agriculture in the coastal zone**

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|---------------------------|--|
| <b>8:30 – 8:35 A.M.</b>   | <b>I. WELCOME AND INTRODUCTION (5 MINUTES)</b>   |
| <b>8:35 – 8:50 A.M.</b>   | <b>II. STAFF PRESENTATION WITH WRITTEN BACKGROUND DOCUMENT ON COASTAL ACT IMPLEMENTATION RELATED TO AGRICULTURE (15 MINUTES)</b>   |
| <b>8:50 – 9:05 A.M.</b>   | <b>III. PANEL PRESENTATIONS (15 MINUTES EACH)</b><br><b>A. Coastal Agricultural Trends</b><br>Sandra Schubert, Undersecretary, California Department of Food and Agriculture |
| <b>9:05 – 9:20 A.M.</b>   | <b>B. Local Experience Addressing Coastal Agriculture</b><br>Steven Monowitz, Deputy Director, San Mateo County Planning & Building Department                               |
| <b>9:20 – 9:35 A.M.</b>   | <b>C. Farmer Perspective on Coastal Agriculture</b><br>Albert Straus, dairy farmer and President of Straus Family Creamery   |
| <b>9:35 – 9:50 A.M.</b>   | <b>D. Non-Regulatory Techniques to Protect Agriculture</b><br>Paul Ringgold, Vice President, Land Stewardship, Peninsula Open Space Trust                                    |
| <b>9:50 – 10:05 A.M.</b>  | <b>E. Integration of Biological Principles and Agriculture</b><br>Larry Ford, PhD., LF Rangeland Conservation Science  |
| <b>10:05 – 10:15 A.M.</b> | <b>IV. BREAK (10 MINUTES)</b>  |
| <b>10:15 – 11:15 A.M.</b> | <b>V. PUBLIC COMMENTS (60 MINUTES)</b><br>The Chair will determine time limits for each speaker.   |
| <b>11:15 – 11:55 A.M.</b> | <b>VI. COMMISSIONER QUESTIONS TO PANELISTS AND DISCUSSION (40 MINUTES)</b>   |
| <b>11:55 A.M. – noon</b>  | <b>VII. WRAP UP (5 MINUTES)</b>  |

## **SPEAKER BIOGRAPHIES**

### **Sandra Schubert, Undersecretary, California Department of Food and Agriculture**

Undersecretary Sandra Schubert was appointed by Governor Jerry Brown in May of 2011. She has spent two decades as a legal and political strategist for government and non-profits on a variety of agricultural, public health, environmental and resource issues, and has nearly 15 years experience working in Washington, DC. On behalf of the Majority Leader of the U.S. Senate and a Ranking Committee member, she developed and successfully carried out campaigns on major energy, environmental quality and agricultural issues. Undersecretary Schubert has advised Presidential, Congressional and local campaigns on a range of issues. Undersecretary Schubert has lectured nationally on numerous issues and taught at the Georgetown University School of Law.

### **Steven Monowitz, Deputy Director, San Mateo County Planning & Building Department**

As Deputy Director of the San Mateo County Planning and Building Department, Steve Monowitz manages the Department's Current Planning, Long Range Planning, Code Compliance, and Technical Services divisions. In this role, Steve oversees the review of development applications, the issuance of land use permits, the enforcement of code violations, and the processing of amendments to the County's General Plan, Local Coastal Program, and Zoning Regulations. Some of the projects Steve is currently involved in include an update to the County's Williamson Act program, and the streamlining of permit procedures for agriculturally related development.

Prior to joining San Mateo County's Planning and Building Department, Steve spent 15 years working for the Central Coastal District of the California Coastal Commission, where he collaborated with Central Coast cities and counties on the development and implementation of Local Coastal Programs. During this time, Steve developed an expertise in the field of coastal resource management, as well as an in-depth understanding of related laws, regulations, and procedures.

Steve's career has been fueled by his interest in creating healthy and sustainable communities that are in harmony with nature, and reflects his lifelong commitment to public service. In college, Steve majored in Environmental Studies at UC Santa Cruz, where he earned a Bachelor of Arts with a focus on Planning and Policy. Steve currently lives in Felton with his wife and three sons.

### **Albert Straus, dairy farmer and President of Straus Family Creamery**

Albert Straus, Owner of Straus family dairy and President of Straus Family Creamery, is an outspoken advocate for organic, sustainable, non-GMO dairy production, farmland protection and environmental stewardship. Albert Straus' family farm on the shores of Tomales Bay had its beginnings in the 1940s and became the first certified organic dairy west of the Mississippi River in 1994.

An industry innovator and organic pioneer, Albert Straus is also an active member of Marin County's agricultural community. He has served on a multitude of boards, including the Environmental Action Committee of West Marin, the Organic Trade Association, Marin Organic and the Sonoma-Marin Fair Board.

In an effort to make his dairy farm more sustainable, Albert Straus introduced methane digester-technology in 2004, to convert dairy waste into energy, which today not only powers the farm

but also powers his car. Additional sustainability efforts, which span seamlessly from the farm to the creamery, include a water reuse system, production of milk in reusable glass bottles; and an employee carpool program.

**Paul Ringgold, Vice President, Land Stewardship, Peninsula Open Space Trust**

Mr. Ringgold joined POST in 1999 undertaking various land acquisition projects. He continues in this role as well as being responsible for land stewardship planning and land management oversight. Prior to coming to POST he was a policy research associate at the Pinchot Institute of Conservation in Washington, D.C and served as a land manager and ecosystem research program director with the University of Washington. Mr. Ringgold holds a Master of Forest Science degree from Yale.

**Larry Ford, PhD., LF Rangeland Conservation Science**

Dr. Ford is Senior Rangeland Conservation Scientist and principal for his firm. He specializes in planning, monitoring, and research to define appropriate grazing management of conservation lands, particularly focusing on habitat of special-status species and natural communities, water quality, fire hazards, pest plants, infrastructure requirements, and stewardship in the working landscape. Dr. Ford has consulted about rangeland ecology and grazing management in the western states (CA, AZ, HI, and TX), serving land trusts, municipalities, water districts, federal government agencies, ranchers, private property owners, residential developers, other consulting firms, and law firms since 1995. He has developed grazing and related management prescriptions, monitoring programs, and mitigation enhancement specifications for numerous special resources, including carnivores, small mammals, birds, amphibians, reptiles, plants, riparian woodlands, wetlands, oak woodlands, native grasslands, and other natural communities. He has incorporated this information into more than 30 formal grazing management plans, each of which was approved by the relevant regulatory agencies. He has assessed and monitored environmental impacts, contractual and regulatory compliance, and management effectiveness for a wide variety of rangeland projects. Notable projects include developing the protocols and conducting the “Indicators of Sustainable Rangeland Stewardship” monitoring program for the Central Coast Rangeland Coalition, modeling of site potential for native grass and oak enhancement, and innovative grazing leasing to incentivize stewardship and support sustainable livestock operations on public rangelands. Research has focused on guidelines for grazing management of upland habitat for the California red-legged frog and California tiger salamander, management to improve habitat of the Ohlone Tiger Beetle, fire ecology of Northern Coastal Scrub, grazing effects on oak woodlands, control of pest plants, and impact assessment associated with novel energy technologies. Among his peer-reviewed scientific publications, a notable example is the 2007 “Northern Coastal Scrub and Coastal Prairie.” Chp. 7, Pp. 181-207 in: M.G. Barbour, T. Keeler-Wolf, and A. Schoenherr (Eds.). *Terrestrial Vegetation of California*, Third Ed., Berkeley: University of California Press, authored with Grey F. Hayes.