East Shore Planning Group
P. O. Box 827
Marshall, CA 94940
ESPG@eastshoreplanninggroup.org

February 18, 2014

Kevin Kahn
Supervising Coastal Planner, LCP Planning
Central Coast District Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Dear Mr. Kahn,

The East Shore Planning Group, a California not-for-profit corporation formed in 1984 ("ESPG"), has a membership about 90 homeowners, tenants and owners of residential and commercial properties in the vicinity of Marshall and along the east shore of Tomales Bay, which is in the unincorporated area of Marin County and is in the Coastal Zone. The ESPG is the primary local organization involved with issues of development in the area, and we have been an active participant with Marin County in the process of amending the Local Coastal Program.

The East Shore Planning Group supports local agriculture and the efforts to reduce the costs and uncertainties of burdensome permitting requirements. At the same time, the ESPG has always been concerned about the effects of commercial activities that can create traffic, parking and safety issues and that could affect the character of our community. For example, from our the East Shore Community Plan (1987),

- *Policy CD-8: "New Development shall not cause a significant cumulative adverse affect on existing roadway and traffic conditions;"*
- *Policy CD-10: "Conflicts between or hazards created by traffic or parking shall be remedied wherever feasible to ensure the peaceful, rural pace of life in the East Shore area:" and*
- *Objective E.6: "Minimize Conflicts Between Traffic, Parking and Land and Bay Uses. Discourage the development of large parking areas that detract from the visual quality of the shoreline, bay, shoreline land uses or upland open space. Also, ensure that there is ample off-highway parking at all major gathering places that is safely accessible from Highway 1."*

Traffic concerns in our area were highlighted in the current Local Coastal Program, Unit 2 (1981). For example, at page 90, referring to a 1979 traffic study, the LCP notes:

Essentially, the study showed that in sections of the road in the Point Reyes Station and Marshall areas are near their "peak capacity" on weekends, while further north, near the

town of Tomales, considerable additional traffic could be accommodated without congestion.

Currently, coastal development permits ("Coastal Permits") for any agricultural retail sales or processing facilities in our area, regardless of size, would be subject to a public hearing before the permit is issued. The Coastal Permit could then be appealed to the Planning Commission, to the Board of Supervisors and ultimately to the Coastal Commission.

In the interest of achieving a fair balance between the business needs of agriculture and the concerns regarding increased commercialization in our area, ESPG agrees that smaller agricultural sales operations (<500 sq. feet) and processing facilities (<5000 sq. feet) can be considered Principal Permitted Uses. This means that for most projects there would be no right of appeal to the Coastal Commission, as provided under See 22.70.80 B. c. of the proposed Development Code. That is acceptable to our organization.

Unfortunately, the proposed Development Code goes a step further by eliminating the opportunity for a public hearing prior to the initial issuance of a Coastal Permit for these smaller operations (and for any other Coastal Permit that cannot be appealed to the Coastal Commission unless a hearing would be required for another County permit). Under the proposed Development Code provisions, the first opportunity for a public hearing would if a party appealed to the Planning Commission - after the Coastal Permit has been issued.

This is seen in **22.70.030 B. 3. Administrative applications.**

A public hearing shall not be required when an application is not defined as appealable to the Coastal Commission by 22.70.080 - Appeal of Coastal Permit Decision, unless a public hearing is required for another discretionary planning permit for the same project."

There are other provisions that would require a public hearing for a "minor development" with a Coastal Permit where a hearing is otherwise required if there is a written request for one. This process is sensible and would satisfy our concerns. But, significantly, those provisions are only applicable to matters where a public hearing would otherwise be required, and where waiver of that hearing is proposed.

***22.70.030 B. 5. Public hearing waiver**. A public hearing that would otherwise be required for a minor development shall be waived if both the following occur:*

(a) Notice as required by Section 22.70.050 – "Public Notice" that a public hearing shall be held upon request by any person is provided, and

(b) No written request for a public hearing is received within 15 working days from the date of sending the notice.

In addition to the requirements of Section 22.70.050, the notice shall include a statement that the hearing will be cancelled if no person submits a written request for a public

hearing as provided above, and 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 Coastal Commission any action taken by the County of Marin on the Coastal Permit application.

For purposes of this Section, "minor development" means a development that the Director determines satisfies all of the following requirements:

(1) Is consistent with the certified Local Coastal Program,

(2) Requires no discretionary approvals other than a Coastal Permit, and

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

Notwithstanding the waiver of a public hearing, any written comments submitted regarding a coastal permit application shall be made part of the permit application record.

ESPG believes that there always should be an opportunity for a public hearing on these smaller facilities before the Coastal Permit is issued if a hearing is requested by a member of the public. That is a process that will allow public participation and the interactive discussions regarding particular issues that cannot be accomplished merely by written comments, especially for controversial projects. It will result in Coastal Permit terms and conditions that are better informed.

We believe that the many benefits of having a public hearing before issuance of a Coastal Permit greatly outweigh the small additional burden of holding a hearing before the County Deputy Zoning Administrator when requested. Indeed, it seems ironic to abolish the public hearing process uniquely for those Coastal Permits where there is no right of appeal to the Coastal Commission.

Accordingly, we would suggest the following amendments to the proposed Development Code. They would allow a waiver of a public hearing on a coastal permit where there is no controversy, but would require one if requested by a member of the public.

22.70.030 B. Determination of permit category.

… .

~~***3. Administrative applications.*** *"A public hearing shall not be required when an application is not defined as appealable to the Coastal Commission by 22.70.080 - Appeal of Coastal Permit Decision, unless a public hearing is required for another discretionary planning permit for the same project."*~~

3. Public hearing applications. *A public hearing shall be required for Coastal Permits ~~when a project is defined as appealable to the Coastal Commission by 22.70.080 - Appeal of Coastal Permit Decision,~~ unless the proposed project only entails the approval of a second unit use or if it qualifies for a public hearing waiver. If a public hearing is*

held for another type of discretionary permit, the same review authority shall issue the decision on the Coastal Permit.

4. Public hearing waiver. **<no changes; shown below for convenient reference>** *A public hearing for a minor development shall be waived if both the following occur:*

(a) Notice as required by Section 22.70.050 – "Public Notice" that a public hearing shall be held upon request by any person is provided, and

(b) No written request for a public hearing is received within 15 working days from the date of sending the notice.

In addition to the requirements of Section 22.70.050, the notice shall include a statement that the hearing will be cancelled if no person submits a written request for a public hearing as provided above, and 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 Coastal Commission any action taken by the County of Marin on the Coastal Permit application.

For purposes of this Section, "minor development" means a development that the Director determines satisfies all of the following requirements:

(1) Is consistent with the certified Local Coastal Program,

(2) Requires no discretionary approvals other than a Coastal Permit, and

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

Notwithstanding the waiver of a public hearing, any written comments submitted regarding a coastal permit application shall be made part of the permit application record.

Alternatively, these small agricultural retail sales and processing facilities should not be considered a Principal Permitted Use, so that a hearing would be required before a Coastal Permit is issued.

Thank you for considering these views.

Sincerely

Lori Kyle
Lori Kyle, President

Standard Note: This letter has been authorized by the ESPG Board of Directors, but has not been presented to or approved by our membership.

February 26, 2014

Kevin Kahn
Supervising Coastal Planner
Central Coast District Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Dear Kevin,

The Environmental Action Committee of West Marin (EAC) has reviewed Marin County's January 10th response to the your December 6th request for additional information and clarification of Marin County's application to update its LCP. EAC wishes to respond to two key issues in the county's letter: (1) whether the significant changes to the certified LCP constitute an amendment/modification, and (2) what standard of review the Commission will use in evaluating the update.

First, the proposed LCP update includes extensive reorganization and refinement of the Unit I and Unit II Land Use Plans – as evidenced by the "crosswalk" documents – to create a single updated Land Use Plan. Moreover, the update also makes significant other substantive changes to the Marin County certified LCP and deletes several pages of substantive background information. In sum, the proposed LCP update constitutes a new LCP submission, not merely an amendment or modification.

For over two years, EAC and numerous others have requested from the County a side-by-side comparison, in the form of "tracked changes", of the certified LCP policies with the proposed modifications so that the public could see the specifically proposed changes to each policy. Unfortunately, neither a tracked changes comparison for the Land Use Plan policies nor the Implementation Plan has been provided, thus it has been left to the reader to determine the significant amount of text changes that have been made. Further, the certified Implementation Plan (aka Title 22 Interim Code) is a distinct document, with a single Interim Code for both Units of the certified LCP.

Marin County has failed to provide a redline version of the proposed Implementation Plan in the proposed LCP update submission, and we hope that before deeming the County's LCP update submission "complete" you will insist on receiving tracked-change versions of both the LUP policies and the IP development code. It's very unfortunate

that the general public will not be afforded an opportunity to review the tracked changes comparison documents.

Second, EAC is concerned with the County's apparent insistence that the LCP submission should not be weighed or assessed against the existing certified LCP but rather only against the Coastal Act. The County's January 10 letter states:

> As discussed in #1 above, under the Coastal Act the standard of review for an LCP Amendment are the Chapter 3 policies of the Act itself, not the current LCP. Time and effort focusing on differences from prior LCP language rather than the consistency of the proposed amendments with the Act itself, takes away from that goal.

However, the Commission must require conformance with Chapter 3 policies and requirements in order to achieve the goals in Coastal Act Section 30001.5(a):

> (a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

It is unclear how Marin County could protect and maintain, as well as enhance and restore, the overall quality of our coastal resources by ignoring 33 years coastal resource protection policies that have been successful in protecting Marin's coastal zone. Doesn't the County have some obligation under 30001.5(a) to use the current certified LCP as the baseline for demonstrating that the submitted update policies, whether an amendment or a new submission, are consistent with the Coastal Act's mandate to protect and maintain our coastal resources as they actually exist today?

Any LCP update must of course be consistent with the Coastal Act, but equally Marin County should not be allowed to rollback existing coastal resource protection policies by simply stating that the proposed new policies comply with the Act. Marin County has provided insufficient findings and post hoc rationalizations to support the more substantive, weakened policy changes in the Agriculture and Biological Resources sections. EAC strongly believes that the certified LCP must be considered the baseline against which the proposed new LCP policies are weighed for compliance with the mandates in Section 30001.5(a).

Thanks very much for your consideration of our comments.

Respectfully yours,

Amy Trainer, Executive Director

March 19, 2014

Dr. Charles Lester, Executive Director
California Coastal Commission
Via email: clester@coastal.ca.gov

Dear Charles,

The Environmental Action Committee of West Marin (EAC) would like to emphasize a major concern about Marin County's proposed LCP Amendment, and bring to your attention a recent Court of Appeals ruling that invalidated Marin County's 2007 Countywide Plan and its possible impact on the proposed LCP Amendment.

Despite our continuous engagement in Marin County's cumbersome LCP update process for the past four years, the County has not been willing to discuss a compromise to its proposed agricultural policies that EAC believes are unacceptable and fail to meet the Chapter 3 standards of the Coastal Act. *EAC absolutely supports family farming in West Marin*. EAC has worked tirelessly for over 43 years to protect the rural character of the coastal zone, including by fighting off numerous ill-conceived residential development proposals that would raise agricultural land costs.

Marin County's proposed LCP Amendment unilaterally expands the definition of "agricultural" to add numerous new residential, commercial, and industrial development activities as Principally Permitted uses (PPUs) in the Coastal-Agriculture Production Zone (C-APZ) zoning district. Currently, about half of these uses are Conditional uses. Thus, the proposed expanded definition of "agricultural" for the C-APZ zoning district is significant because for all the uses proposed to be PPUs the effect would be to 1) curtail public notice, 2) eliminate public review, input, and appeal rights, 3) eliminate compliance with existing rigorous development standards, and 4) eliminate the existing comprehensive master planning process and replace it with piecemeal planning on a project-by-project basis. The C-APZ zoning district is not subject to the Design Review process, so the significant amount of development proposed would be without any other public review, hearing, or appeal process.

EAC believes these changes, particularly the exclusion of the public from the appeal process, is not in keeping with the spirit or purpose of Prop. 20 or the Act. The expanded definition of "agriculture," should the Commission accept it, could be applied statewide.

EAC is not advocating that the expanded residential, commercial and industrial uses all be prohibited in the C-APZ zoning district. Rather, EAC submits that there have been insufficient findings and documentation to support 1) changing these uses from Conditional uses in the Certified LCP to Principally Permitted uses in the proposed LCP Amendment, 2) allowing a significant amount of new development as PPUs, or 3) removing the rigorous development standards that require comprehensive planning and review and replacing it with greatly loosened standards and removing the comprehensive planning approach. Your staff has consistently supported this assessment, to a large extent, and we hope that you will maintain your position that the County's proposal does not foster protection of agriculture and agriculturally productive lands in the coastal zone or meet the requirements of sections 30241 or 30250.

EAC believes that there is be a better way to support family farmers in the coastal zone than by casting aside over 30 years of Coastal Act policy that has protected family farms in West Marin. If Marin County's vastly broadened definition of "agricultural" is certified, the Coastal Commission would also be deprived of the right to appeal, review, or revise a county-issued permit for any of the many agricultural "principally permitted uses." EAC is hopeful that you and your staff will be able to find a more appropriate balance of proposed development on agricultural production lands and looks forward to working with you to find creative solutions that support our family farmers while maintaining the integrity of the Coastal Act.

A second issue that we want to bring to your attention is the March 5, 2014 California Court of Appeals decision striking down Marin County's 2007 Countywide Plan and accompanying Environmental Impact Report. We believe that this court ruling may affect the Commission's ability to review Marin County's LCP Amendment and ask your legal counsel to please provide guidance.

The Court of Appeals ruled that the County failed to comply with the California Environmental Quality Act (CEQA) by: 1) failing to adequately assess the cumulative impacts of development along the main watershed and stream conservation area of the federally endangered Central Coast Coho, 2) failing to define or adopt adequate mitigation measures to reduce impacts of build-out on the fish, and 3) and failing to adopt performance standards by which to evaluate proposed mitigation measures.

The Appeals Court disposition states:

> The matter is remanded with instructions to enter a writ of mandate directing the County to set aside its approval of the 2007 CWP and certification of the related EIR, pending preparation of a supplemental EIR that analyzes cumulative impacts in conformity with Guidelines section 15130, subdivision (b) and this opinion, and that describes mitigation measures in conformity with Guidelines section 15126.4 and this opinion or makes other findings in conformity with Guidelines section 15091.

The court's opinion can be found here:
http://www.courts.ca.gov/opinions/nonpub/A137062.PDF

The proposed LCP Amendment relies on the County's non-coastal Design Review [Marin Code Chapter 22.42] process as a prerequisite for all Permitted uses and all Conditional uses in the coastal zone [see Tables 5-2 and 5-3 in the proposed Development Code amendment]. The Design Review process, per Marin Code section 22.42.010, "consists of review of plans and proposals for land use and design of physical improvements in order to implement the goals of the Countywide Plan . . ." and includes specific reference to the Countywide Plan as follows:

> 22.42.060 Decision and Findings
> The Review Authority shall issue the decision and the findings upon which the decision is based. The Review Authority may approve or conditionally approve an application only if all of the following findings are made:
>
> G. The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable community plan and zoning district regulations and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.

Thus, any project seeking coastal development permit approval for a Permitted use or Conditional use must meet all the criteria of 22.42.060, including consistency with the Countywide Plan that was invalidated by the Court of Appeals decision. It is unclear how the legal concept of severability could alter the impact of the March 5th ruling since that ruling addresses the inadequacy of the Countywide Plan's environmental and stream conservation area protection policies.

It is doubtful that those policies - addressing topics that are certainly important Coastal Zone resource protection considerations – can now be relied upon for the purpose of weighing the adequacy of a Permitted or Conditional use permit application. EAC believes that at this time, and until Marin County completes a court-approved Supplemental EIR that meets the requirements of CEQA and makes necessary revisions to the Countywide Plan as directed by the court ruling, the findings required by the Design Review process cannot be validly made. If the Design Review process cannot be relied upon, then in seeking to amend the Certified LCP, Marin County must propose another way to evaluate all Permitted and Conditional Uses in the Coastal Zone.

Thank you very much for your consideration of our comments. In the event that Marin County's LCP Amendment will be heard at the May Commission meeting, we respectfully request an opportunity to meet with you in late April prior to completion of the staff report to discuss in more detail these and numerous other concerns.

Respectfully yours,

Amy Trainer, Executive Director

Environmental Action Committee of West Marin
PO Box 609 Point Reyes, California 94956
www.eacmarin.org 415-663-8054