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Prepared May 14, 2014 (for May 15, 2014 hearing)

Th12a

To: Coastal Commissioners and Interested Persons

From: Madeline Cavalieri, District Manager
Kevin Kahn, District Supervisor, LCP Planning

**Subject: STAFF REPORT ADDENDUM NUMBER 2 for Th12a
Marin County Local Coastal Program Amendment Number LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update)**

Staff previously distributed an addendum to the staff report covering issues associated with agricultural protection, viewshed protection, village commercial protection, and a range of other topics (e.g., LUP background text, community plans, etc.). That addendum modified the staff recommendation in a number of ways, exclusively to make it more protective of coastal resources. This addendum, addendum number 2, is focused entirely on issues related to coastal hazards. Specifically, several questions have arisen regarding coastal hazards and staff's suggested modifications to the proposed LUP Environmental Hazards chapter. These questions regard the proposed definition of redevelopment and the way in which shoreline development would be treated under the LUP as suggested to be modified.

1. Redevelopment

With respect to the definition of redevelopment, questions have been raised about the manner in which cumulative development is tallied towards the 50% redevelopment threshold, and about the nature of the differences between the proposed suggested modification redevelopment definition and the redevelopment definition used by the Commission in other cases (e.g., Solana Beach, as referenced in the staff report). With respect to the former, the staff report describes the concept of cumulative additions being additive (i.e., an initial 30% addition would not be considered redevelopment, but a subsequent 30% addition would result in a cumulative 60% increase in floor area, and would thus constitute redevelopment; see staff report page 60). What the staff report doesn't explicitly do is specify the way in which other cumulative accounting is meant to work for major structural components. Thus, the following is added to the end of the second paragraph on page 60:

In terms of major structural components, these too are meant to be understood on a cumulative basis within each component (i.e., they are not additive between different components). For example, if an applicant proposed to modify 25% of the exterior walls and 30% of the roof structure, even though together these add up to more than 50%, this would not be considered redevelopment because it relates to two different major structural components. However, if the applicant were to come back for a subsequent CDP to modify an additional 25% of the exterior walls or an additional 20% of the roof structure, the project would be considered redevelopment because it would result in a cumulative

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alteration to 50% for both of these two major structural component, either of which is sufficient to trigger “redevelopment” and the need for the entire structure to be made consistent with all LCP policies, including with respect to setbacks and armoring.

With respect to the difference between the suggested redevelopment definition in this case and the definition approved by the Commission in the Solana Beach LUP case, the differences are mostly subtle, but are substantive in terms of the cumulative accounting issue discussed above. The suggested definition left open the possibility of ‘cross-major structural component’ cumulative accounting, which is not what was done in Solana Beach, and not what staff intended here. To be clear on this point, the suggested modification that adds the definition of redevelopment to a portion of LUP Policy C-EH-5 (see page 41 of Exhibit 6 of the staff report) is replaced in its entirety with the following definition that tracks the same requirements as the definition that was approved by the Commission in the Solana Beach LUP case:

Coastal redevelopment must be found consistent with all applicable LCP policies. Coastal redevelopment is development that is located on top of bluffs or at or near the ocean-sand interface and/or at very low lying elevations along the shoreline that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, and/or (3) demolition of an existing bluff home or other principal structure, or portions thereof, which results in:

- (1) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.*
- (2) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP.*

2. Shoreline Development

With respect to shoreline development, questions have been raised about the way in which the proposed suggested modifications to proposed LUP Policy C-EH-5 (see page 41 of Exhibit 6 of the staff report) would work when applied in a shoreline as opposed to a blufftop situation. The following is added to the staff report at the bottom of page 60 as a new subsection G (causing other subsections to be renumbered accordingly) as findings to address these issues:

G. Shoreline Development

Shoreline development is development at or near the ocean-sand interface and/or at very low lying elevations along the shoreline, generally seaward of bluffs (e.g., such as at Seadrift and Stinson Beach in Marin County), and/or directly at the water’s edge (e.g., such as along the

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east shore of Tomales Bay). Although there remain some existing developments in these shoreline areas that have not been built with deep caisson/pier foundations and elevated as a response to coastal hazards, including in light of FEMA requirements, many have, including as is evidenced by some of the development at Seadrift and Stinson Beach. The proposed LUP does not explicitly address shoreline development past stating that all development must avoid hazards and meet the 100-year minimum stability requirements. This is problematic as it is unclear how such development at the dynamic and critical shoreline interface is to be addressed.

In such cases, it is difficult to set these types of shoreline developments back a sufficient distance to ensure their stability and structural integrity for a minimum of 100 years, and to eliminate the need for shoreline protective devices, as would be the case for blufftop development. The difficulty with this framework is that shoreline properties typically do not have area within which to allow for traditional setbacks sufficient to address coastal hazard concerns. Instead of siting such development inland and away from the coastal hazards, including to provide adequate area for natural erosion processes to occur without armoring, the traditional setback has been replaced with a superstructure type of foundation designed to withstand hazards and to have structures (e.g., residences) above the hazardous areas. These superstructures are typically made up of deep caisson/pier foundations that can themselves constitute shoreline protective devices. Thus, a policy that required siting and design to avoid such hazards for a minimum of 100 years without shoreline protective devices would lead to a situation where a new development (e.g., a new house) or a project that met the redevelopment definition (discussed above) would need to be sited without the need for shoreline protective devices, when the only way to do so was via such superstructure, which would likely constitute a shoreline protective device, which would not be allowed. In other words, projects like this would be required to be denied absent a takings evaluation that required some form of approval.

The problems with this scenario are multifaceted. First, in recent years these shoreline areas in Marin have been developed with these types of elevated structures on superstructure foundations, many of which were approved by the Commission (e.g., in retained jurisdiction areas in Seadrift). Therefore, an existing pattern of such development has been established to a certain degree. Second, absent a vision for what the policies are meant to achieve with respect to shoreline development, it is unclear both what might be approved in a takings scenario, and whether it would achieve long-term LCP goals. For example, it is clear in a blufftop scenario that the intent is to avoid armoring and to allow for natural processes to continue, including so that beaches can move inland as shorelines and bluffs do. In a shoreline scenario, these developments are, at times, on or near the beach itself, and the analytic framework is a little less clear in this regard, including as beaches might migrate under superstructure foundations themselves in some cases. Third, the shoreline interface presents a somewhat different set of issues for which there has been limited Commission engagement on an LCP planning level elsewhere. Although there are areas up and down the state where the superstructure foundation/elevated residence is fairly common (e.g., south Santa Cruz County, etc.), LCP policies geared towards addressing this phenomenon are more tied into FEMA flood elevation requirements than more traditional coastal resource

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protection frameworks. As a result, there is limited LCP experience from which to draw and apply to Marin.

Finally, and related to all of those, Marin County itself did not engage this topic in the five plus years of local deliberations on the proposed LUP. In addition, just as the Commission's approach to addressing coastal hazards has evolved over that time frame, so has Commission staff's recommendations to the County on this point as the LUP was pending. As a result, although staff provided the County with a clear general framework based on hazards and shoreline protective device avoidance, and on retaining natural shoreline processes as much as possible, it proved elusive to provide more precise potential LUP language to the County for consideration during that time frame, including because such language was constantly evolving. The language that was provided also did not, as a general rule, apply explicitly to the shoreline development phenomenon.

As detailed earlier, the County recently was awarded grant funds to evaluate such low lying areas and to develop appropriate policies for addressing coastal hazards issues, including in light of sea-level rise. Per the Commission's grant to the County, this effort is meant to culminate in an LCP amendment submittal to the Commission in early 2016.¹ In other words, this upcoming assessment and LCP amendment project appears to be exactly the type of vehicle appropriate for identifying the issues and developing a response, including providing for a local public participation process that can help form the basis for objectives and a vision for this shoreline interface moving forward.

In recognition of all of these factors, the Commission chooses to suggest a modification that would generally provide for shoreline development to be treated similarly to blufftop development, except that elevation may be considered as a strategy for shoreline redevelopment. In other words, in cases where there is insufficient space on a property to feasibly meet setback requirements, redevelopment would be allowed to meet the minimum 100-year stability and structural integrity requirements through both setbacks and the use of caisson/pier foundations and elevation (including if elevation of the structure is necessary to meet FEMA flood requirements). However, other new development (such as new development on vacant/undeveloped properties, and new additions) would be required to meet all hazards avoidance policies, including avoiding the use of shoreline protective devices to ensure stability and structural integrity for the minimum 100 year period. In this way, minor modifications to existing structures (such as repair, maintenance and minor alterations that don't result in an addition or meet the redevelopment definition) would be allowed consistent with meeting all other LCP consistency policies, but these more significant types of new development would also have to meet the LUP's hazards requirements. This is consistent with the Commission's general approach to such development on bluffs. The only difference here is that the Commission here recognizes the above factors and chooses to allow shoreline redevelopment to meet hazards requirements through setbacks and the use of caisson/pier foundations and elevation for a limited time, tied to the upcoming grant project (see below).

¹ The grant commits the County to submitting an LCP amendment by April 30, 2016.

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Any elevation/caisson systems and supported structures would need to be fully evaluated for consistency with the other policies of the LCP, including in terms of protecting public access, shoreline dynamics, natural landforms, and public views, including as project impacts continue and/or change over time, including in response to sea-level rise. Such evaluations would necessarily need to focus not only on the elevated structure, but also on ingress/egress to structures and provision of services (e.g., water, wastewater, etc.), as all of these affect and are affected by changes in shoreline dynamics over time, including beach/shoreline inland migration, and can have their own coastal resource issues as a result. In short, the burden would be on each individual case to show why elevation/caisson systems and supported structures and any related development would be appropriate under the LCP, including in terms of fully mitigating any unavoidable coastal resource impacts over time. As with blufftop development, these parameters would explicitly state that no other type of shoreline protective device would be allowed, and approval for such development must be accompanied by conditions necessary to achieve compliance with the policies (e.g., appropriate provisions to ensure that all permitted development is relocated and/or removed before other types of shoreline protection are needed).

The intent would be to treat shoreline development like blufftop development except that elevation may be considered as a strategy for shoreline redevelopment as an interim strategy. For the longer term, the Commission recognizes that the upcoming grant-funded work is expressly meant to provide a means of addressing such issues more specifically. Such grant/LCP amendment analysis will need to identify what is likely to occur in the shoreline environment given sea-level rise and shoreline erosion, how the shoreline and beach and low-lying areas will change over time in this regard, what the implications are for shoreline development and development patterns, what the alternatives are for addressing identified coastal resource issues, what the County's vision is for these areas, and a proposed policy framework to implement the vision, including to replace the shoreline development portion of Policy C-EH-5 if appropriate. Thus, the modification includes a provision to only allow the use of caissons/piers and elevation for shoreline redevelopment until such time as the LCP is amended or until April 30, 2017 (i.e., a full year after the grant requires the LCP amendment to be submitted to the Commission to allow time for Commission processing). To address unforeseen issues, the sunset clause provides for the Executive Director to extend the sunset clause date for good cause. See page 41 of Exhibit 6 for the suggested modifications to Policy C-EH-5.

In tandem with the new shoreline development findings above that are being added to the staff report, the suggested modifications related to Policy C-EH-5 would change. Specifically, Policy C-EH-5 would be modified to provide more clarity on the differences and similarities between shoreline and blufftop development, as follows:

C-EH-5 New Shoreline and Blufftop Development.

A. Blufftop Development. Ensure that new blufftop development, including coastal redevelopment (see below) and additions to existing structures, is safe from bluff retreat and other coastal hazards without a reliance on shoreline protective devices. ~~New structures e~~Except as provided for by Policies C-EH-7, C-EH-15, and C-EH-16,

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~~including accessory structures and infill development (i.e., new development between adjacent developed parcels); new blufftop development shall be set back from the bluff edge a sufficient distance to reasonably ensure their its stability and structural integrity for a minimum of 100 years the economic life of the development and to eliminate the need for shoreline protective works devices. Any approval for such development shall be accompanied by conditions necessary to achieve compliance with this policy (e.g., appropriate provisions to ensure that all permitted development is relocated and/or removed before shoreline protection is needed). A coastal hazards analysis shall evaluate the effect of geologic and other hazards at the site to ensure its stability and structural integrity for a minimum of 100 years. Such assurance~~ The coastal hazards analysis shall take the form of include a quantitative slope stability analysis demonstrating a minimum factor of safety against sliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer). Such Safety and stability must be demonstrated for the predicted position of the bluff following bluff recession during the 100-year economic life over at least 100 years of the development. The predicted bluff retreat position shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat due to continued and accelerated sea level rise, and other climate impacts according to best available science. The effect of any existing shoreline protective devices shall not be factored into the required stability analysis.

B. Shoreline Development. New shoreline development (including new development on vacant/undeveloped lots, additions to existing structures, and coastal redevelopment (see below)) shall be set back a sufficient distance from the shoreline to ensure stability and structural integrity for a minimum of 100 years without the need for shoreline protective devices. For coastal redevelopment, if there is insufficient space on a property to feasibly meet the setback requirements, then such development may meet the minimum 100-year stability and structural integrity requirement through setting back as far as feasible in tandem with the use of caisson/pier foundations and elevation (including if elevation of the structure is necessary to meet Federal Emergency Management Agency (FEMA) flood requirements) but no other type of shoreline protective device is allowed. Any approval for new shoreline development shall be accompanied by conditions necessary to achieve compliance with this policy (e.g., appropriate provisions to ensure that all permitted development is relocated and/or removed before shoreline protection (other than caisson/pier foundations and elevation where allowed for redevelopment) is needed). A coastal hazards analysis shall evaluate the effect of geologic and other hazards to ensure stability and structural integrity for the minimum 100 year period, and such analysis shall not factor in the presence of any existing shoreline protective devices. The coastal hazards analysis shall also evaluate the effect of the project over time on coastal resources (including in terms of protecting public access, shoreline dynamics, natural landforms, and public views, including as project impacts continue and/or change over time, including in response to sea-level rise), including in terms of not only the impacts associated with the elevated structure, but also in terms of the effects of related development, such as required ingress/egress to structures and the provision of services (e.g., water, wastewater, etc.). The provisions of this subsection allowing the use of caisson/pier foundations and elevation for shoreline redevelopment in certain circumstances shall apply until April 30, 2017 or until this subsection is amended,

whichever occurs first. If this subsection is not amended by April 30, 2017, then shoreline redevelopment will no longer be allowed to meet minimum 100-year stability and structural integrity requirements through the use of caisson/pier foundations and elevation. The April 30, 2017 deadline may be extended for good cause by the Executive Director of the Coastal Commission.

C. Coastal Redevelopment. Coastal redevelopment must be found consistent with all applicable LCP policies. Coastal redevelopment is development that is located on top of bluffs or at or near the ocean-sand interface and/or at very low lying elevations along the shoreline that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, and/or (3) demolition of an existing bluff home or other principal structure, or portions thereof, which results in:

(1) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.

(2) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP.

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To: Coastal Commissioners and Interested Persons

From: Madeline Cavalieri, District Manager
Kevin Kahn, District Supervisor, LCP Planning

**Subject: STAFF REPORT ADDENDUM for Th12a
Marin County Local Coastal Program Amendment Number LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update).**

The purpose of this addendum is to both supplement the recommended findings with additional clarification and to modify the staff recommendation on particular policies. Specifically, this addendum provides added clarification in relation to the LUPA's agricultural protection policies, and makes modifications to the staff recommendation related to agriculture, visual resources and community character. It also makes certain changes to the proposed suggested modifications, as shown below (where applicable, text in double underline format indicates additional text that is being suggested, and text in ~~double strikethrough~~ format indicates additional text suggested for deletion. A separate addendum will be prepared and distributed regarding coastal hazards.

The findings below are hereby incorporated by reference into the relevant sections of the staff report dated May 2, 2014 and would appear as Commission findings rather than staff statements if adopted by the Commission.

1. Response to comments related to Agriculture. Insert the following "Response to Comments" Section as Section III.B.9 on page 73 of the Staff Report:

Development Potential

Public comments assert that the proposed LUP modifies the definition of a parcel from "all contiguous assessor's parcels owned by one individual or group" to a legal lot, and that this change in definition results in increased development potential on agricultural lands throughout the County's coastal zone because it means that the County will no longer have the ability to consider commonly held contiguous properties when evaluating development proposals. This assertion is not accurate for several reasons. First, although the terminology has been updated, the LCP's intended definition of a parcel remains the same. Second, the County's ability to review contiguous ownership in order to achieve the agricultural protection policies of the LCP has been strengthened through the LUPA, as modified, not weakened.

With regard to the parcel definition, the existing LCP defines a parcel as all contiguous assessor's parcels under common ownership, unless legally divided. This definition differentiates between an assessor's parcel and a legally divided lot, in part because it is not uncommon for landowners to request separate assessor's parcels for tax purposes, and separate assessor's

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parcels can be provided without a land division occurring. Thus, a legal lot may consist of multiple assessor's parcels because an assessor's parcel does not in and of itself determine lot legality. Therefore, rather than rely on the contiguity of assessors parcels or other properties of unknown legal status, suggested modifications to C-AG-2 rely on a 'legal lot,' thereby improving the clarity of the existing LCP. Thus, the LUPA, as modified, provides the same standard unit of measurement at its core, the legal lot, and comments indicating that the LUPA is somehow increasing development potential by referring to legal lots as the unit of measurement are incorrect.

Also, as further clarified in additional suggested modifications to LUP Policy C-AG-5, the County retains and arguably strengthens its ability to consider all commonly held contiguous parcels, regardless of lot configuration. For example, under the existing LCP the requirement for a master plan can be waived at any time, at the discretion of the Planning Director, and in fact, according to County staff, the master plan requirement has never been utilized. In contrast to the unutilized master plan requirement, the LUPA includes clear and certain criteria that must be adhered to in order for development to be allowed. These criteria emanate from the prior master plan requirements, which have been refined to be more protective of coastal resources in the new as modified LUP. Moreover, the farmhouse must be owned by the farm owner or operator, and all development, including farmhouses, must protect and maintain renewed and continued agricultural production and viability on-site and on adjacent agricultural lands.

Regarding the combined total size limits applicable to every farm owner or operator, C-AG-5, as initially modified, limits each farm owner or operator to a combined total limit of 7,000 square feet. Additional modifications to C-AG-5 make explicit the requirement that this combined total limit applies to every farm owner or operator regardless of whether that farm owner or operator owns multiple legal lots. The combined total size limit thus serves to allow each farm owner or operator the ability to live on the land they are farming. However, the combined total size limit also serves to protect agricultural productivity by ensuring that, for example, a farmer owning five legal parcels does not build five different farmhouses. This is because each farm owner or operator is limited by the 7,000 square foot maximum, as well as the need to maintain agricultural land in agricultural production.

In short, the existing and proposed LUP are both based on a legal lot framework, despite assertions to the contrary, and thus there is no change in terms of this standard. Moreover, suggested modifications make it clear that all legal lots in common ownership are to be considered when agricultural dwelling units are proposed, guarding against the possibility that farmers could attempt to develop farmhouses on each legal lot under their ownership. Further, there is little indication that farmers might want to pursue such development schemes. In fact, the County indicates that there have only been six homes approved in the last fifteen years on C-APZ land under the LUP in Marin. Given that the allowance for one farmhouse per legal lot is not changing, and given that the standards for how such farmhouses can be sited and designed are being refined to better protect agricultural operations (including requirements to cluster, to limit aggregate size to 7,000 square feet or less for all dwelling units in the cluster, to require farm owner/operator ownership, to prohibit division of dwelling units, etc.), it is clear that with respect to the first farmhouse on a legal lot issue, the amended LUP is, if anything, more

restrictive with respect to allowing such farmhouses than is the existing LUP, and thus such development potential is, if anything, the same or reduced.

Thus, with the exception of intergenerational homes, discussed further below, the first farmhouse development potential of agricultural land in the County's coastal zone is similar, if not reduced, under the LUPA, as compared to under the existing LCP.

Use Permits

Unless categorically excluded, all new agricultural dwellings will require a discretionary coastal permit. No agricultural dwellings are either allowed by right or constitute an entitlement. The "allowed by right" concept is utilized by local governments to distinguish whether a use permit is or is not required. If a use is principally permitted, no use permit will be required and the proposed use will be assessed based on applicable CDP standards, such as maximum potentially allowable density requirements, buffer setback requirements, and clustering requirements. However, the fact that no use permit is required by no means results in a building entitlement. Other applicable development standards must still be met whether or not a use permit is required. For example, just because a farmhouse is a principally permitted use in an agricultural zone does not mean it can be built inconsistent with the CDP requirements limiting permissible uses in a wetland. Nor can the farmhouse ignore the minimum density requirements applicable to the agricultural production zone.

From a Coastal Act perspective, the fact that an agricultural use is a principally permitted use in an agricultural zone only means that the principally permitted agricultural use will not be appealable to the Commission based solely on the fact that it did or did not require a use permit. Not requiring a use permit for an agricultural use in an agricultural production zone is appropriate as long as there are sufficient protections in place to assure that the farmhouse indeed remains an agricultural use utilized by the farm owner or operator and does not result in a conversion of agricultural land to a residential use inconsistent with the limitations on conversion contained in sections 30241-30242 of the Coastal Act. Suggested modifications to C-AG-5 clarify these points. Furthermore, as currently certified and proposed, and as described in more detail below, any CDP issued by the Planning Director at the outset because no use permit was required is still internally appealable to the Planning Commission and the Board of Supervisors.

Intergenerational Homes

One of the primary goals for the County in terms of the LUP's agricultural protection policies is fostering multi-generational succession in family farming operations. This goal is specifically stated in Policy C-AG-1 and largely implemented in Policy C-AG-2 and C-AG-5, which allow for the concept of intergenerational housing. The intent of these dwelling units is to allow for the preservation of family farms by facilitating multi-generational operation and succession by allowing family members to both live and work on the farm. Thus, the proposed LUPA, as modified, allows for either one farmhouse up to 7,000 square feet in size, or a combination of one or two intergenerational homes in addition to the farmhouse, but within the aggregate 7,000 square foot size limit. Intergenerational homes must be also clustered together with the farmhouse. As such, farm owners or operators and their designees can choose to live in either one large farmhouse, or a group of smaller houses.

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The County has found, based on their extensive work with the farming community and other agricultural stakeholders (including Marin County Farm Bureau and University of California Cooperative Extension), that intergenerational homes would provide a necessary avenue for family farming operations to continue. Throughout the LUP update process, the agricultural community expressed a need for greater flexibility with respect to farm housing, particularly since the majority of Marin's coastal agricultural operations are third and fourth generation family farms with the average age of the farm owner at nearly 60 years old. The need to allow a younger generation to take over the agricultural operation without either forcing them or their retired parents to live off the land is the overall intent of intergenerational homes. The currently certified LCP does not allow for more than one home per C-APZ parcel; thus, the property owner must divide his/her property into a separate lot in order to allow for the family member to live and work on the property. The County expects that allowing for intergenerational homes on the agricultural parcel will relieve the pressure to divide agricultural property, and therefore help keep the maximum amount of land in parcels large enough to support agricultural production.

Further, the proposed LUPA, as modified, provides numerous restrictions with clear and enforceable development parameters to limit the development footprint and coastal resource impacts of intergenerational homes. As proposed, the homes cannot be divided from the rest of the agricultural legal lot, and must maintain the C-APZ district's required 60 acre density, meaning that an intergenerational home would only be allowed when a lot is at least 120 acres, and a second intergenerational home is only allowed when the lot is at least 180 acres. The LUPA further requires a new restriction on the combined total size of homes allowed on C-APZ land: 7,000 square feet. The LUPA also proposes to retain the existing requirement that agricultural dwellings be placed, along with other permissible development, on a total of no more than 5% of the gross acreage, with the remaining 95% of land used for agricultural production or open space. As modified, C-AG-5 also requires that intergenerational homes only be occupied by persons authorized by the farm owner or operator and that they not be divided from the rest of the legal lot, which means that intergenerational homes remain tied to the farm owner or operator and cannot be sold to another party.

In the existing LCP, there is no limit on the size of a house in the C-APZ zone. The overall size limit required by C-AG-5, in conjunction with the ability to develop up to 3 homes within that size limit, support the continued operation of a farm or ranch and reduce the likelihood of a ranch being sold off to a buyer who may be more interested in using the property as an estate rather than maintaining ag operations. Thus, whereas a single home could be allowed at 8,000 square feet under the existing LUP, the amended LUP would limit the home to 7,000 square feet, and in fact would limit all of the homes to this aggregate limit. Another way of looking at the intergenerational homes in this context is that they are simply clustered homes that together might be as large as might be pursued for a single home under the current LUP.

Finally, the County analyzed the development potential of each agricultural parcel in the coastal zone, finding that of the 193 parcels not in public ownership, 40 are restricted by Marin Agricultural Land Trust (MALT) easements, and 123 are restricted by Williamson Act parcels. Assuming that MALT parcels would not be allowed additional development, and Williamson Act

parcels are only allowed one farmhouse per parcel, the County determined that the maximum potential number of intergenerational units that could be allowed in the coastal zone is 27. As modified, the LUPA would cap the total number of units at 27. Therefore, the total number of intergenerational units is strictly limited. This limit, together with the size limits and cluster requirement, ensures that intergenerational housing will not adversely impact agricultural resources, and that future changes, such as the loss of Williamson Act contracts, will not lead to a proliferation of intergenerational homes.

Principally Permitted Uses (PPUs)

Public comments assert that the proposed LUPA, as modified, would greatly increase the amount of development that could be principally permitted, and that such a change will impact the public's ability to participate in the coastal development permit process in the County. However, the proposed LUPA, as modified, actually narrows the amount of development that would be principally permitted, as compared to the existing LCP. Further, both the existing certified and proposed implementation plan allows all coastal development permits to be appealed to the County Planning Commission for a full public hearing, and therefore, the public has the ability to participate in the process for all coastal development permits, not just appealable coastal development permits.

Coastal Act Section 30603 authorizes appeals to the Commission of development approved by the County that is not designated as the principally permitted use (PPU) under the LCP. The Commission's past practice has been to encourage local governments that designate more than one PPU in the same zoning district (for example visitor serving, agriculture and residential) to confine their PPU to one type of use per zoning district or at least designate one type of use in each zoning district as the PPU for purposes of appeal to the Commission. Under the existing LCP, Marin has designated three different types of uses as principally permitted in the C-APZ district: single-family residences (a residential use); bed and breakfasts (a visitor-serving use); and agricultural uses. Although the LCP also requires a master plan approval prior to approving principally permitted uses, the master plan can be waived in any case that the Planning Director thinks is appropriate. In addition, the LCP expressly allows for waivers of the master plan requirement for single-family residential development. On the other hand, the LUPA only allows for one type of use – agriculture – as the principally permitted use on C-APZ lands, consistent with Section 30603. Specifically related to residential uses, single-family residences are currently principally permitted, but in the LUPA, only farmhouses owned by the farm owner or operator are principally permitted. In addition, the LUPA provides clear limits on development of agricultural dwelling units, while the existing LCP relies on the master plan requirement to ensure appropriate standards are met, but also allows the master plan requirement to be waived. As stated previously, according to the County, the master plan requirement has never been utilized, because it has always been waived.

Moreover, allowing both agricultural production and the facilities necessary to support agricultural production as forms of the principally permitted use of agriculture is appropriate in Marin County's agricultural production zone not only because sustainable agricultural operations are critical to the long-term viability of agriculture in Marin but also because development of agricultural uses does not involve a conversion of agricultural land to a non-

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agricultural use. As such, these uses do not involve a conversion of agricultural land to a non-agricultural use that is regulated by Coastal Act Sections 30241 and 30242.

In addition, in order for a farmhouse owned by a farm owner or operator to be considered a PPU, the farmhouse is subject to limitations and development standards including a combined total square footage maximum per farmer or operator, a limitation on subdivision of the property containing the farmhouse, a minimum parcel size of 60 acres, and clustering requirements. As currently modified, C-AG-5 limits every farm owner or operator to a combined total of 7,000 square feet that may be used as an agricultural dwelling, whether in a single farmhouse or combination of smaller farm dwellings. While a farm owner or operator are by definition involved in agricultural use of the property, the proposed implementation plan that will come before the Commission expressly includes the requirement that the farm owner or operator be “actively and directly engaged” in agricultural use of the property. An additional suggested modification to C-AG-5 imports this proposed implementation standard directly into C-AG-5. By ensuring that the farm owner or operator is “actively and directly engaged” in agricultural use of the property, the proposed LUPA as modified further ensures that the farm owner is using the property for an agricultural use rather than converting the property to a non-agricultural residential use.

Finally, classifying employee housing as a form of the PPU of agriculture is consistent with other state laws that decree employee housing to be an agricultural use such as Health and Safety Code section 17021.6 which states that: “any employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces for use by a single family or household shall be deemed an agricultural land use designation” and “employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use.”

Categorical Exclusions

Several public comments indicate that agricultural activities should require CDP authorization. However, much agriculturally related development is categorically excluded from permit requirements unless it is located in sensitive geographic locations which are otherwise appealable. In Marin County, the Commission issued the County Categorical Exclusion Orders E-81-2 and E-81-6, which exclude from coastal permit requirements agriculturally-related development, including production activities, barns and other necessary buildings, fencing, storage tanks and water distribution lines, and water impoundment projects. These exclusions apply to parcels zoned C-APZ at the time of the exclusion orders’ adoption if those parcels are located outside the statutorily proscribed exclusion areas as well as outside of the area between the sea and the first public road or half-mile inland, whichever is less. Also, such excludable development must still be found consistent with the zoning in effect at the time of the orders’ adoption (meaning the existing certified LCP). As such, development must still meet the LUP’s requirements that development be clustered on no more than five percent of the gross acreage; be outside of wetlands, streams, and their 100 foot buffers; not obstruct significant views as seen from public viewing places; and have adequate water supply, among other requirements. In addition, intergenerational homes cannot be excluded because they were not an allowed use on C-APZ lands when the Orders were adopted. Even with these caveats, much of the agricultural development within the coastal zone can be excluded per the Exclusion Orders.

2. Modify C-AG-2, C-AG-5 and C-AG-7 on Exhibit 6, as follows:

Amend Policy C-AG-2(4) on Page 16 of Exhibit 6 as follows:

4) One farmhouse or a combination of one farmhouse and one intergenerational home per legal lot, consistent with ~~the size limits of~~ C-AG-5, including combined total size limits ~~and C-AG-9~~;

5) Agricultural worker housing, providing accommodations consisting of no more than 36 beds in group living quarters per legal parcel or 12 units or spaces per legal lot ~~parcel~~ for agricultural workers and their households;

...

Conditional uses in the C-APZ zone include a second intergenerational home per legal lot, agricultural product sales and processing of products not grown on-site, for-profit educational tours, agricultural homestay facilities, agricultural worker housing above 12 units per legal lot, and additional agricultural uses and non-agricultural uses including residential development potentially up to the zoning density, consistent with Policies C-AG-5, 6, 7, 8 and 9.

Amend Policy C-AG-5 on Page 18 of Exhibit 6 as follows:

C-AG-5 Agricultural Dwelling Units (Farmhouses, Intergenerational Housing, and Agricultural Worker Housing). Support the preservation of family farms by facilitating multi-generational operation and succession. Agricultural dwelling units may be permitted on C-APZ lands subject to the policies below, as well as any applicable requirement in C-AG-6, 7, 8, and 9, and all other applicable requirements in the LCP. Agricultural dwelling units must be owned by a farmer or operator actively and directly engaged in agricultural use of the property. No more than a combined total of 7,000 sq ft may be used as an agricultural dwelling by the farm owner or operator, whether in a single farmhouse or in a combination of a farmhouse and intergenerational homes(s). Only a single farmhouse or a combination of a farmhouse and intergenerational home(s) with the combined total of 7,000 square feet may be allowed for each farm owner or operator actively and directly engaged in agriculture, regardless of the number of legal lots each farm owner or operator owns... ~~Where a legal lot is less than 60 acres,~~ ~~¶~~The reviewing authority shall consider all contiguous properties under the same ownership to achieve the requirements of the LCP....

Amend Policy C-AG-7(A)(4) on Page 19 of Exhibit 6:

In order to retain the maximum amount of land in agricultural production or available for future agricultural ~~uses~~ production, farmhouses, intergenerational homes, and agricultural homestay facilities all infrastructure and structural development (e.g. agricultural accessory structures, other agricultural uses, and roads) shall be placed in one or more groups along with any nonagricultural development on within a clustered development area of a total of no more than five percent of the gross acreage, to the extent feasible,

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with the remaining acreage retained in or available for agricultural production or open space.

All new structural development shall be clustered within existing developed areas, except when:

- (a) placement outside such areas is necessary for agricultural operations (e.g. when a more remote barn is required in a different part of the property to allow for efficient agricultural operations); or
- (b) when placement inside such areas would be inconsistent with applicable LCP standards (e.g. when such placement would be within a required stream setback area).

In the latter case, new development shall be placed as close as possible to the existing clustered development area in a way that also meet applicable LCP standards.

Development shall be located close to existing roads, and shall not require new road construction or improvements resulting in significant impacts on agriculture, natural topography, major vegetation, or significant natural visual qualities of the site. Development shall be sited to minimize impacts on coastal resources and adjacent agricultural operations and shall be designed and sited to avoid hazardous areas.

3. Add findings to the Agriculture Section “G. Other” on Page 35 of the staff report, as follows:

G. Other

Further, as modified, when reviewing a coastal permit application for development, the County retains the right to look at all contiguous properties under common ownership to determine impacts to coastal resources and consistency with LCP requirements. This provision is particularly important for agricultural operations, which often consist of multiple separate legal ~~parcels~~ lots owned by one or more owners but altogether constitute one unified farming operation. Thus, in order to meet LUP agricultural protection policies, including a finding that development is necessary for on-site production, it may be necessary to review all of the parcels that altogether constitute the farming operation, including by stating that on-site farming operations may include multiple separate legal parcels. Thus, a ~~suggested modification is included in Policy C AG 2 to clarify the IP’s requirement that the County (and Coastal Commission on appeal) may include all contiguous properties under the same ownership when reviewing a coastal permit application.~~ A suggested modification is ~~also~~ required in Policy C-AG-5 that states that, ~~when reviewing applications for farmhouses where the legal lot is less than the required 60-acre density,~~ the reviewing authority shall consider all contiguous properties under the same ownership to achieve the requirements of the LCP. The intent behind this suggested modification is to require development proposals on substandard lots to consider whether such development can be accommodated on contiguous legal lots.

Further, Policy C-AG-7(A)(4), as modified, requires all infrastructure and structural development to be placed within a clustered development area of a total of no more than five percent of the gross acreage, to the extent feasible. The policy also requires all structural development to be clustered within existing developed areas, with two exceptions: when placement elsewhere is necessary for agricultural operations or when placement would create

an inconsistency with other LUP policies, such as for stream/wetland setbacks. However, the suggested modifications as written are contained in one paragraph and therefore group different requirements together. Instead, the policy needs to group different requirements into different paragraphs to make clear that, for example, all development (and not just development outside the developed cluster area) needs to be located close to existing roads and minimize impacts on coastal resources. This modification does not change the substantive language of the policy; it simply changes its grammatical structure to more clearly list the applicable development standards.

...

4. LUP Background Text

The staff report included a suggested modification to clarify that the background text at the beginning of each LUP chapter provides broad context for the issue area, including, for example, describing the existing conditions and general issues facing agriculture in coastal Marin, but that the background text in and of itself shall not be used for coastal permit decisions. In further discussion with County staff, they recommend a modification to the proposed language by removing the terms “by itself” to further clarify the County’s original intent that only the numbered policies would be the standard of review for issuance of coastal permits. Commission staff concurs with the County’s recommendation, since the terms “by itself” are not necessary, including because in all situations an enumerated policy would be the standard of review for determining whether a project is consistent with the LUP. Thus, the staff report dated prepared May 2, 2014 is modified as follows:

Amend the following text before “Affordable Housing” and just below “8. Other” on Page 72 of the staff report as follows:

The LUP begins with a chapter titled “Interpretation of the Land Use Plan”, which describes how the LCP works in conjunction with other local, state, and federal laws. It also provides guidelines for how to interpret LUP policies, including clarifying that LCP policies take precedence and supersede any conflicting non-LCP policy in the coastal zone. However, the policy does not address how language within the LCP should be interpreted, including how background text at the beginning of each LUP chapter relates to the chapters’ subsequent enumerated policy language. The County has stated that its intention is to have the background text be used for broad guidance, and that only the policies themselves would be used as legal standards of review. To eliminate potential confusion in how to interpret LCP provisions, a suggested modification is thus required in Policy C-INT-2 to clarify that the introductory background text in each chapter provides broad context for the issue areas, but shall not be used ~~by itself~~ as the legal standard of review for coastal permit decisions.

Amend Policy C-INT-2 on Page 9 of Exhibit 6 as follows:

C-INT-2 Precedence of LCP. In the coastal zone, ~~T~~he LCP supersedes and takes precedence over other local plans, policies and regulations, including any conflicting provisions of the Countywide Plan, Community Plans and relevant sections of the Marin

County Code. Provisions that are not addressed by the Coastal Act and the LCP (e.g., policies that address education, diversity, public health, etc.) that apply throughout the County, also apply within the Coastal Zone, but not in a coastal permit context. Broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies. The introductory background text in each chapter provides some broad context for each chapter, but shall not be used as the legal standard of review by itself for coastal permit decisions.

6. Protection of Visual Resources

Policy C-DES-2, as modified, requires development to be sited and designed to protect significant views, and defines significant views to include views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and water used for recreational purposes. Since the staff report was published, staff has received correspondence from the public requesting that the policy's term "to and along the coast" be replaced with "to and along the ocean and scenic coastal areas", since the latter language is directly from Coastal Act Section 30251. Since the suggested language is directly from the Coastal Act, staff concurs and recommends that the staff report dated prepared May 2, 2014 be modified as follows:

Add the following text as the third paragraph after the words "... (see page 107 of Exhibit 6)." and before "Third, Policy C-DES-2 requires..." on Page 45 of the staff report as follows:

Furthermore, Policy C-DES-2 requires development to be sited and designed to protect significant views, and defines significant views to include views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and water used for recreational purposes. While the policy's term "to and along the coast" is expansive, it does not exactly match Coastal Act Section 30251's language of "to and along the ocean and scenic coastal areas". As such, a suggested modification is required in Policy C-DES-2 to replace the term "to and along the coast" with "to and along the ocean and scenic coastal areas," thereby ensuring that Section 30251's precise language is listed in the LUP and ensuring that all scenic coastal areas, and not just those directly along the water, are protected.

Amend Policy C-DES-2 on Page 64 of Exhibit 6:

C-DES-2 Protection of Visual Resources. ~~Ensure appropriate Development shall be siteding and designed of structures~~ to protect significant views, including views both to and along the ocean and scenic coastal areas ~~coast~~ as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes. The intent of this policy is the protection of significant public views rather than coastal views from private residential areas. Require development to be screened with appropriate landscaping provided that when mature, such landscaping shall not interfere with public views to and along the coast. The use of drought tolerant, native coastal plant species is encouraged. Continue to

keep road and driveway construction, grading, and utility extensions to a minimum, except that longer road and driveway extensions may be necessary in highly visible areas in order to avoid or minimize other impacts.

7. Residential Uses in Coastal Villages

Policy C-PK-3, as modified, only allows residential uses on the ground floor of a new or existing structure on the road-facing side of the property where a finding is made that the development maintains and/or enhances the established character of village commercial areas. This policy applies to all development zoned Coastal Village Commercial/Residential (C-VCR), which contains structures located along the primary commercial streets in the coastal zone's villages, but also along side streets that include residential development as well as commercial development, including single-family residences. In further discussions with County staff, the intent is to govern the commercial core of the villages, which does not necessarily include all areas designated C-VCR. Thus, it is appropriate to limit the required finding that ground-floor residential uses enhance the established character of village commercial areas to development within the village commercial core. In addition, the suggested modification added language allowing existing legally established residential uses in the C-VCR zone on the ground floor and road-facing side of the property to be maintained *where otherwise LCP consistent*. This last provision of "where otherwise LCP consistent" is redundant since the policy already only applies to "existing legally established residential uses." Therefore, the phrase "where otherwise LCP consistent" can be deleted. Thus, the staff report dated prepared May 2, 2014 is modified as follows:

Amend the following text on Page 52 of the staff report as follows:

The C-VCR zoning district implements key Coastal Act and LUPA objectives of providing visitor-serving commercial uses (Section 30222) in existing developed areas (Section 30250). ... Thus, modifications are required that: 1) designate commercial uses as the sole principal permitted use and residential uses as permitted or conditional uses (to be consistent with Coastal Act Section 30603 that each zoning district contain one principal permitted use and to recognize that commercial uses are the primary uses sought for this zoning district); 2) directs new residential uses to either the upper floor of a mixed-use building or the lower floor if not located on the road-facing side of the street; and 3) requires a finding for any residential development in the village commercial core area on the ground floor of a new or existing structure on the road-facing side of the property that the development maintains and/or enhances the established character of village commercial areas...

Policy C-PK-3 on page 123 of Exhibit 6:

C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone. Continue to permit a mixture of residential and commercial uses in the C-VCR zoning district to maintain the established character of village commercial areas. Principal permitted use of the C-VCR zone shall include commercial and residential uses. ~~Require a Use Permit for~~ Residential uses shall be limited to: (a) the upper floors, and/or (b) the lower floors if not located on the road-facing side of the property. In the village commercial core area, Residential uses on the ground floor of a new or existing structure of the road-facing side of the property shall only be allowed subject to a use permit where a finding

~~can be made that the development maintains and/or enhances the established character of village commercial areas. Existing legally established residential uses in the C-VCR zone on the ground floor and road-facing side of the property can be maintained where otherwise LCP consistent. proposed on the ground floor of a new or existing structure on the road-facing side of the property. Replacement, maintenance and repair of any legal existing residential use shall be exempt from the above provision and shall be permitted.~~

8. Community Plans

Commission staff has received public comments addressing the status of the Muir Beach Community Plan. As discussed on Page 22 of the staff report, the only two community plans that have been certified by the Coastal Commission to be part of the LCP are the Bolinas Gridded Mesa Plan and the Dillon Beach Community Plan. While the Muir Beach Community Plan was never specifically certified by the Commission, in *Hyman v. California Coastal Commission*, the Marin County Superior Court held that the Muir Beach Community Plan was incorporated into the certified Unit 1 Land Use Plan. The County decided not to submit the Muir Beach Plan as part of its LUP, thus effectively proposing to remove it from the LUP to the extent the court case means it is currently a part of the existing LUP. In its place, the proposed LUP includes many of the Muir Beach Plan's applicable standards directly into the LUP, including Policy C-MB-1, which requires the maintenance of the small-scale character of Muir Beach. Therefore, to clarify the status of the Muir Beach Community Plan, the staff report dated prepared May 2, 2014 is modified as follows:

Add the following text after "...development within the zone would not be exposed to coastal hazards)." on Page 23 of the staff report as follows:

The Muir Beach Community Plan was never specifically certified by the Commission; however, the Marin County Superior Court in Hyman v. California Coastal Commission held that the Muir Beach Community Plan was incorporated into the certified Unit 1 Land Use Plan. The County has not submitted the Muir Beach Plan as part of its comprehensive LUP amendment, thus effectively proposing to remove it from the LUP to the extent the court case means it is currently a part of the existing LUP. In its place, the proposed LUP incorporates many of the Muir Beach Plan's applicable standards directly into the LUP, including Policy C-MB-1, which requires the maintenance of the small-scale character of Muir Beach. Other LUP policies, including those for building height and significant view protections, are also partly derived from the Muir Beach Community Plan.

CALIFORNIA COASTAL COMMISSION

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Prepared May 2, 2014 (for May 15, 2014 hearing)

Th12a

To: Coastal Commissioners and Interested Persons

From: Madeline Cavalieri, District Manager
Kevin Kahn, District Supervisor, LCP Planning

Subject: **Marin County Local Coastal Program Amendment Number LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update).** Proposed major amendment to the certified Marin County Local Coastal Program's Land Use Plan to be presented for public hearing and Commission action at the California Coastal Commission's May 2014 meeting in Inverness. The amendment comprehensively updates the existing certified LCP's Land Use Plan.

DESCRIPTION OF SUBMITTAL

The County of Marin is proposing to comprehensively update its Local Coastal Program (LCP)'s Land Use Plan (LUP). The current LCP was originally certified, with the County assuming coastal development permitting (CDP) authority, in May of 1982. The proposed LUP is the result of nearly five years of public involvement, formal hearings, and extensive deliberation by the Marin County Planning Commission and Marin County Board of Supervisors. The Planning Commission conducted nineteen public workshops between 2009 and 2011, followed by nine public hearings to evaluate the proposed draft. Subsequent to Planning Commission approval in early 2012, the Board of Supervisors held seven additional public hearings, concluding with approval of the LCP in 2013. County staff has offered an open, inclusive, and collaborative dialogue with Commission staff, including early consultation on issues to be addressed in the update.

The County's extensive consultation and hearing process has informed the staff's recommendation, especially given that the County's record contains extensive public comments about the County's proposed revisions. The staff recommendation has also benefitted from public comment that was received from interested stakeholders and community groups over recent years on issues raised by the submittal, such as the public input provided during the Commission's Workshop on Agriculture a year ago. For example, the public provided significant input to the Commission and its staff during the Commission's Workshop on Agriculture including: (1) numerous requests by the farming community to maximize the use of the Coastal Act's procedural tools to exempt and streamline permit processing; (2) requests by interested persons to safeguard the public participation and appeal rights of the public in conjunction with that streamlining; and (3) requests by local governments to maximize their ability to tailor their LCP to their particular local government situation.

SUMMARY OF STAFF RECOMMENDATION

Marin County contains approximately 106 miles of coastline from the Sonoma County border in the north to Point Bonita near the Golden Gate Bridge in the south. The coastal zone totals roughly 130 square miles (82,168 acres) of the County's 520 square miles of total land area. Of this total, approximately 53 square miles (33,913 acres) are owned and managed by the federal government, mostly within either Point Reyes National Seashore or Golden Gate National Recreation Area. Approximately 75 square miles (48,255 acres) comprise the County's LCP jurisdiction. Nearly two-thirds of the County's LCP jurisdictional area (30,781 acres out of the total 48,255 acres) is zoned Coastal Agricultural Production Zone (C-APZ), the LCP's primary agricultural zoning classification, making agriculture, and its protection, a primary LUP concern.

Staff's recommendation for approval with modifications addresses LUP provisions related to the protection of agriculture, ESHA, and wetland areas; provision of public recreational access; protection of visual resources; adequacy of public services (including related to transportation, water, and wastewater capacities, particularly for Coastal Act priority land uses); and coastal hazards protection policies, including for both new development (by requiring hazards issues to be studied and addressed in the siting and design of new development) and existing development (e.g., defining what types of improvements to existing structures constitute new development and therefore require adherence to all applicable LCP policies). These modifications range from targeted revisions needed to ensure that the objectives of the Coastal Act are clearly articulated (e.g., the modifications to shoreline hazards protection as stated above), to minor changes, such as clarifying that certain development standards (for example, height and density) are maximums and not entitlements. The following contains an overview of the County's submittal and the suggested modifications required to achieve Coastal Act consistency.

Agriculture

Nearly two-thirds of the Marin County coastal zone is zoned Coastal Agricultural Production Zone (C-APZ), the LCP's primary agricultural zoning designation. Thus, the LUP's policies addressing agricultural protection, including allowable land uses on C-APZ land and the applicable resource protection standards that development must meet, are of paramount concern and importance in ensuring development within Marin's coastal zone is consistent with the Coastal Act.

The primary intent of the proposed LUP's agriculture policies is, as stated in Policy C-AG-1: to protect agricultural land, continued agricultural uses, family farming, and the agricultural economy. It seeks to do so by maintaining parcels large enough to sustain agricultural production, preventing conversion to non-agricultural uses, providing for diversity in agricultural development, facilitating multi-generational operation and succession, and prohibiting uses that are incompatible with long-term agricultural production or the rural character of the coastal zone. The protection of both agricultural production and the agricultural economy, including in relation to allowing uses that are incidental to and supportive of agricultural production, are clear objectives for the County's proposed agriculture policies.

One of the primary differences between the existing and proposed LUP is which uses are considered a principally permitted use (PPU) in the Agricultural Production Zone (C-APZ) and which are considered a conditional use in this zone. Currently, the certified LCP does not

designate any one principally permitted use in the C-APZ zone. Principally permitted uses in the C-APZ zone include agricultural uses (defined as uses of land to grow and/or produce agricultural commodities for commercial purposes), one single-family residential dwelling, and agricultural accessory structures (including barns, fences, stables, and utility facilities). In addition to agricultural and residential uses, the certified zoning code identifies a visitor serving B&B as another type of PPU in the C-APZ zone. In contrast, conditional uses include farm worker housing and facilities for the processing of agricultural products. Thus, several types of agricultural development are considered conditional in the agricultural production zone, and thereby appealable to the Coastal Commission, even where such development is clearly necessary to agricultural production. Conversely, some currently certified principally permitted uses in the C-APZ zone are not agricultural uses.

The proposed LUPA designates a single use, agriculture, as the PPU for the C-APZ zone. By confining the PPU in the C-APZ zone to one PPU, agriculture, the protection of both agricultural production and the agricultural economy is strengthened. The proposed LUPA would include several new types of agricultural development within the C-APZ's PPU designation of agriculture, but would confine the development types to agriculture. The types of agricultural development which is considered within the PPU designation of agriculture encompass activities essential to the viability of agricultural operations and thereby the long-term preservation of agriculture. In an area characterized by farms, such as Marin County, agricultural dwellings located on the property for farm workers, owners or operators are an essential part of the agricultural operation. For example, to adequately tend livestock or milk cows, the operator must be in close proximity to the agricultural operation. Visitor serving uses and residential uses unrelated to agricultural production would become conditional uses while some of the agricultural uses that are currently conditional would become principally permitted.

Another primary goal for the County is fostering multi-generational succession in family farming operations. Thus, the LUPA proposes a new type of agricultural land use within the umbrella of the C-APZ's PPU of agriculture: intergenerational homes. The intent of these homes is to allow for the preservation of family farms by facilitating multi-generational operation and succession by allowing family members to live on the farm. While the current LUP only allows one single-family residence per parcel, as proposed in Policy C-AG-5, one intergenerational home (in addition to a farmhouse) would be permitted for members of the farm operator's or owner's immediate family as a principally permitted agricultural use. A second intergenerational home may be permitted as a conditional agricultural use (thereby subject to appeal to the Commission). As proposed, the homes cannot be divided from the rest of the agricultural legal lot, and must maintain the C-APZ district's required 60 acre density, meaning that an intergenerational home would only be allowed when a parcel is at least 120 acres, and a second intergenerational home is only allowed when the parcel is at least 180 acres. The LUPA further requires a new restriction on the combined total size of homes allowed on C-APZ land: 7,000 square feet. The 7,000 square foot maximum is a cap on the aggregate size of all homes allowed, meaning that a farmhouse and intergenerational home would have to average 3,500 square feet or less in order to be consistent with the LUPA's home size limit. The LUPA also proposes to retain the requirement that agricultural dwellings be placed, along with other permissible development, on a total of no more than 5% of the gross acreage, with the remaining 95% of land used for agricultural production or open space.

Many aspects of the proposed LUPA's policies on agricultural protection are consistent with the Coastal Act and provide added resource protection as compared with the existing certified LUP. For example, even though the existing certified LUP contains strong standards that apply to all development pursuant to its master plan requirement, because of the master plan's ability to be waived at the Planning Director's discretion, such standards have, in practice, rarely been implemented. The proposed LUPA replaces the rather uncertain implementation of the master plan with definitive CDP standards that cannot be waived. This change inherently strengthens the LUPA because it provides for more objective and more consistently applied standards as compared with the current LUP.

Staff has suggested modifications to further strengthen the proposed LUPA consistent with the Coastal Act policies requiring the protection and maintenance of agricultural production and the agricultural economy. Proposed LUPA Policy C-AG-7(A) defines the PPU of agriculture to include not only land in agricultural production but also structural development needed to conduct those agricultural operations. However, as proposed, agricultural processing facilities would not be required to minimize their footprint on the rural landscape or be incidental to the primary function of the C-APZ: the growing of food and fiber. Thus, suggested modifications are necessary throughout Policy C-AG-7 to ensure that even though uses such as barns and processing facilities may be necessary for agricultural production and are considered agricultural, all development must protect and maintain land for agricultural production consistent with the requirements of Coastal Act sections 30240 and 30241.

Other modifications are required to further refine the development parameters that particular uses must meet in order to be found necessary for agricultural production. These modifications include requiring only the processing and sale of agricultural products grown on-site to be considered a type of development within the principally permitted use of agriculture, requiring an agricultural worker housing needs assessment for any application for worker housing greater than the 12 units authorized by state housing law, and classifying agricultural homestay facilities, which are similar to bed and breakfasts, as conditional agricultural uses since this type of use brings in supplemental income but is not necessary for agricultural production itself. In terms of dwellings allowed on C-APZ land (i.e. farmhouses, intergenerational homes, and agricultural worker housing), modifications are required to clarify that only one farmhouse and one intergenerational home subject to the 7,000 square foot aggregate size cap, and only agricultural worker housing subject to the LUPA's (and state housing law's) density standard of twelve units per parcel, are principally permitted agricultural land uses. The LUPA's requirement that occupants of intergenerational homes can only be family members and do not have to be actively or directly engaged in agricultural use is also suggested for removal, including because state and federal housing laws prohibit regulating housing based on familial status. Instead, the agricultural dwelling or dwellings, if owned by a farm owner or operator, may be occupied by any person authorized by that farm owner or operator, as long as the aggregate dwelling size of all agricultural dwellings is confined to no more than 7,000 square feet, the dwelling meets the 60 acre minimum density requirements and the agricultural dwelling is not divided from the rest of the legal lot. Thus, as modified, if the required 120 acre density is met (60 acres per unit), the owner/operator is thus allowed either one 7,000 square foot farmhouse, or one 3,500 square foot

farmhouse and one 3,500 square foot intergenerational home clustered together (the clustering requirement is proposed by the County). These limitations supplement an already certified limitation retained by the County in its proposed LUPA that development be clustered on no more than 5% of the gross acreage of the parcel, to the extent feasible.

Further, in order to account for any change in future conditions (including changes to Williamson Act laws, rezonings, subdivisions, etc.) such that the allowance for intergenerational homes does not overburden the coastal zone with additional intergenerational homes unforeseen under today's conditions, a suggested modification is required in Policy C-AG-5 to place a cap of no more than 27 intergenerational homes allowed throughout the coastal zone, which is the amount of such homes estimated by the County to be possible for all the County's C-APZ coastal zone lands. Once this threshold is reached, an LUP amendment authorizing additional units, and analyzing the impact such additional units would have on agricultural resources as protected by the Coastal Act, is required.

In its review of the proposed LUP amendment, Commission staff recognizes that the Commission issued the County Categorical Exclusion Orders E-81-2 and E-81-6, which exclude from coastal permit requirements agriculturally-related development, including production activities, barns and other necessary buildings, fencing, storage tanks and water distribution lines, and water impoundment projects. By statute, Categorical Exclusion Orders do not apply to tide and submerged lands, beaches, lots immediately adjacent to the inland extent of any beach, or lands and waters subject to the public trust. Further, the Exclusion Orders only apply to parcels zoned C-APZ at the time of the exclusion orders' adoption if those parcels are outside of the area between the sea and the first public road or a half-mile inland, whichever is less, and if such excludable development is consistent with the zoning in effect at the time of the orders' adoption (meaning the existing certified LCP). As such, development must still meet the LUPA's requirements that new development be clustered, be outside of wetlands and their buffers, and not be built on steep slopes above 35%. Even so, there is a significant amount of agricultural development within the coastal zone that is excluded from coastal development permit requirements pursuant to the Exclusion Orders adopted by the Commission in 1981-1982.

Where appropriate, the processing of agricultural development that has not been categorically excluded pursuant to a Commission-approved Exclusion Order (such as intergenerational homes because it was not an allowed use when the Orders were adopted) is also eligible for streamlining in the certified LCP. Several of these streamlining measures will be considered by the Commission when it reviews the procedures proposed by the County in its implementation plan amendment. These streamlined procedures include de minimis waivers of CDP requirements for non-appealable development (proposed IP Section 22.68.070) and public hearing waivers for appealable development (proposed IP Section 22.70.030(B)(5)). The ability of the County to use a de minimis waiver stems from Coastal Act Section 30624.7, while the ability of the County to use a waiver of a public hearing for appealable development stems from Coastal Act Section 30624.9.

The main streamlining tool available for the County in the context of its proposed LUPA is its ability to identify a use as the principally permitted use. For example, as discussed above, agriculture is the principally permitted use in the C-APZ zone. The permit processing of

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principally permitted uses involves a more streamlined process than the permit processing conditionally permitted uses, because the latter also require action on use or other discretionary permits. If a County approves a type of development that is designated as the principally permitted use under the zoning ordinance, it will not be appealable to the Commission unless it is otherwise appealable pursuant to Coastal Act section 30603. Accordingly, even though development types which comprise the principally permitted use of agriculture are not appealable based on their use type, the appeal rights of the public are still protected if such development is appealable on a different basis, such as the development's geographic location.

Finally, as stated above, the proposed LUPA also streamlines the permit requirements for agricultural uses in the C-APZ district by maintaining the Coastal Permit requirement, but removing the need to obtain a Master Plan. The requirement to obtain a Coastal Permit and meet applicable development standards prior to approval accomplishes the function of a master plan without unnecessary and confusing duplication.

As modified, the LUPA's agricultural policies protect agricultural land, promote the agricultural economy, and foster family farming operations, all consistent with the County's objectives and the requirements of the Coastal Act.

Biological Resources and ESHA Protection

The Marin County coastal zone contains an extraordinary variety of habitat types and geologic features, including a broad range of estuarine and marine environments, tidal marshes, freshwater wetlands, streams, upland forests, chaparral, grasslands, dunes, and beaches. Because so much of the coastal zone is rural, the protection of these habitats, including through policies that specify allowable uses within them and clearly defined development standards, is critical.

The existing LUP defines the allowable uses within wetlands, streams, and other ESHA; requires buffers around them; and designates the allowable uses within the buffers. Specifically, the allowable uses within wetlands are those specifically allowed by Section 30233 of the Coastal Act, including commercial fishing facilities, incidental public service purposes, aquaculture, and resource-dependent uses. Allowable uses within streams are those specified by Coastal Act Section 30236, including necessary water supply projects, flood control projects, and fish and wildlife enhancement projects. No development is allowed within coastal dunes, and for "other ESHA," defined to include habitats of rare or endangered species and unique plant communities, only resource-dependent uses are allowed, consistent with Coastal Act Section 30240. In terms of buffers, the LUP requires 100 foot buffers around wetlands and streams, and the only allowed uses within the buffers are those that are allowed within the wetland/stream itself. For other ESHA, the LUP requires development to be set back a sufficient distance to minimize impacts on the habitat area.

The LUPA's proposed biological resources policies retain the existing LUP's requirements that limit the allowable uses within the particular resource type, including for wetlands, streams, and terrestrial ESHA, but also provide additional detail and clarity over the existing LUP in terms of biological resource protection standards. Foremost, the LUPA now requires development proposals within or adjacent to ESHA to prepare a biological site assessment prepared by a qualified biologist. The purpose of the assessment is to confirm the existence of ESHA,

document site constraints, and recommend precise buffer widths and siting/design techniques required to protect and maintain the biological productivity of the ESHA. Such a requirement is a new program in the LUPA and will help provide detailed site-specific development parameters so as to protect sensitive coastal resources. The LUPA retains the existing requirements for buffers around ESHA, 100 feet for wetlands and streams and a newly defined 50 feet for terrestrial ESHA, and also maintains that the uses allowed within buffers are only those that are allowed within the ESHA itself (except for terrestrial ESHA, wherein any use is allowed within the buffer so long as it does not significantly degrade the habitat). However, while the existing LUP allows for a reduction in buffer width only for streams, the proposed LUPA allows for a reduction in the required buffer to an absolute minimum of 50 feet for both wetlands and streams, and no absolute minimum for terrestrial ESHA. Any buffer reduction may only be allowed upon required findings of the biological site assessment and upon a project condition that there be a net environmental improvement (including elimination of non-native or invasive species) over existing conditions.

The LUPA policies have been reviewed and developed with recommendations from the Commission's Senior Ecologist, Dr. John Dixon, and generally reflect the Commission's best practices in terms of LCP requirements for resource protection. While a few suggested modifications are required to clarify terms and strengthen some standards (e.g. requiring an absolute minimum buffer of 25 feet around terrestrial ESHA), the LUPA as proposed and as modified provides a more encompassing definition of ESHA, requires detailed site-specific biological assessments to protect it, and the allowed land uses within such resources are fully consistent with those specified by the Coastal Act.

Coastal Hazards

As stated above, Marin County contains 106 miles of coastline, stretching from just outside the Golden Gate Bridge, north to Bolinas Bay and Drakes Bay, around the Point Reyes Peninsula, south along Tomales Bay, and north to the Sonoma County line at Estero Americano near Bodega Bay. Communities including Stinson Beach/Seadrift, parts of Bolinas, and Marshall are all low-lying communities near the shoreline, while parts of Bolinas and Muir Beach are set upon large coastal bluffs subject to wave and tidal action. Thus, the protection from coastal hazards of the homes and infrastructure, including Highway 1, within these communities, including flooding, sea level rise, tsunamis, and bluff retreat, is a critical issue area of the LUPA.

The existing certified LUP requires all development within areas subject to geologic or other hazards to demonstrate that the area of construction is stable for development, that the development will not create a hazard or diminish the stability of the area, and that the development will not require the construction of protective devices. It defines "geologic or other hazards" as areas mapped as earthquake zones, areas subject to tsunami runup, landslides, liquefaction, beach and bluff erosion, over 35% slopes, and flood hazard areas. The LUP then contains specific requirements for blufftop development, including requiring new development to be setback a sufficient distance from the Bolinas and Muir Beach bluffs to ensure with reasonable certainty that development is not threatened from bluff retreat within its economic life expectancy, defined as 50 years. The existing LUP also requires all proposed development within 150 feet of a bluff or in mapped hazardous areas to produce a geotechnical investigation determining the bluff retreat rate and the appropriate siting and design necessary to ensure

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protection against hazards. In terms of shoreline development and flooding, new development is to be sited and designed so that no protective shoreline structures, including seawalls, groins, and breakwaters, will be necessary to protect structures during a 50 year economic life. The existing LUP allows shoreline protective structures subject to seven requirements that must all be met, including that the device is required to serve a coastal-dependent use or to protect existing endangered development, no other non-structural alternative is practical or preferable, the condition causing the problem is site specific and not attributable to a general erosion trend, and public access is not reduced, among others. If each of these tests can be met and the protective device is therefore allowed, the LUP requires the device to meet five design standards, including that it be as visually unobtrusive as possible, respect natural landforms, and minimize the impairment and movement of sand supply.

The proposed LUPA generally maintains and strengthens the existing certified LUP's hazards policies by requiring new development to be safe from geologic or other hazards. These policies include Policies C-EH-1 and -2, which ensure that new development during its economic life (now increased and defined as 100 years) is safe from and does not contribute to geologic or other hazards and that the development within its economic lifetime will not require a shoreline protective device. All applications for new development within identified hazard areas must include specific geotechnical studies to determine the extent and type of hazards on a site, and the specific siting and design measures that must be implemented to ensure hazards are addressed. For blufftop development, Policy C-EH-5 requires new structures to be set back a sufficient distance from the bluff edge, as determined by a geotechnical engineer, to reasonably ensure stability for its economic life and eliminate the need for a protective device. Policy C-EH-3 requires any development within a mapped hazardous area to record a document that specifically prohibits shoreline protective device protection. Policy C-EH-13 generally maintains the required criteria for allowing shoreline protective devices, including that the device is to protect a coastal-dependent use, that sand supply impacts are mitigated, and also requires a finding that no other non-structural alternative (such as beach nourishment or managed retreat) is feasible. Policy C-EH-14 maintains the required design standards for otherwise allowable devices, including that such devices blend visually with the natural shoreline and respect natural landforms to the greatest degree possible.

The LUPA also contains new policies meant to address new coastal hazards concerns and/or to expand on existing policies. Policies C-EH-7 and C-EH-16 prohibit permanent structures on bluff faces, with the exception of public beach access facilities, while Policy C-EH-15 allows accessory structures, including patios and gazebos, to be built within required hazard setback areas so long as they are built in a manner such that they could be relocated should they become threatened. Policies C-EH-11 and -12 address FEMA flooding requirements, including by allowing the height of new development in the Seadrift Subdivision to be measured from the base flood elevation (BFE) as opposed to existing grade, and by allowing existing structures that are non-conforming with respect to required yard setbacks to be raised above FEMA's required BFE without a variance. Finally, Program C-EH-22.a directs the County to prepare a vulnerability assessment from the potential impacts of sea level rise in the coastal zone. The assessment will identify the areas, assets, and infrastructure of the County most at risk from sea level rise, along with recommended responses to identified threats, including potential amendment of LCP policies to address coastal resource protection. The Commission recently

provided a LCP assistance grant to the County to do vulnerability assessment and develop LCP amendments to address such issues.

While the LUPA as submitted represents a comprehensive update to the hazards policies as compared to the existing certified LUP, certain modifications are necessary to ensure compliance with the Coastal Act, including in terms of articulating when a geologic hazards assessment is required and in defining how such policies apply to existing development, particularly for coastal redevelopment. The LUPA only allows shoreline protective devices to protect principal structures, residences, or second residential units in existence prior to May 13, 1982, the date in which the LCP was originally certified and CDP issuing responsibility was transferred to the County. However, missing from the LUPA are policies that address the point at which an “existing” structure has been improved so much that it no longer can be classified as existing but instead constitutes a new structure (one that must meet all applicable LUPA policies, including those for hazards protection). For example, in recent LCPs, including for Solana Beach, the Commission has defined “redevelopment” as the point at which additions and expansions, or any demolition, renovation or replacement, result in alteration or reconstruction of 50 percent or more of an existing structure. The intent is to require structures that are, for example, completely torn down and rebuilt to conform with applicable existing LCP policies, including being setback a sufficient distance so as to not be in a hazardous location and not require protection from shoreline devices. Thus, suggested modifications are required to add a definition of coastal redevelopment.

Coastal Act Section 30235 only allows shoreline protective devices to protect existing development in danger from erosion. However, the proposed LUPA allows shoreline protective devices to be authorized for a specified time period, depending on the nature of the project and other possible changing conditions. Thus, the LUPA as proposed is not consistent with Section 30235 because it does not tie the armoring to the development it is authorized to protect. A suggested modification is required to state that a shoreline protective device is only authorized until the time that the structure being protected by the device is either no longer present, no longer requires armoring, or constitutes coastal redevelopment thereby triggering LCP policies that only allow for shoreline protective device protection for structures built before May 1982. The modification further requires a CDP application to remove the shoreline protective device.

Finally, while proposed Policy C-EH-13 includes requirements that applications for shoreline protective devices mitigate for effects on local shoreline sand supply, the policy is modified to state that mitigation is required for all associated coastal resource impacts, such as those related to public views and public access, and that such mitigation is required in 20 year increments, consistent with recent Commission practice in both LCPs (e.g., Solana Beach) and CDPs (e.g., Land’s End, CDP 2-10-039).

Other suggested modifications in the LUPA’s coastal hazards policies include requiring development that must be elevated to meet FEMA flood requirements to also meet applicable LUPA visual resources and community character policies, and ensuring that new development is sited and designed so as to avoid the need for fuel modification and brush clearance for fire safety. As modified, the LUPA provides new requirements for the protection of development against coastal hazards and is consistent with the Coastal Act.

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In addition to the agricultural, biological, and hazards policies discussed above, the proposed LUPA also updates policies related to housing, transportation, public facilities and services, public recreation, public access, and others. Many of the proposed LUPA's policies are carried over from the existing LUP, some with slight modifications and others updated to reflect on-the-ground conditions today, including deleting policies with recommendations specific to individual communities and/or parcels since such recommendations have been implemented. The LUPA also contains new policies to address new coastal resource protection issues, including more detailed policies pertaining to the protection of water quality for new development, new protections for visually prominent ridgelines, and policies requiring provision of bicycle and pedestrian amenities in new development to help foster multi-modal access. In general, the policies within these LUPA chapters are consistent with the Coastal Act, and most of the suggested modifications are minor in nature and simply clarify terms and requirements. Thus, if modified as suggested in this report, the LUPA is in conformity with the Chapter 3 policies of the Coastal Act.

In conclusion, Marin County has prepared and submitted a significant update to the LUP, one that has been vetted thoroughly at the local level through dozens of public forums over the past five years. Commission staff have worked closely with County staff over the course of this time, including providing directive comments and input at critical junctures, and has continued to work closely even after the proposed LUP was submitted to the Commission for consideration. The end result of this close collaboration is a robust LUP as submitted and as suggested to be modified; one that should serve to very ably protect the significant coastal resources of the Marin County coastal zone for years to come.

If modified as suggested in this report, staff believes that the LUPA is in conformity with the Chapter 3 policies of the Coastal Act.

Staff recommends that the Commission hold a public hearing and approve the LUPA subject to modifications. This will require the Commission to **deny** the LUPA as submitted, and then **approve** the LUPA if modified to incorporate the suggested modifications. The motions to accomplish this are found on page 12 below.

Staff Note: The proposed LCP amendment was filed as complete on April 28, 2014. The proposed amendment affects the LUP and IP and the 90-day action deadline is July 27, 2014. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until July 27, 2014 to take a final action on this LCP amendment. The County would have six months (i.e., until November 15, 2014) to accept the modifications or only the denials would stand. While the County's original submittal included updates to both the LUP and Implementation Plan (IP), the County and Commission staff recently agreed to process the two documents separately, including for clarity purposes so that the Commission-certified LUPA can readily be used as the standard against which the proposed IP amendment will be reviewed.

ADDITIONAL INFORMATION

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For further information on the County’s proposed LCP or this report, please contact Kevin Kahn, Central Coast District Supervisor for LCP Planning, at (831) 427-4863. Correspondence should be sent to the Central Coast District Office in Santa Cruz at 725 Front Street, Suite 300, Santa Cruz, CA 95060.

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EXHIBITS

- [Exhibit 1](#): Existing LUP Text
- [Exhibit 2](#): Proposed LUPA Appendices
- [Exhibit 3](#): Proposed LUPA Maps
- [Exhibit 4](#): Cross-through and Underline of Existing and Proposed LUPA Agriculture, Biological Resources, and Environmental Hazards chapters
- [Exhibit 5](#): County’s Comparison of the Existing Versus Proposed LUPA
- [Exhibit 6](#): Proposed LUPA Text with Suggested Modifications in Cross-through and Underline
- [Exhibit 7](#): Correspondence
- [Exhibit 8](#): Location Maps

Additional correspondence since initial distribution of staff report

I. MOTIONS AND RESOLUTIONS

Staff is recommending that the Commission approve the LUPA if modified. The Commission needs to take two separate actions to effect this recommendation.

1. Denial of LUPA as Submitted

Staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the LUP amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

Motion:

I move that the Commission certify Land Use Plan Amendment LCP-2-MAR-13-0224-1 as submitted by the County of Marin. I recommend a no vote.

Resolution:

The Commission hereby denies certification of Land Use Plan Amendment LCP-2-MAR-13-0224-1 as submitted by the County of Marin and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

2. Approval of LUPA with Suggested Modifications

Staff recommends a **YES** vote on the following motion. Passage of the motion will result in the certification of the LUP amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

Motion:

I move that the Commission certify Land Use Plan Amendment LCP-2-MAR-13-0224-1 for the County of Marin if it is modified as suggested in this staff report. I recommend a yes vote.

Resolution:

The Commission hereby certifies Land Use Plan Amendment LCP-2-MAR-13-0224-1 for the County of Marin if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation

measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. SUGGESTED MODIFICATIONS

The Commission suggests that the following changes to the submitted County of Marin Land Use Plan are necessary to make the requisite findings. If the County accepts the suggested modifications within six months of Commission action (i.e., by November 15, 2014), by formal resolution of the Board of Supervisors, the County's LUPA will become effective upon Commission concurrence with the Executive Director finding that this has been properly accomplished.

- 1. Amend the policies of the LUPA's Agriculture chapter as shown on pages 15-23 of Exhibit 6.**
- 2. Amend the policies of the LUPA's Biological Resources chapter as shown on pages 28-38 of Exhibit 6.**
- 3. Amend the policies of the LUPA's Community Design chapter as shown on pages 64-66 of Exhibit 6.**
- 4. Amend the policies of the LUPA's Community Development chapter as shown on pages 68-78 of Exhibit 6.**
- 5. Amend the policies of the LUPA's Community Specific Policies chapter as shown on pages 80-91 of Exhibit 6.**
- 6. Amend the policies of the LUPA's Historical and Archaeological Resources chapter as shown on pages 118-120 of Exhibit 6.**
- 7. Amend the policies of the LUPA's Parks, Recreation and Visitor-Serving Uses chapter as shown on pages 122-130 of Exhibit 6.**
- 8. Amend the policies of the LUPA's Public Coastal Access chapter as shown on pages 132-137 of Exhibit 6.**
- 9. Amend the policies of the LUPA's Environmental Hazards chapter as shown on pages 40-48 of Exhibit 6.**
- 10. Amend the policies of the LUPA's Public Facilities and Services chapter as shown on pages 102-107 of Exhibit 6.**
- 11. Amend the policies of the LUPA's Transportation chapter as shown on pages 110-113 of Exhibit 6.**
- 12. Amend the policies of the LUPA's Housing chapter as shown on pages 98-100 of Exhibit 6.**

- 13. Amend the policies of the LUPA's Water Resources chapter as shown on pages 54-59 of Exhibit 6.**
- 14. Amend the policies of the LUPA's Mariculture chapter as shown on pages 50-51 of Exhibit 6.**
- 15. Amend the policies of the LUPA's Maps as shown in Exhibit 6.**

Please see Exhibit 6 for the suggested modifications to the County of Marin LUPA.

III. FINDINGS AND DECLARATIONS

A. Description of Proposed LCP Amendment

The County's submittal intends to update the Land Use Plan by refining existing certified policies and by including new ones to address current and future coastal resource protection issues. In terms of general structure, the County's LCP was originally certified in May 1982 and segmented the coastal zone in two units: Unit 1 and Unit 2. Unit 1 consists of the southern portion of the coastal zone, including the communities of Bolinas, Stinson Beach, and Muir Beach, while Unit 2 consists of the northern coastal zone from Olema to the Sonoma County border. This structure results in essentially two LUPs, with both units containing separate policies addressing Coastal Act requirements (i.e. the Unit 1 and Unit 2 LUPs both contain separate chapters containing policies for agricultural protection, biological resources, coastal hazards, etc.). However, since the corresponding policies in both units are nearly identical to each other, the LUPA submittal proposes to combine the two units' standards into one LUP that applies throughout the County's coastal zone area.

The LUPA contains three major sections: Natural Systems and Agriculture, Built Environment, and Socioeconomic. The Natural Systems and Agriculture section contains chapters for Agriculture; Biological Resources; Environmental Hazards; Mariculture; and Water Resources. The Built Environment section contains chapters for Community Design; Community Development; Community Specific Policies; Energy; Housing; Public Facilities and Services; and Transportation. Finally, the Socioeconomic section contains chapters for Historical and Archaeological Resources; Parks, Recreation and Visitor-Serving Uses; and Public Coastal Access. The Land Use Policy maps (Map Set 19a–19m) also form part of the Land Use Plan.

The proposed LUPA retains many of the standards contained in the existing certified LUP as is, updates existing standards to reflect current conditions, and adds new policies meant to address issues that were not addressed in the existing LUP. For example, the proposed LUPA maintains the existing certified LUP's prohibition on major energy and industrial development in the coastal zone because of its potential for adverse coastal resource impacts. This policy has been carried forward unmodified. Meanwhile, other certified standards have been retained but with alterations in language. For example, whereas the certified LUP requires all development to be safe from geologic or other hazards, and defines those hazards as including earthquakes, tsunamis, landslides, and floods, the proposed LUPA specifically adds sea level rise to the list of hazards

from which new development must be deemed safe. Finally, to be consistent with today's planning standards and to respond to the needs particular to Marin, the LUPA proposes some new policies. These policies include a new type of allowed land use on agricultural lands, intergenerational homes, meant to allow family members of the farm operator or owner to live in a home on the farm (separate from and in addition to an allowed farmhouse), as well as new requirements for the preparation of a biological site assessment for any development proposal within or adjacent to ESHA that identifies the site-specific parameters that development must conform to in order to be found consistent with the LUPA's biological resources protection standards.

The LUP amendment is explained in more detail, below.

Agriculture

The proposed LUPA defines agriculture to include not only agricultural production (defined in the IP as the growing and/or producing of agricultural commodities) and agricultural accessory structures (defined as uninhabited structures to store farm animals, supplies, and/or products and including barns, fences, stables, etc.), but also those uses identified as appurtenant and necessary to the operation of agriculture, including one farmhouse, one intergenerational home for the farm operator's or owner's immediate family, agricultural worker housing, agricultural processing and sales of such products, educational tours, and agricultural homestays. Since the LCP defines these uses as agricultural, they are mostly proposed to be a type of development comprising the principally permitted use of agriculture within the LCP's primary agricultural zoning district: Coastal Agricultural Production Zone (C-APZ) (and therefore CDPs for such uses approved by the County would not be appealable to the Coastal Commission unless they were located within the geographic appeal areas specified in Coastal Act Section 30603).

Intergenerational homes are a newly proposed type of agricultural dwelling unit in the LUP. The intent of these homes is to allow for the preservation of family farms by facilitating multi-generational operation and succession. As proposed in Policy C-AG-5, one intergenerational home (in addition to a farmhouse) may be permitted for members of the farm operator's or owner's immediate family as a principally permitted agricultural use. A second intergenerational home may be permitted as a conditional agricultural use (thereby subject to appeal to the Commission). The homes cannot be divided from the rest of the agricultural legal lot, and must maintain the C-APZ district's required 60 acre density, meaning that an intergenerational home is only allowed when a parcel is at least 120 acres, and a second intergenerational home is only allowed when the parcel is at least 180 acres. As proposed, the intergenerational home can only be occupied by the immediate family of the farm owner or operator and the LUP specifically states that occupants are not required to be actively or directly engaged in the agricultural use of the land. Policy C-AG-9 contains additional standards for intergenerational homes and other residences including a 60-acre minimum density for each residence, and a 7,000 square foot cap on the total size of all residences. While the farmhouse and first intergenerational home are principally permitted, a second intergenerational home is classified as a conditional (and therefore appealable) use. Policy C-AG-9 also requires additional specific findings for nonagricultural development, including that such development shall not be allowed to diminish current or future agricultural use or convert the parcel to a residential use, and that any residence must ensure its mass and scale reflect site constraints, including meeting the LUP's ridge

protection and grading standards.

The LUPA contains standards for proposed development on C-APZ lands, including findings that all development must protect and maintain continued agricultural use and contribute to agricultural viability. In addition to the required standards and findings for agricultural development listed above, non-agricultural development would be required to make findings that such development is necessary because agricultural use of the property would no longer be feasible and that the proposed development will not conflict with the continuation or initiation of agricultural uses on the remainder of the subject property and on agricultural parcels within one mile of the parcel. Where non-agricultural development is otherwise permissible, including a land division, the LUPA proposes to retain the requirement that, consistent with state and federal laws, the remaining undeveloped part of the parcel be placed under an agricultural conservation easement.

Together, these policies are intended to protect and enhance the existing agricultural economy in the Marin coastal zone, and ensure its preservation into the future. As such, the LUPA generally proposes to meet coastal resource protection goals and protect agricultural production, within the framework established by the Coastal Act.

Habitat Resources

The existing LUP defines the allowable uses within wetlands, streams, and other ESHA; requires buffers around them; and designates the allowable uses with the buffer. Specifically, the allowable uses within wetlands are those allowed by Section 30233 of the Coastal Act, including commercial fishing facilities, incidental public service purposes, aquaculture, and resource-dependent uses. Allowable uses within streams are those specified by Coastal Act Section 30236, including necessary water supply projects, flood control projects, and fish and wildlife enhancement projects. No development is allowed within coastal dunes, and for “other ESHA,” defined to include habitats of rare or endangered species and unique plant communities, only resource-dependent uses are allowed, consistent with Coastal Act Section 30240. In terms of buffers, the LUP requires 100 foot buffers around wetlands and streams, and the only allowed uses within the buffers are those that are allowed within the wetland/stream itself. For other ESHA, the LUP requires development to be set back a sufficient distance to minimize impacts on the habitat area, but does not specify a numeric buffer width or particular types of allowed uses. Buffers for wetlands cannot be reduced from the required 100 feet, but buffers for streams may be reduced if either the entire parcel is located within the buffer, or if a finding is made that development outside the buffer would be more impactful than within the buffer. No buffer reduction is allowed for other ESHA, but there is also no minimum required numeric width.

The proposed LUPA generally maintains the same standards from the existing LUP above, but also includes new requirements detailing specific biological resource protections. The proposed LUPA protects the County’s significant natural habitats primarily through the designation and protection of ESHA. The LUPA defines three types of ESHA: wetlands, streams and riparian vegetation, and terrestrial. Terrestrial ESHA is defined as those habitats that support rare and endangered species: coastal dunes; roosting and nesting habitat; and riparian vegetation not associated with a perennial or intermittent stream. This definition for what constitutes terrestrial ESHA is an expansion of what is listed under the existing LUP, including because resources like

roosting and nesting habitats and coastal dunes will now specifically be identified as ESHA.

Allowable uses within the three types of ESHA mirror those allowed in the existing LUP and Coastal Act. For terrestrial ESHA: those uses that are resource dependent; within wetlands: commercial fishing facilities, incidental public service uses, mineral extraction, restoration, aquaculture, and agriculture if used for such agricultural purposes prior to April 1, 1981; and, within streams and riparian vegetation: necessary water supply projects, flood control projects, and fish and wildlife improvement projects. Furthermore, the LUPA requires buffers surrounding such ESHA, a minimum of 100 feet for streams and wetlands and 50 feet for terrestrial ESHA, and the only uses allowed within the buffer are those otherwise allowed within the ESHA itself (except that uses within terrestrial buffers are those that will not significantly degrade the habitat).

New LUPA policies include the requirement to prepare a site-specific biological assessment. As proposed, any development proposal within or adjacent to ESHA is required to prepare a biological site assessment that identifies the extent of ESHA, documents any site constraints and sensitive biological resources, recommends precise buffer widths to protect the habitat, and recommends appropriate restoration/mitigation (generally 2:1 for on-site mitigation, 3:1 off-site, or 4:1 in-lieu fee). The site assessment is also required for any project that seeks to reduce the width of the buffer. If supported by assessment findings that a reduced buffer will be compatible with and prevent significant degradation of the ESHA, buffers may be reduced to a minimum of 50 feet for wetlands and streams/riparian vegetation (there is no absolute minimum buffer for terrestrial ESHA). Any buffer reduction for wetlands and streams must provide a net environmental improvement over existing conditions, including increasing native vegetation cover, retrofitting existing features for improved stormwater quality, or eliminating on-site invasive species.

Visual Resources and Community Character

The existing LUP requires development to protect the scenic and visual qualities of the coastal zone, and contains specific policies that new development must meet. These policies include a general requirement that the height, scale, and design of new structures are to be compatible with the character of the surrounding natural or built environment, including by following the natural contours of the landscape so as to limit grading, and also ensuring that structures are sited so as to not obstruct significant views as seen from public viewing places. Views of the ocean are given extra protection by requiring that new development, to the maximum extent feasible, not impair or obstruct any such view. The LUP also limits building heights to 25 feet, and contains additional standards specific to particular villages or communities. These standards include specific parcel rezonings to provide for additional visitor-serving commercial uses within Olema, and requirements that structures in Paradise Ranch Estates in Inverness use dark earth-tones to ensure the least amount of visual intrusion into the landscape, among other detailed community-specific requirements.

The proposed LUPA also requires that all development ensure its use, height, scale, and design is compatible with the character of the surrounding natural or built environment. It implements this policy by maintaining some of the existing LUP's policies, including height restrictions of a maximum of 25' (which is generally two stories). The proposed LUPA also adds new policies or

refines existing ones, including a new policy that prohibits development on top of, within 300 feet horizontally, or 100 feet vertically (whichever is more restrictive) of visually prominent ridgelines. The LUP now specifically defines what a significant view is (including those views to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, and coastal streams and waters used for recreational purposes), and requires new development to be sited and designed to ensure protection of these views. The LUPA also retains policies specific to the coastal zone's nine villages (Muir Beach, Stinson Beach, Bolinas, Olema, Point Reyes Station, Inverness, East Shore/Marshall, Tomales, and Dillon Beach), including the protection of the tree canopy in Inverness, and promoting infill development of visitor-serving and commercial uses within Point Reyes Station. These policies have been updated to reflect on-the-ground conditions today, including by deleting some of the existing LUP's recommended rezonings since they have been implemented and therefore are no longer necessary in the LUPA. Village-specific policies are intended to work in tandem with the broader policies that apply throughout the entire coastal zone, such as for the protection of coastal views.

Public Access and Recreation

The existing LUP requires the protection and enhancement of public access opportunities to the coast, including through the provision of public recreational opportunities and visitor-serving facilities. The existing LUP's Public Access policies require public access in all development proposals located between the sea and the first public road, unless access would be inconsistent with the protection of public safety, fragile coastal resources, agricultural production, or privacy of existing homes. Coastal permit applications are to include evidence showing potential prescriptive rights on the subject property, and if historic use is determined to exist, the development can only be approved if equivalent access is provided. Parking and signage should be provided in areas with public access easements and trails. The LUP also provides guidance on the types of recommended development within local, state, and federal parks, including additional hiking trails, improved parking, and potentially a hostel within Mount Tamalpais State Park, for example. The LUP also requires the provision of visitor-serving commercial uses within coastal villages. The Coastal Village Commercial Residential (C-VCR) zoning district is a primary district within the coastal zone's villages that allows a broad range of local and visitor-serving uses, including shops and restaurants. Residential uses are also allowed, but Unit 1 Recreation and Visitor Serving Facilities Policy 14 only allows residential uses when they are incidental to the primary commercial use of the property. Further, the policy only allows exclusive residential uses on no more than 25% of the lots vacant as of April 1980.

The proposed LUPA policies also place a high priority on the development of visitor-serving and commercial recreational facilities, including a new requirement that lower-cost visitor serving uses be protected and maintained. It lists recommendations for future development within park and recreational lands, including Tomales Bay State Park and Mount Tamalpais State Park, requires protection of public parks for recreational access and opportunities, and lists recommendations for the siting and design of the California Coastal Trail (CCT). In terms of public access, the LUPA requires development between the sea and first public road to be examined for potential impacts on public access. Such impacts include potential overuse of existing public access caused from new development, creation of physical obstructions or perceived deterrence to public access, and creation of conflicts between private land uses and public access. A lateral and/or vertical accessway, including potential segments of the CCT, is

required for new development if an impact is found and there is a nexus between the impact and the public access provision. Other access policies include requirements for protection of existing coastal accessways, evaluation of the effects on access from changes or reductions in public parking, and placing appropriate signage identifying public coastal accessways.

Coastal Hazards

The existing certified LUP requires all development within areas subject to geologic or other hazards to demonstrate that the area of construction is stable for development, that the development will not create a hazard or diminish the stability of the area, and that the development will not require the construction of protective devices. It defines “geologic or other hazards” as areas mapped as earthquake zones, areas subject to tsunami runup, landslides, liquefaction, beach and bluff erosion, greater than 35% slopes, and flood hazard areas. The LUP then contains specific requirements for blufftop development, including requiring new development to be setback from the Bolinas and Muir Beach bluffs a sufficient distance to ensure with reasonable certainty that it is not threatened from bluff retreat within its economic life, defined as 50 years. The existing LUP requires all development within 150 feet of a bluff or in mapped hazardous areas to produce a geotechnical investigation determining the bluff retreat rate and the appropriate siting and design to ensure protection against hazards. In terms of shoreline development and flooding, new development is to be sited and designed so that no protective shoreline structures, including seawalls, groins, and breakwaters, will be necessary to protect the building during its 50 year economic life. The existing LUP allows shoreline protective structures subject to seven requirements that must all be met, including that the device is required to serve a coastal-dependent use or to protect existing endangered development, no other non-structural alternative is practical or preferable, the condition causing the problem is site specific and not attributable to a general erosion trend, and public access is not reduced, among others. If each of these tests can be met and the protective device is therefore allowed, the LUP requires the device to meet five design standards, including that it be as visually unobtrusive as possible, respect natural landforms, and minimize the impairment and movement of sand supply.

The proposed LUPA generally strengthens the existing LUP’s hazards policies through the protection against coastal hazards and flooding by requiring development for its economic life (now increased and defined to be 100 years) to be set back a sufficient distance so as to be safe from geologic and other hazards and not require shoreline protective devices (including through recording a document prohibiting the development of such devices from protecting the subject property). The hazards setback is to be determined via an Environmental Hazards Report prepared by a qualified engineer that describes potential hazards (defined to include earthquake hazard zones; areas subject to tsunami runup, landslides, liquefaction, and beach/bluff erosion; slopes above 35%; unstable slopes; and flood hazards areas, including areas potentially inundated by accelerated sea level rise) and recommends specific siting, design, and construction techniques to make the following requisite findings: that the area is safe for development, the development will not create a hazard or diminish the stability of the area, and that the development will not require a shoreline protective device. The proposed LUPA also retains the existing LUP’s required findings for what types of structures are allowed protection from shoreline protective devices (i.e. those listed in Coastal Act Section 30235: coastal-dependent uses, public beaches in danger from erosion, and existing endangered development, defined as that which has existed prior to the adoption of the LCP: 5/13/1982), as well as required design

standards, mitigation for sand supply and wildlife impacts, and a new standard that such devices shall only be authorized for specific time periods depending on the nature of the proposed project. Finally, all development located on a blufftop parcel or within mapped bluff hazard zones is required to submit a blufftop geotechnical report that identifies the required setback so as to be protected from erosion for 100 years, using the best available information including historic retreat rates and projected rates from sea level rise.

Transportation and Circulation

The existing LUP contains a few policies specific to roads and transportation in the Marin coastal zone. Highway 1 traverses the coastal zone and is its only major north-south transportation corridor, including for public recreational and visitor use. Foremost, the LUP currently requires Highway 1 to remain a scenic, two-lane roadway, and requires improvements to not, individually or cumulatively, detract from the rural scenic characteristics of the highway. Only repair and maintenance and improvements such as slope stabilization, drainage control, minor safety improvements, signage, and scenic vista turn-outs are allowed, and only when there will be no filling of streams or wetlands. Sir Francis Drake Boulevard, the primary east-west coastal zone road, is also required to be maintained as two-lanes. Alternative transportation modes, including public transit and bicycling, are encouraged.

The LUPA expands the existing LUP's two-lane road requirement to all roads in the coastal zone, while maintaining the requirement of preserving the scenic, rural, twisty characteristics of Highway 1. These characteristics will be preserved by ensuring that improvements are limited to slope stabilization, drainage control, minor safety improvements, and improvements for accommodating bicycle and pedestrian travel and turn-outs at vista points and for slow moving traffic. The LUPA adds a new policy for the County to work with Caltrans on studying and identifying the impacts of sea level rise on Highway 1, including analyzing the relocation and/or structural preservation of the highway in flood-prone areas. Finally, the LUPA requires more detailed requirements for the provision of adequate parking and bicycle facilities in new development, expansion of bike and pedestrian trails, provision of public transportation (including developing stable funding streams for transit operations), and requires a finding for all new development that adequate road capacity, parking, and other transportation services are available.

Public Services

The existing LUP requires a finding for all new development that adequate public services, including water supply, sewage disposal, and road capacity, are available to serve the proposed development. Lack of such services is grounds for denial of the project or for a reduction in the density otherwise potentially allowed. The existing LUP also contains detailed requirements for water, sewer, and road capacity, including that new development within a water system's boundaries can only use a private well if the water system is unable or unwilling to provide service or if the extension of physical distribution improvements necessary to serve the development is economically or physically infeasible. When wells are allowed, the LUP requires a CDP, with progressively tighter standards depending on how many parcels the well is to serve. Individual wells must demonstrate a sustained yield of 1.5 gallons per minute, while wells serving five or more parcels must provide detailed engineering studies demonstrating that groundwater basins, streams, aquifers, and other coastal resources will not be adversely affected. In terms of sewage capacity, the LUP requires all on-site septic systems to meet the performance

standards adopted by the Regional Water Quality Control Board. For other types of industrial development, the existing LUP, in Unit 2 New Development and Land Use Policy 7, prohibits the development of major energy and industrial facilities, both on- and off-shore. The policy states that the coastal zone's priceless unique natural resources and recreational opportunities of nationwide significance may be adversely impacted by the potential development of such facilities.

The proposed LUPA describes the County's public infrastructure and offers policies for its future improvements and maintenance. Foremost, the LUPA requires a finding for all new development (including land divisions) that adequate public services (water supply, sewage disposal, and transportation) are available to serve it. It also limits public service capacity expansions to the minimum necessary and requires it to neither induce growth not authorized by the LUPA nor expand greater than the capacities of other services (i.e., the capacity of drinking water cannot be expanded to serve additional development that cannot be handled by existing roads or sewage disposal). The proposed LUPA prohibits private drinking water wells if located within a public or private water system, unless the well is to serve agricultural/horticultural uses if allowed by the water system operator, if extension of water service infrastructure is economically or physically infeasible, or if the water system operator is unable or unwilling to provide service. However, no such well exception shall be granted because of a water shortage or drought. A CDP is required for all well development, with findings that there will be no impacts on coastal resources, with additional engineering studies required for wells serving 5 or more parcels. In terms of sewage disposal, the LUPA requires connection to a public sewer system if within a village limit boundary and 400 feet from the system. Private septic systems are allowed outside of these areas so long as the biological productivity of coastal streams, wetlands, and other waters is protected.

The LUPA maintains the existing LUP's prohibition on the development of major energy and industrial facilities due to their significant adverse impacts on coastal resources, and specifically states that desalination facilities are also prohibited for the same potential adverse coastal resource impacts.

Water Quality

In terms of water quality protection, the existing LUP includes rather broad policies requiring "sediment, erosion, runoff control, and revegetation measures" and "maximum groundwater recharge" (Unit I Grading Policy 26). The proposed LUPA includes more robust storm water and water quality protection provisions to mitigate both construction and post-construction water quality impacts, and targets specific types of development, defined as high-impact projects, for their particularly acute water quality impairment potential. The storm water and water quality provisions were coordinated through Commission water quality staff, including to ensure that they address current water quality planning standards such as the prevention of non-point source pollution. Non-point source pollution, including pollutants from roads, parking lots, and other impervious surfaces, is a leading cause of water quality impairment. The LUPA addresses these issues by requiring Best Management Practices (BMPs) to prevent pollutants from entering coastal waters both during construction and, for certain land uses, post-construction (including auto repair shops, uncovered parking lots, and outdoor storage areas). Development is also required to filter, treat, or infiltrate stormwater runoff from the 85th percentile 24-hour storm event (or 85th percentile 1-hour storm event for flow-based BMPs, both commonly accepted

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water quality metrics). These requirements complement other LUPA policies, including protections against development in and surrounding wetlands and streams and keeping grading and cuts/fills to the minimum necessary, that altogether ensure the protection of the biological productivity of coastal waters.

Other

The existing LUP contains a few policies related to the protection of existing housing and provisions for new housing, particularly low and moderate income housing. These policies include a requirement that demolishing existing low and moderate income housing is only allowed in rare circumstances, including for health and safety reasons or when the units are replaced on a one-for-one basis. These policies also direct such housing, using appropriate zoning tools such as small parcel sizes, into coastal villages. The LUPA retains policies protecting existing housing for very low, low, and moderate income households, but also includes new policies addressing the provision of housing in the coastal zone. These policies include requiring 20% of the units in residential developments consisting of two more units to be affordable, allowing second units in residential neighborhoods, and allowing for density bonuses for affordable housing, so long as the density increase is consistent with other applicable LUP requirements.

The proposed LUPA also includes maps and an Appendix, which contains eight documents, including the County's three Commission-adopted Categorical Exclusion Orders. All of the documents within the Appendix are carried over from the existing certified LCP, and, with the exception of the Inventory of Visitor Serving Facilities (which has been updated to reflect existing conditions), none of these documents have been amended in the proposed LUPA.

The Appendix consists of the following documents:

- Appendix 1: List of Recommended Public Coastal Accessways
- Appendix 2: Inventory of Visitor-Serving, Commercial, and Recreation Facilities in the Coastal Zone
- Appendix 3: Coastal Village Community Character Review Checklist (Local Coastal Program Historic Review Checklist)
- Appendix 4: Design Guidelines for Construction in Areas of Special Character and Visitor Appeal and For Pre-1930's Structures
- Appendix 5: Seadrift Settlement Agreement
- Appendix 6: 1977 Wagner Report "Geology for Planning, Western Marin County"
- Appendix 7: Categorical Exclusions Orders and Maps
- Appendix 8: Certified Community Plans:
 - a. Dillon Beach Community Plan
 - b. Bolinas Gridded Mesa Plan

In general, these documents provide additional background information and/or requirements to implement LUPA policies. For example, the List of Recommended Public Coastal Accessways is carried over from the existing certified LCP and contains a detailed list of specific parcels in which the County has determined lateral and/or vertical public access easements may be of particular importance (in addition to the general LUPA requirement that all new development be analyzed for public access impacts). Meanwhile, the two community plans for Bolinas Gridded

Mesa and Dillon Beach were certified by the Commission in 1985 and 1990, respectively, and provide additional background information and policy language to refine LUPA requirements specific to those two communities. For example, while the existing certified LUP contains policies for the protection against coastal hazards, including in terms of being set back a sufficient distance from the Bolinas bluffs, Policy LU-1.1 of the Bolinas Gridded Mesa Plan provides additional bluff setback requirements, including establishing a Bluff Erosion Zone based on 100 years of erosion and prohibiting new construction within this zone (although such restriction can be waived if a site specific engineering report shows that development within the zone would not be exposed to coastal hazards).

The County has three Commission-adopted Categorical Exclusion Orders: E-81-2, E-81-6, and E-82-6. Generally speaking, the Orders exclude certain types of development from needing a coastal development permit, some coastal zone-wide and others within specified boundaries, subject to meeting specified standards. For example, Orders E-81-2 and E-82-6 exclude certain agriculturally-related development, including barns, fences, and electric utility lines on land zoned C-APZ. The exclusion applies throughout the entire coastal zone, except for the area between the sea and first public road paralleling the sea, or a half-mile inland from the sea, whichever is less. These Orders are not being amended.

Finally, the proposed LUPA includes 29 sets of maps showing the location of the coastal zone, protected agricultural lands, vegetation communities and special-status species, wetlands and streams, flood zones, categorical exclusion areas, and land use and zoning maps. These maps are meant to be illustrative and solely for general informational purposes. They are not intended to, for example, show precisely where ESHA is located, or which parcels will be inundated by sea level rise. They are also not meant to show where a particular Categorical Exclusion applies; only the maps adopted by the Commission per the Orders themselves are the official exclusion maps. The LUPA does not propose the re-designation of any coastal zone parcel.

B. Consistency Analysis

1. Agriculture

A. Applicable Coastal Act Policies

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.

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.

(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.

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 30100.2. *“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 30233. *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

...

(7) Nature study, aquaculture, or similar resource dependent activities.

Sections 30241, 30241.5 and 30242 of the Coastal Act require the protection of agricultural lands within the coastal zone by, among other means, requiring that the maximum amount of prime agricultural land be maintained in agricultural production and that all other lands suitable for agricultural use not be converted to nonagricultural uses. To protect the agricultural economy, the Act requires conflicts between agricultural and urban uses to be minimized by establishing stable urban-rural boundaries, providing agricultural buffers, ensuring that non-agricultural development is directed first to lands not suitable for agriculture or to transitional lands on the urban-rural boundary, restricting land divisions, and controlling public service or facility expansions.

B. LUP Background

As previously discussed, agriculture is one of the primary land uses of the Marin coastal zone. Nearly two-thirds of the coastal zone is zoned for agricultural production. The LUP’s Agriculture chapter describes the coastal zone’s agricultural landscape and economy. Agriculture is the predominant land use of the Marin coastal zone. Nearly two-thirds of the coastal zone is zoned for agricultural production. Animal agriculture makes up the greatest part of the County’s total agricultural production, including beef cattle, sheep, poultry and eggs, as well as dairy cows and the milk, yogurt, and cheese they yield. A number of farms, many of them organic, raise fruits, vegetables, flowers, nuts and other crops.

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The existing certified LCP contains strong agricultural resource protection standards. The LUP (Unit 2 Policy 6a) defines agricultural uses as those to grow and/or produce agricultural commodities for commercial purposes, including:

- Livestock and poultry: cattle, sheep, poultry, goats, rabbits, and horses (unless horses are the primary animals raised)
- Livestock and poultry products: milk, wool, eggs
- Field, fruit, nut, and vegetable crops: hay grain, silage, pasture, fruits, nuts, and vegetables
- Nursery products: nursery crops, cut plants

These agricultural uses, as well as one single-family dwelling, agricultural accessory structures (including barns, fences, stables, and utility facilities), and bed and breakfasts are all classified as principally permitted uses within the Coastal Agricultural Production Zone (C-APZ), while uses such as agricultural processing facilities, agricultural worker housing, and retail sales of agricultural products are all conditional uses. The C-APZ zoning district includes agricultural protection standards such as 60 acre density minimums per parcel as well as preparation of a master plan for all development (including land divisions) subject to specific standards and requirements, including that:

- Development would protect and enhance continued agricultural use and contribute to agricultural viability;
- All development, including all land converted from agricultural use, such as roads and residences, shall be clustered on no more than 5% of the gross acreage, to the extent feasible;
- Permanent conservation easements over that portion of the property not used for physical development are required, with only agricultural uses allowed;
- The creation of a homeowner's or other organization and/or the submission of agricultural management plans may be required.

Although these master plan requirements are part of the LUP, the Implementation Plan (in Section 22.56.026) allows the Planning Director to waive the master plan when one single-family dwelling is proposed and/or when he/she determines that the proposed development is minor and within the intent and objectives of the LCP.

The proposed LUPA continues to implement its agricultural protection standards primarily through the C-APZ district. This single zoning district comprises nearly two-thirds of the non-federally owned coastal zone (30,781 acres out of a total of 48,255 acres), and contains the vast majority of Marin's agricultural lands, much of which is used primarily for grazing (Marin's coastal zone contains very little prime agricultural land; almost all of the C-APZ land is classified as land suitable for agriculture). The LUPA does not propose any redesignation or of C-APZ parcels (or of any parcels within the coastal zone for that matter) and retains the existing certified LCP's requirement for a minimum 60 acre density for any residence. Proposed Policy C-AG-7 lists the required CDP development standards which nearly mirror those standards previously required for master plan approval from the existing certified LCP, as listed above.

The LUP's other agricultural district is the Coastal Agricultural Residential Planned zone (C-ARP). This zoning district is a quasi-agricultural, quasi-residential zone of parcels that are located predominantly within the boundaries of the coastal villages. Policy C-AG-3 describes C-ARP lands as those adjacent to residential areas, which because of their transitional location do not necessitate the protective standards afforded C-APZ parcels. The C-ARP district allows flexibility in lot size and building locations so that residential uses are concentrated, minimizing impacts on agricultural resources.

As discussed above, one of the primary differences between the existing and proposed LUPA is the LUPA's proposal to designate one principally permitted use, agriculture, for the APZ and classify more types of agricultural development as principally permitted, non-appealable uses. While many of these types of agricultural development are currently allowed within C-APZ land in the existing LUP, they are mostly classified as conditional uses (and therefore appealable to the Coastal Commission). In comparison, the existing LUP does not designate any one principally permitted use but instead designates three different use types as principally permitted. The existing LUP's list of principally permitted land uses within C-APZ lands includes agricultural uses (defined as the use of land to grow and produce agricultural commodities for commercial purposes), one single-family residential dwelling, agricultural accessory structures (including barns, fences, and stables), and visitor-serving bed and breakfast facilities of three or fewer guest rooms.

Another difference between the existing and proposed LUPA is that while the certified LUP requires the same standards and findings through the master plan for all development, the proposed LUP now contains two different sets of standards: standards for agricultural development and additional standards for non-agricultural development. Thus, while most of the existing certified C-APZ development standards are retained in the proposed LUP in Policy C-AG-7, the standards no longer apply to all development.

As previously discussed, the proposed LUPA contains enhanced additional standards (as compared with the existing certified LUP) for individual land uses that must be met in order for them to be classified as agricultural (and principally permitted). Of particular importance is the 7,000 square foot cap on all agricultural homes. As proposed, no home within the C-APZ can be greater than 7,000 square feet. When an intergenerational home is allowed in addition to a farmhouse, the *total* size of both homes still must be capped at no more than 7,000 square feet (i.e. the two homes would average a maximum of 3,500 square feet). When a second intergenerational home is allowed, *all three* must still all be within the 7,000 square foot cap (i.e. the three homes would have to average a maximum of ~2,333 square feet). Additionally, the size requirements of the homes work in concert with the density requirements of the parcel. The C-APZ zoning district requires a 60 acre density for each home. Thus, a parcel must be 120 acres in order for an intergenerational home to be allowable, and 180 acres for a second intergenerational home. Further, Policy C-AG-7(A)(4) requires all farmhouses and intergenerational homes to be placed in one or more groups along with any non-agricultural development on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space. This standard helps ensure that structural development, including farmhouses and intergenerational homes, is limited to a small

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portion of the agricultural operation. These standards, as proposed by the County, help ensure that such development retains and preserves the agricultural economy, including by developing quantitative, objective criteria that help limit the amount of land used for such residences, minimizing their impact on agricultural land.

While the existing LUP requires all development to be consistent with an approved master plan (which can be waived by the Planning Director), the proposed LUPA removes the master plan provisions and instead replaces it with the enumerated standards discussed above. Additionally, non-agricultural development may be required to prepare an Agricultural Production and Stewardship Plan (APSP), described in Policy C-AG-8. This plan is meant to ensure that permissible non-agricultural development will promote long-term agricultural productivity and substantially contribute to Marin's agricultural economy by identifying and describing existing and planned agricultural uses, and identifying on-site resources and infrastructure, among other requirements.

As proposed, many aspects of the proposed LUPA's policies on agricultural protection are consistent with the Coastal Act and provide added resource protection as compared with the existing certified LUP. For example, even though the existing certified LUP contains very strong standards that apply to all development pursuant to a master plan requirement, because the master plan requirement can be waived at the Planning Director's discretion, such standards have, in practice, rarely been implemented. The proposed LUP replaces the rather uncertain implementation of the master plan with definitive standards that cannot be waived. This change inherently strengthens the LUP because it provides for more objective and more consistently applied standards as compared with the current LUP.

Finally, the protection of both agricultural production and the agricultural economy, including in relation to allowing for uses that are incidental and supportive of agricultural production, are clear objectives for the County's proposed agriculture policies. Defining the PPU for C-APZ as agriculture and including both production (the physical use of land to grow a commodity) and structures necessary for its operation (barns, worker housing, and facilities used for storage and processing of the commodity) furthers the Coastal Act's objective of protecting agricultural viability in the state's coastal zone. For example, allowing farmers the opportunity to not only grow commodities but also create and sell products on site is an increasingly important way to keep farms viable and therefore keep land in active production. This concept is particularly important in Marin's coastal zone, where many small family farms not only produce milk but also create value-added products such as cheese. Further, ensuring that agricultural operations have a stable workforce includes the ability to house workers in agricultural worker housing, which is particularly important in rural West Marin which is far from affordable housing opportunities in the more urban parts of the County and Bay Area. In fact, the Health and Safety Code expressly declares the first 36 beds or 12 units of employee housing to be an agricultural use by law (Health & Safety Code 17021.6). Thus, it is appropriate to classify development other than agricultural production itself as a form of the principally permitted use of agricultural, so long as there are appropriate standards to ensure that they are in fact necessary to agricultural operations.

C. Denial As Submitted and Approval with Suggested Modifications

However, the LUP as proposed contains some elements that are not Coastal Act consistent because they are internally inconsistent or need further refinement in order to achieve consistency with the requirements of Coastal Act sections 30241-30242). These inconsistencies range from adding non-specific principally permitted uses to a lack of defined development standards for individual land uses, to development standards that do not coincide with the different types of allowable uses within agricultural lands, all as discussed below. Therefore the LUPA must be denied as submitted and only approved as modified as discussed specifically below. (See pages 15-23 of Exhibit 6 for the Suggested Modifications discussed in this section)

D. Allowed Uses on Agricultural Land

Principally-Permitted Use

Proposed Policy C-AG-2 states that the principal permitted use on C-APZ parcels is agriculture, including the following:

1. Uses of land for the breeding, raising, pasturing, and grazing of livestock;
2. The production of food and fiber;
3. The breeding and raising of bees, fish, poultry, and other fowl;
4. The planting, raising, harvesting and producing of agriculture, aquaculture, horticulture, viticulture, vermiculture, forestry crops, and plant nurseries;
5. Substantially similar uses of an equivalent nature and intensity; and
6. Accessory structures or uses appurtenant and necessary to the operation of agriculture, including one farmhouse per legal lot, one intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities (not including wind energy conversion systems and wind testing facilities).

The first four items constitute agricultural production, the fifth is intended to provide for uses similar to agricultural production, and the sixth is development that is appurtenant and necessary to the operation of agriculture. The proposed list of principally permitted uses revises the existing certified LCP, which allows for a single-family dwelling and bed and breakfast in addition to agricultural uses. As discussed above, the proposed LUPA eliminates the principally permitted single-family residential dwelling and replaces it with a farmhouse. However, although the proposed LUPA refines the list of PPUs in some ways, it also proposes to expand the list of uses to include “substantially similar” uses, a term that is not specific enough to be characterized as a principally permitted agricultural use.

The suggested modifications relating to the principally permitted use of agriculture first clarify that the first four uses are types of agricultural production, and deletes the fifth listed principally permitted use (substantially similar uses of an equivalent nature and intensity) since the definition of what constitutes agricultural production is broad enough so as to include the raising of all types of agricultural products and commodities. It is unclear what other type of use would not be classified under the first four listed types of agricultural production but would instead be considered “substantially similar”. (See page 16 of Exhibit 6)

Next, the proposed policy establishes that the uses listed as being appurtenant and necessary to

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agricultural production (barns, stables, etc.) are appurtenant and necessary because it defines them to be. However, these uses should only be considered appurtenant and necessary when they are found to meet specific criteria, including the needs of the particular farming operation, and when they meet specific LUP criteria, including clustering, for example. Thus, a suggested modification is required in proposed Policy C-AG-2(6) to define the principally permitted agricultural uses in C-APZ as those other agricultural uses *if* found appurtenant and necessary to the operation of the farm (“if” being whether such uses meet the LUP’s specified criteria and standards for both the individual land use and the general overall development standards for C-APZ parcels). (See page 16 of Exhibit 6)

The modification also further clarifies the specific sub-types of uses that are principally permitted. For example, the LUP as proposed does not state that products used for processing must only come from the parcel on which they are grown. Instead, the LCP specifically allows products grown from other farms in the County to be used. In order to meet the LUP’s principally permitted use test (i.e. whether the use is necessary to the operation of the farm and whether such development protects and maintains on-site agricultural production), such processing can only use products grown on-site. While using off-site products may be appropriate in some situations and should be allowable, this type of processing use, as modified, is a conditional agricultural use because it may not always be necessary for *on-site* agricultural production. Thus, a suggested modification in Policy C-AG-2(6) is required to specify that the processing and sales of products grown *on-site* is a principally permitted use, while those using products grown off-site are conditional. (See page 16 of Exhibit 6)

In addition, Policy C-AG-2(6) includes “limited agricultural product sales and processing” facilities as part of the principally permitted use. The intent of the term “limited” is to ensure that these facilities are of an appropriate size and scale to meet LUP agricultural protection and community character policies. However, the policy as proposed does not provide adequate detail to clearly define what is meant by “limited”. While, for example, the LUP as proposed defines a 7,000 square foot cap on the allowable size of the farmhouse and any allowed intergenerational homes, this level of detail is missing for agricultural processing and sales facilities. As written, any size could potentially be allowed so long as it was determined to be “limited”. However, the proposed IP specifies that the principally permitted use for sales and processing facilities is limited to 5,000 square feet or less for processing uses and 500 square feet for sales facilities. Any facilities above these thresholds are conditional. These size limits are aggregates of the total size of all allowed structures, and are based on provisions that have been in effect outside the coastal zone for approximately ten years. The County has found these square footage limits to be successful in meeting the goals of considering small processing and sales facilities as appropriate agricultural uses and requiring larger facilities to meet more strict criteria. Therefore, a suggested modification is required to Policy C-AG-2(6) to indicate that processing and sales facilities are a type of development within the principally permitted use of agriculture provided the structure(s) used for these activities do not exceed an aggregate square footage of 5,000 square feet or 500 square feet, respectively (see page 16 of Exhibit 6).

Additionally, while the proposed policy states that all educational tours and agricultural homestay facilities of three guest rooms or fewer are principally permitted, these uses also require further refinement. An educational tour that operates for-profit and any homestay facility

(which is similar to a bed and breakfast except that the offering of meals is an incidental function) are commercial uses and do not qualify as a PPU when the PPU is agriculture. While permissible uses, these uses instead provide supplemental income to the farming operation and are not inherently necessary for agricultural production. Thus, these uses are modified to be changed from Policy C-AG-2(6)'s list of appurtenant and necessary agricultural uses to conditional uses.

Thus, as modified, Policy C-AG-2 defines the principally permitted uses in C-APZ to be agriculture, limited to: agricultural production; agricultural accessory structures and activities; other agricultural uses if appurtenant and necessary to the farm: agricultural processing of products grown on-site and processed in structures 5,000 square feet or below, agricultural product sales of products grown on-site and sold in structures 500 square or below, and not-for-profit educational tours; and, as described below, agricultural dwelling units. (See page 16 of Exhibit 6)

Conditional Uses

Policy C-AG-2 states that conditional uses (i.e. uses that would be appealable to the Coastal Commission) within C-APZ lands include additional agricultural uses and non-agricultural uses including residential development potentially up to the zoning density. The policy as written does not specify what these additional agricultural uses are. It also does not reflect the uses that have been changed to conditional per the previously discussed suggested modifications, such as agricultural homestay facilities and processing of products grown off site. As such, a suggested modification is required to clearly list some of the types of conditional agricultural uses, including a second intergenerational home, agricultural product sales and processing of products not grown on-site, for-profit educational tours, agricultural homestay facilities, and agricultural worker housing above 12 units per legal lot. The modification also deletes residential development as a type of conditional non-agricultural use, as discussed subsequently. As modified, conditional uses include non-agricultural development and the more impactful agricultural uses that are not considered principally permitted, such as a second intergenerational housing unit and agricultural worker housing above the 12 unit/36 bed density threshold.

E. Development Standards on Agricultural Land

Proposed LUP Policy C-AG-7 contains two types of standards for proposed development within the C-APZ: standards for agricultural uses and additional standards for non-agricultural uses. However, the County has proposed a permitting structure in which land uses fall into one of three types: principally permitted uses (which include agricultural uses), permitted uses (which include some agricultural and non-agricultural uses), and conditional uses (which also include some agricultural and non-agricultural uses). Thus, while the LUP contains three types of permitted uses, it only contains two types of standards (agricultural and non-agricultural). This structure can become problematic, for example, for the potentially more impactful agricultural uses (e.g. the second intergenerational home and large processing facilities), since the proposed LUP does not apply additional standards to these uses beyond their appealability; it only classifies them as agricultural and requires the same findings as for barns, for example. Thus, suggested modifications are necessary to revise Policy C-AG-7 from two sets of standards to three, including Policy C-AG-7(A): Standards for All Uses; -7(B): Standards for Non-Principally Permitted Uses; and -7(C): Standards for Non-Agricultural Conditional Uses. Such a revised

permitting structure provides a hierarchy of standards, including a progression of more stringent requirements for more potentially impactful uses, for the three types of allowable uses on C-APZ lands. (See pages 19-21 of Exhibit 6)

However, while much of the language for the standards specified within Policy C-AG-7 is carried over from the existing LCP, some standards have been weakened or amended, as discussed below. As proposed, policies that seek to protect agriculture do not fully meet Coastal Act Sections 30241 and 30242 requirements that protect against conversion of prime agricultural land and land suitable for agricultural uses because they do not specifically protect land in agricultural production. As discussed above, since the policies protect structural development (i.e. barns, farmhouses, and processing facilities) as well as agricultural production, suggested modifications are necessary throughout Policy C-AG-7 to ensure that while, even though uses such as barns and processing facilities may be necessary for agricultural production and are considered agricultural uses, all development in the C-APZ zone must protect and maintain land for agricultural production. Thus, the standards and findings required for all development must be that the maximum amount of land suitable for agricultural production is conserved; otherwise, agricultural processing facilities, farmhouses, and other such agriculturally-related development would not be required to minimize their footprint on the rural landscape or be incidental to the primary function of the C-APZ: the growing of food and fiber. As modified, Policy C-AG-7's requirements to protect and maintain agricultural production are consistent with Coastal Act Sections 30241 and 30242.

Next, the proposed LUP weakens the existing LUP's requirement that development on C-APZ land cluster. The current LUP (in Unit II Policy 5a) requires all development (including agricultural development such as barns and farm roads) to be clustered within 5% of the parcel to the extent feasible, and the remaining 95% to be left in production (i.e. on a standard 60 acre parcel, a maximum of 3 acres would be allowed to be used for structural development and 57 acres left in open space for grazing). However, while the 95% requirement is being retained, the proposed LUP requires only agricultural residences and non-agricultural development to cluster in one or more groups within 5% of the parcel, thereby excluding uses such as processing and sales facilities. In order for principally permitted agricultural uses to be protect agricultural production, and to retain standards from the existing certified LUP, suggested modifications are needed in Policy C-AG-7(A)(4) to require all development (with the exception of certain agricultural structures, such as water tanks and barns, when necessary for production) to be clustered within 5% of the parcel. Additionally, the policy's proposed language of "in one or more groups" must be deleted for two reasons: one, because of the need for objective and enforceable standards for development to be classified as principally permitted; and two, retaining such language is unnecessary since the modification already allows some agricultural structures to be placed outside of the cluster if necessary for agricultural operations. Further, while the term "cluster" is used in the existing LUP, it is not precisely defined, nor does it allow for site specific conditions to be taken into consideration to further protect coastal resources (i.e. if the existing developed cluster is within a wetland or stream buffer, development would have to be located within the buffer, creating an internal LCP inconsistency). Thus, suggested modifications are required in Policy C-AG-7(A)(4) to further refine the "cluster" concept by stating that, while all development must cluster within existing developed areas, if such action would create an inconsistency with the LUP (such as wetland or scenic view protection

requirements), development shall be placed as close as possible to the existing development while meeting all LUP objectives and eliminating the inconsistency. (See page 19-20 of Exhibit 6).

Next, while the proposed LUP (in Policy C-AG-7(B)(1)) retains the existing LUP's language requiring development within C-APZ lands to minimize impacts on scenic resources, wildlife habitat, and streams, the proposed LUP now only requires this finding to be applied to non-agricultural development. This change is a large deviation from the existing certified standard, which required all development to meet this standard. Additionally, this list does not encompass all LUP requirements (including those for steep slopes, etc.). The Coastal Act requires all development, including agricultural development, to meet all applicable Coastal Act requirements. Thus, as proposed, the policy is inconsistent with the Coastal Act because it only requires non-agricultural development to meet other LUP requirements. Suggested modifications are thus required to move the standards listed in Policy C-AG-7(B)(1) to Policy C-AG-7(A)(4), thereby ensuring that all development, and not just non-agricultural development, must minimize impacts on coastal resources. This modification retains the existing standard that both agricultural and non-agricultural development must meet LUP requirements, and broadens those requirements to include all coastal resource protection policies, not just those listed few. (See pages 19-20 of Exhibit 6)

Proposed Policy C-AG-7(B) lists the requirements for non-agricultural uses. Both the existing and proposed LCPs allow certain non-agricultural uses within the C-APZ, including such uses as campgrounds, waste disposal sites, and marinas. The Coastal Act contains strong standards against the conversion of agricultural land for non-agricultural land uses. As such, the LUP requires strong findings for any such proposal, including that such development is necessary because agricultural use would no longer be feasible, and a permanent agricultural conservation easement be placed on the remaining portion of the property not used for physical development. However, since Policy C-AG-7(B) has been modified to instead apply to all non-principally permitted uses, some agricultural land uses, including those non-principally permitted agricultural uses discussed above, would be subject to these required conversion findings and requirements, which is unnecessary since these uses are by definition agricultural (i.e. the Coastal Act's and LCP's required conversion findings only apply for non-agricultural uses). Thus, suggested modifications are necessary to move such findings to newly inserted Policy C-AG-7(C), which contains standards for *non-agricultural* conditional uses. (See pages 20-21 of Exhibit 6).

Thus, as modified, the LCP has three sets of development standards: those for principally permitted uses; those for non-principally permitted uses; and those for non-agricultural conditional uses. These required findings and standards are cumulative, with the most restrictive standards and findings required for the land uses that have the most potential adverse impact on coastal resources. Additionally, as opposed to the existing certified LCP, these standards are required for all applicable development on C-APZ parcels; they cannot be waived by the decision-maker. The standards are thus consistent with Coastal Act Sections 30241 and 30242 because they require the maximum amount of prime agricultural land and land suitable for agricultural use to be maintained in agricultural production, while requiring non-agricultural development to only be allowed when agricultural use is not feasible.

As stated earlier, in addition to the general development standards specified in Policy C-AG-7, the proposed LUP also contains new standards that apply for individual land uses. These include the aforementioned requirements for housing, processing, and sales facilities. However, while some of these standards, as proposed, are adequate to achieve conformity with Section 30241-30242, other allowed land uses need more specific standards to ensure that they are agricultural uses. Without the added specificity, the proposed LUPA does not achieve conformity with Section 30241-30242 and must be denied.

F. Housing

As proposed, the LUP allows four types of housing on C-APZ lands: farmhouses, intergenerational homes, agricultural worker housing, and residential development potentially up to the zoning density. Residential development is classified as a non-agricultural conditional use, while the other three housing types are considered agricultural land uses. One farmhouse, one intergenerational home, and up to 12 units of agricultural worker housing per parcel are considered principally permitted agricultural uses. As discussed earlier, allowing dwellings on agricultural lands for a farm owner or operator to further agricultural production of that land protects the area's agricultural viability and economy. However, the LUP must assure that such agricultural dwellings are not converted to residential uses. For example, though clearly intended to be in support of agriculture, the LUP as proposed refers to the agricultural dwellings as residential units. For example, the LUP consistently calls these land uses "residential" uses (see Policy C-AG-9, the title of which is "Residential Development Impacts and Agricultural Use"). If these uses are to be classified as agricultural uses, with some of them principally permitted agricultural uses, they cannot be treated as if they were residential uses and must contain standards that ensure they are necessary for agricultural production. Otherwise, they must be considered residential uses and would be subject to the conversion findings of Coastal Act Section 30242 and LUP Policy C-AG-7(C). As such, suggested modifications are required in Policies C-AG-5 and C-AG-9, as well as throughout the LUP, that state that these three types of agricultural residential uses (farmhouses, intergenerational homes, and agricultural worker housing) are all classified as "agricultural dwelling units". In order for agricultural dwelling units to be considered agricultural land uses, they must meet specified criteria in the LUP to ensure as much, including the proposed cap on the aggregate size of all allowed agricultural dwelling units at 7,000 square feet (except for agricultural worker housing). Single-family residences owned by persons unrelated to the farming operation cannot meet the required test that such use is necessary for agricultural production. Since single-family dwellings are inherently not necessary for agricultural production, nor can they meet Coastal Act 30241's requirements, they must be deleted as an allowable land use. Thus, a suggested modification is required in Policy C-AG-2 which deletes such residential development as an allowed conditional use.

Other modifications are necessary to the required findings and standards to ensure that agricultural dwelling units are indeed agricultural. For intergenerational homes, a type of agricultural dwelling unit, suggested modifications are necessary to delete the explicit statement that occupants are not required to be actively and directly engaged in the agricultural use of the land. A suggested modification is also required to indicate that occupants do not necessarily need to be members of the farm operator's or owner's immediate family, by deleting the requirement that only the immediate family of the farm owner or operator can live in such homes (including

because regulating housing based on familial status is inconsistent with state and federal housing laws). Instead, the Commission chooses to regulate the permissibility of intergenerational homes based on relation to the farm owner or operator and based on land use parameters, including minimum parcel sizes and maximum square footage limits. Further, in terms of intergenerational homes, based off the required LUP criteria and assumptions, 27 units of such homes are the projected maximum number potentially allowed.¹ However, in order to account for any change in future conditions (including changes to Williamson Act laws, rezonings, subdivisions, etc.) such that the allowance for intergenerational homes does not overburden the coastal zone with additional residences unforeseen under today's conditions, a suggested modification is required in Policy C-AG-5 to place a cap on the total number of intergenerational homes throughout the coastal zone at 27. Once this threshold is reached, a LUP amendment authorizing additional units, and analyzing the impact such additional units would have on coastal resources, including findings of consistency with Coastal Act policies, would be required. In terms of agricultural worker housing, another type of agricultural dwelling unit, a suggested modification is necessary to require applications for agricultural worker housing above 36 beds or 12 units to include a worker housing needs assessment demonstrating the need for such housing.

G. Other

Further, as modified, when reviewing a coastal permit application for development, the County retains the right to look at all contiguous properties under common ownership to determine impacts to coastal resources and consistency with LCP requirements. This provision is particularly important for agricultural operations, which often consist of multiple separate legal parcels owned by one or more owners but altogether constitute one unified farming operation. Thus, in order to meet LUP agricultural protection policies, including a finding that development is necessary for on-site production, it may be necessary to review all of the parcels that altogether constitute the farming operation, including by stating that on-site farming operations may include multiple separate legal parcels. Thus, a suggested modification is included in Policy C-AG-2 to clarify the IP's requirement that the County (and Coastal Commission on appeal) may include all contiguous properties under the same ownership when reviewing a coastal permit application. A suggested modification is also required in Policy C-AG-5 that states that, when reviewing applications for farmhouses where the legal lot is less than the required 60 acre density, the reviewing authority *shall* consider all contiguous properties under the same ownership. The intent behind this suggested modification is to require development proposals on substandard lots to consider whether such development can be accommodated on contiguous legal lots.

Finally, while the LUP as proposed allows for certain uses such as agricultural homestays to be allowable within the C-APZ, it does not specify that such uses must be within otherwise allowable agricultural dwelling units. Therefore, it is possible the LUP could be interpreted to allow a separate structure for the sole purpose of providing such a use. Thus, a suggested modification to Policy C-AG-9 clarifies that all such uses must operate within otherwise allowable agricultural dwelling units and cannot be within additional separate structures built for

¹ Including a total of 153 privately-owned C-APZ parcels, the required 120 acres necessary to meet the density requirements for the first such home, and the assumption that parcels currently under Williamson Act contract and/or agricultural conservation easement held by MALT (Marin Agricultural Land Trust) are not allowed any intergenerational homes.

the sole purpose of housing the non-agricultural use.

The LUP's proposed policies and standards, taken together with the suggested modifications, protect agricultural production and ensure a sustainable agricultural economy, and can be found consistent with the Coastal Act.

2. Habitat Resources

A. Applicable Coastal Act Policies

Section 30107.5. "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30233. (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreation.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities.*

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant

disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

- (c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. ...*

Section 30236: *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section 30250(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.*

Coastal Act requirements emphasize the importance of protecting, maintaining, enhancing, and restoring coastal waters, wetlands, and ESHA. For example, with regard to sensitive habitats, Coastal Act Section 30240 requires that ESHA be protected against any significant disruption of habitat values, prohibits all but resource dependent uses, and requires areas adjacent to ESHA be sited and designed to prevent impacts that would significantly degrade ESHA. In addition to requiring protection to habitats designated as ESHA, Section 30233 provides that the diking, filling, or dredging of open coastal waters, wetlands, or estuaries may only be permitted where there is no less environmentally damaging alternative and when such actions are only for those uses specifically listed, including new or expanded port facilities, boating facilities and public recreational piers, incidental public service purposes, and mineral extraction. Section 30236 limits channelizations, dams, or other substantial alterations of rivers and streams to only three purposes: necessary water supply; protection of existing structures where there is no feasible alternative; or improvement of fish and wildlife habitat. Finally, Section 30250(a) requires, in part, new residential, commercial, and industrial development to be located within existing developed areas, or, in other areas where it will not have adverse effects on coastal resources, including biological resources. Thus, the LUPA must contain appropriate standards, such as avoidance of ESHA for all but resource dependent uses, maintaining adequate habitat buffers, and full mitigation for all unavoidable impacts. Any allowed land uses within wetlands and streams must also be consistent with the specific uses allowed within them by Coastal Act Sections 30233 and 30236, respectively, and all development must be consistent with coastal resource protection.

B. LUP Background

The Background section of the LUPA's Biological Resources chapter describes the natural habitats and environment of the Marin coastal zone as containing a broad range of estuarine and marine environments, tidal marshes, freshwater wetlands, stream corridors, upland forests, chaparral, grasslands, dunes, and beaches. These sensitive biological resources are easily disturbed and support communities of rare plants and protected species of fish and wildlife such as Snowy Plover (*Charadrius alexandrinus nivosus*), Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), California red-legged frog (*Rana draytonii*), and Central California coast steelhead (*Oncorhynchus mykiss*). Bolinas Lagoon and Tomales Bay are part of a larger, relatively undisturbed complex of wetlands along the Marin/Sonoma coast that includes Drakes and Limantour Esteros, Abbotts Lagoon, Estero Americano, Estero de San Antonio, and Bodega Harbor. Tomales Bay, Bolinas Lagoon, and the waters along much of the County's ocean shoreline are also part of the Gulf of the Farallones National Marine Sanctuary. The area is within the Pacific flyway and supports approximately 20,000 wintering shorebirds, seabirds, and waterbirds both seasonally and year-round. Subtidal areas and extensive mudflats support diverse populations of invertebrates and provide nursery and feeding habitat for resident and migratory fish, while steelhead and coho salmon access streams in the watershed. In Tomales Bay, eelgrass beds occur within the shallow waters at the northern end of the Bay that are critical for particular species of migratory birds, and for fish species such as Pacific herring. The rocky points, intertidal areas, and shoreline substrate in Tomales Bay provide habitat for many distinct invertebrate communities. The wetlands areas in Tomales Bay also serve as corridors to valuable spawning nurseries for the Coho salmon and Steelhead. Estero Americano and Estero de San Antonio are "seasonal estuaries" and their unique morphology result in a fjord-like quality which is not found in other California wetlands and results in a wide variety of species diversity and habitats. The coastal zone also includes unique terrestrial habitats such as serpentine grasslands, chaparral habitat that contain endemic plants such as Mount Tamalpais Manzanita (*Arcostaphylos hookeri Montana*), and coastal terrace prairie grasslands.

For the most part, the LUPA's proposed biological resources policies provide additional detail and clarity over the existing LUP and are consistent with applicable Coastal Act policies (including the designation of ESHA, the specified allowable uses within ESHA, and the requirements for buffers around ESHA). The LUPA proposes to designate three types of ESHA: wetlands, streams and riparian habitat, and terrestrial; establishes allowable uses within each ESHA type; requires buffers around the ESHA; and establishes allowable uses within those buffers. For terrestrial ESHA, the allowed uses are only those that are resource dependent (consistent with Coastal Act Section 30240), while the allowed uses within wetlands and streams/riparian are those that are specifically allowed for by Coastal Act Sections 30233 and 30236, respectively (including expanded boating facilities, incidental public service purposes, aquaculture, and flood control projects). The LUPA requires buffers surrounding all such ESHA, defined as at least 100 feet around wetlands and streams and 50 feet for terrestrial ESHA. However, these widths may increase depending on the findings of a required biological assessment and report. As proposed by the County, development proposals within or adjacent to ESHA will be required to prepare a biological site assessment prepared by a qualified biologist. The purpose of the assessment is to confirm the existence of ESHA, document site constraints, and recommend precise buffer widths and siting/design techniques required to protect and

maintain the biological productivity of the ESHA. This requirement is a new requirement in the LUPA and will help provide detailed site-specific development parameters.

Another modified approach of note as compared with the existing LUP are Policies C-BIO-3(3), C-BIO-20, and C-BIO-25, which all allow for a reduction in the buffer width required for the particular ESHA type. As proposed, a reduction to the required 100 foot buffer for wetlands and streams to an absolute minimum of 50 feet may be allowed, subject to required findings of the biological site assessment that the project will prevent impacts that significantly degrade the wetland/stream. In addition, for any buffer reduction, the LUPA requires additional measures that result in a net environmental improvement over existing conditions (including elimination of non-native or invasive species). Terrestrial ESHA's 50-foot buffer may also be reduced with the same findings and requirements, although there is no absolute minimum buffer distance. The existing certified LUP treats ESHA buffers less consistently than the proposed LUPA. For example, the existing LUP allows for a stream buffer reduction, with no absolute minimum, if a parcel is entirely within the stream buffer or where a finding is made that development outside the buffer would be more environmentally damaging than within (Unit 2 Natural Resources Policy 3(d)). In addition, the existing LUP does not allow for any buffer adjustment for wetlands, and does not specify any required buffer for "other ESHA" (now called "terrestrial ESHA"). Thus, the proposed LUPA provides for a more consistent approach to buffers and potential width reductions between the three types of ESHA, and, in particular for streams and terrestrial ESHA, provides tighter standards than currently exist. The approach proposed by the County, in terms of allowable buffer reductions, is consistent with other certified LCPs, including San Mateo County (100' buffer may be adjusted to a minimum of 50' with biological assessment findings).

C. Denial as Submitted and Approval with Suggested Modifications

However, the LUP as proposed contains some elements that are not Coastal Act consistent because they are internally inconsistent or need further refinement in order to achieve consistency with the requirements of Coastal Act related to habitat resources. Therefore the LUPA must be denied as submitted and only approved as modified as discussed specifically below. (See pages 28-38 of Exhibit 6 for the Suggested Modifications discussed in this section)

D. Habitat Buffers

First, although the proposed LUPA includes an absolute minimum buffer of 50 feet from streams and wetlands, it does not include a minimum buffer from terrestrial ESHA, such as coastal dunes and endangered plant habitats. Buffers function as important transition zones between development and adjacent habitat areas, serving to protect the habitat from the direct effects of nearby disturbance. Buffer areas provide protection for habitat from adjacent development in a number of ways (e.g., sheer distance, setback configuration, topographic changes, vegetation in the setback, fences at setback edges, etc.), where the methods chosen depend in part on the desired functions of the buffer (e.g., reducing human impacts, preserving habitat, water quality filtration, etc.). When more intensive urban uses are proposed adjacent to habitat areas, a primary method to protect the habitat is to provide adequate distance so as to limit direct contact and reduce the conveyance of human-generated impacts (such as noise, lights, movements, odors, debris, and other edge effects). Vegetation planted or present within the buffer can often help to reduce the absolute distance necessary for buffer width. Depending upon their design, buffers can also be a functional part of the ESHA acting as a transition zone from the more sensitive to

less sensitive parts of a site. Moreover, species numbers of both plants and animals increase at buffer edges, due to the overlap from adjacent habitats and the creation of unique edge habitat niches. By minimizing disturbance to the resource from adjacent development, and by providing transitional habitat areas, buffers protect the health and vitality of functioning habitat areas. Therefore, buffers are an essential tool in carrying out Section 30240(b), which requires development to be sited and designed to prevent impacts that would significantly degrade ESHA, and requires development to be compatible with the continuance of ESHAs. As proposed, habitat buffers could be eliminated entirely for development adjacent to terrestrial ESHAs, inconsistent with Section 30240. To address this inconsistency, suggested modifications to proposed policy C-BIO-3 establish an absolute minimum buffer of 25 feet from terrestrial ESHA (see page 29 of Exhibit 6).

Also related to buffers, as proposed, policy C-BIO-20 allows wetland buffers to be reduced to no less than 50 feet, in certain circumstances. The policy allows such a reduction for wetlands that were constructed for the treatment, conveyance or storage of water, where the constructed wetland does not affect natural wetlands. However, it is important to clarify that such a reduction can only be applied to legally constructed wetlands (meaning they were authorized by coastal permit or pre-dated coastal permit requirements). Further, in some cases, constructed wetlands can provide important habitat value that must be protected consistent with Coastal Act resource protection policies. Therefore, suggested modifications are necessary to clarify that wetland buffers can only be reduced for wetlands that were legally created, and for wetlands that have no habitat value (see page 34 of Exhibit 6).

E. Other

While the LUPA allows all accessways and trails in ESHA, Coastal Act Section 30240 only allows resource-dependent uses to be located within ESHA, and therefore, accessways and trails can only be allowed if they are resource-dependent. Therefore, accessways and trails that can be placed elsewhere and do not require location within ESHA to function are not allowed in ESHA, pursuant to 30240. As proposed, this policy may allow trails within ESHA that are not dependent on the ESHA itself, inconsistent with Section 30240, and a suggested modification is necessary within C-BIO-2 to clarify that only trails “fundamentally associated with the interpretation of the resource” can be allowed within ESHA (see page 28 of Exhibit 6).

Further, Policy C-BIO-14 prohibits grazing or other agricultural uses in a wetland, except in those areas used for such activities prior to April 1, 1981, the date on which the LCP was first certified. While the intent of the policy is to retain certified LCP Policy 4A (Unit 2 Natural Resources Policy), allowing existing agricultural activities to remain in wetlands and their buffers, the policy as proposed would allow for any agricultural activity in wetlands so long as the agricultural activity had been conducted in the wetland at some point prior to 1981. The policy does not clarify that such activities must be ongoing. Therefore, as proposed, any agricultural activity performed prior to 1981 could be resumed in a wetland, even if the wetland had not been used for agricultural activities since. As drafted, the policy could result in significant adverse impacts to wetlands, and allow new development in wetlands that is not resource-dependent, inconsistent with Coastal Act Section 30240. A suggested modification is thus required to Policy C-BIO-14 clarifying that only ongoing agricultural activities may continue to be allowed within a wetland or its buffer (See page 32 of Exhibit 6).

In addition, Policy C-BIO-14 allows for agricultural activities in wetlands that emerged as a result of agricultural activities, such as from livestock management or tire ruts, and specifically states that the LUPA's wetland buffer requirements do not apply for these wetland types. The policy is inconsistent with Coastal Act policies because it excludes some wetlands from required wetland protections. Further, while the policy's intent is to allow for continued agricultural use in wetlands created by agricultural activities, this is already provided for in the preceding paragraph of the policy. As modified above, the policy already allows agricultural activities within wetlands so long as the agricultural activity is an ongoing use. Therefore, a wetland created by ongoing agricultural activities would still be allowed to be used for those ongoing agricultural operations. For these reasons, a suggested modification is required to delete the paragraph addressing wetlands created by agricultural activities.

In addition, as proposed, policy C-BIO-4 requires coastal permits for the removal or harvesting of all major vegetation, and requires the County to allow the management or removal of major vegetation where it is necessary to minimize risks to life and property or to promote the health and survival of surrounding native vegetation. First, the Coastal Act's definition of development does not include the removal or harvesting of major vegetation for agricultural purposes, and therefore, coastal permits are not required for such work. Therefore, suggested modifications to C-BIO-4 clarify that a coastal permit is not required for the removal or modification of major vegetation if it is for agricultural purposes. Second, although the policy states that the management or removal of vegetation to minimize risks to life and property should avoid adverse impacts to ESHA, as written, it is not clear that such avoidance is a requirement. Therefore, suggested modifications to C-BIO-4 are also required to clarify that all permits for the removal of major vegetation must avoid adverse impacts to ESHA and other coastal resources (see page 29 of Exhibit 6).

Finally, there are a series of suggested modifications throughout the habitat resources policies that clarify minor inconsistencies or ambiguities. For example, Policy C-BIO-9 requires development in Stinson Beach and Seadrift to be set back behind the first line of terrestrial vegetation to the maximum extent feasible. However, this policy may lead to inconsistencies with policies in the Environmental Hazards chapter that require development to be set back a sufficient distance so as to be safe from environmental hazards, including flooding, and not require a shoreline protective device during its economic life. Thus, as proposed, there are two potentially competing standards. A suggested modification is required for Policy C-BIO-9 to state that development within these communities must be set back so as to meet *both* policies (i.e., development must be set back behind the first line of terrestrial vegetation as far as is necessary to also meet Policy C-EH-2's hazards protection requirements).

In addition, Policy C-BIO-1 states that terrestrial ESHA "refers to those" non-aquatic habitats that support rare and endangered species. Coastal Act Section 30107.5 defines ESHA as "any" area in which plant or animal life or their habitats are either rare or especially valuable. The Coastal Act definition does not give a specific list limiting ESHA to a narrow type; instead, site-specific conditions must be analyzed to determine the extent that such habitat is rare or especially valuable. While the definition as proposed offers a broad list of what constitutes ESHA, by limiting it solely to those listed types, the definition may preclude other types of especially valuable habitats and is thus inconsistent with the Coastal Act. A suggested modification is required for Policy C-BIO-1 to state that terrestrial ESHA "includes" (and is not

limited to) non-aquatic habitats that support rare and endangered species, etc.. As modified, the proposed definition for terrestrial ESHA offers a list of habitats that require protection, including habitats that support rare and endangered species, coastal dunes, groves of trees that provide colonial nesting and roosting habitat for butterflies or other wildlife, and riparian vegetation that is not associated with an ephemeral watercourse.

Further, in terms of ESHA buffer adjustments, Policy C-BIO-19 states that a buffer greater than 100 feet may be required based on the results of a site assessment, if a site assessment is determined to be necessary. However, per Policy C-BIO-2(4), all development proposals within or adjacent to ESHA require a biological site assessment, thereby making C-BIO-19's statement of "if such an assessment is determined to be necessary" internally inconsistent. To fix the inconsistency, a suggested modification is required to delete this sentence since all development within and adjacent to wetlands and their buffers require a biological site assessment.

Additional clarifications are provided in suggested modifications to policies C-BIO-2, C-BIO-5, C-BIO-7, C-BIO-8, C-BIO-9, C-BIO-11, C-BIO-21, C-BIO-"TBD", C-BIO-25 and C-BIO-26. These modifications are minor and further clarify terms and standards, including, for example, that the buffer width required for coastal streams in Policy C-BIO-"TBD" is either (a) 50 feet landward from the outer edge of riparian vegetation; (b) 100 feet from the top of the stream bank; or (c) as recommended by the biological site assessment. The suggested modification added (c) to ensure consistency with Policy C-BIO-2(4), which requires a biological site assessment for all development within or adjacent to ESHA to, in part, determine precise buffer widths. See pages 28 to 38 of Exhibit 6 for all suggested modifications to the Biological Resources chapter.

If modified as described above, the LUPA's proposed Biological Resources chapter would include a clear, comprehensive and appropriate set of policies to meet the goal of protecting, maintaining, enhancing, and restoring coastal streams, wetlands, and ESHA, consistent with and adequate to carry out the Coastal Act.

3. Visual Resources and Community Character

A. Applicable Coastal Act Policies

Section 30250(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.

Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually

degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 (part). *New development shall do all of the following:*

(e): Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30244. *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The Coastal Act requires new residential, commercial, and industrial development to be located within, contiguous with, and in close proximity to existing development, or in other areas where it will not have significant adverse impacts, either individually or cumulatively, on coastal resources. Additionally, Section 30250 establishes that land divisions outside existing developed areas can only be permitted where fifty percent of existing parcels have already been developed and that the new parcels are no smaller than the average size of existing parcels. For otherwise allowable development, one of the primary objectives of the Coastal Act is the protection of scenic and visual resources, particularly as viewed from public places. Section 30251 requires that development be sited and designed to protect views to and along the ocean and other scenic coastal areas. New development must minimize the alteration of natural landforms and be sited and designed to be visually compatible with the character of surrounding areas. Where feasible, development shall include measures to restore and enhance visual quality in visually degraded areas. Finally, Section 30244 requires the protection of archaeological and paleontological resources.

B. LUP Background

The Background section of the Community Design chapter describes the character of the Marin coastal zone as containing small-scale communities, farms, scattered residences, and businesses. The built environment is subordinate to the natural environment; natural landforms, streams, forests, and grasslands are dominant. Yet the residential, agricultural, and commercial buildings, as well as the community services that support them, have particular significance, both as the scene of daily life and for their potential impacts on natural resources. Visitors enjoy coming to Marin's coast because of the small-scale character of its built environment surrounded by agricultural and open space lands that offer a pastoral, rural character.

The proposed LUPA implements these Coastal Act requirements primarily through two LUPA chapters, Community Design and Community Development, containing general policies and standards that apply coastal zone-wide, as well as additional community-specific policies that contain particular standards for the nine coastal villages. For example, Policy C-DES-2 requires the protection of visual resources, including requiring development to be sited and designed to protect significant views (defined as including views both to and along the coast as seen from public viewing areas such as highways, roads, beaches, parks, etc.). This policy applies coastal zone-wide to all development, while, for example, Policy C-PRS-2, which encourages

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commercial infill within and adjacent to existing commercial uses in Point Reyes Station, only applies within the village itself. However, such commercial infill would still have to meet the requirements of C-DES-2, as well as other LUPA policies that apply throughout the coastal zone (including Policy C-DES-1 which ensures that all structures be compatible with the character of the surrounding built and natural environment).

Much of the policy language in these two chapters is carried over from the existing certified LUP, including the requirement that structures be limited to a 25' height limit (15' in Seadrift and the shoreline of Tomales Bay; 17' in Stinson Beach Highlands) and that utilities be placed underground in new development. While both the existing and proposed LUPA contain broad policy language to ensure the height, scale, and design of structures are compatible with community character, the proposed LUPA now contains additional policies that contain more objective standards. Such standards include Policy C-DES-3, which prohibits new development on top of, within 300 feet horizontally, or 100 feet vertically of visually prominent ridgelines. The proposed LUPA also contains new policies that address key planning issues, such as Policy C-CD-5 addressing nonconforming structures and uses. Whereas the existing LUP does not contain policies or standards on how to address such structures and uses, the proposed policy states that these structures and uses can be maintained or continued so long as they are not enlarged, intensified, or moved to another site. Finally, the LUPA's Historic and Archaeological Resources chapter provides policies that have been incorporated from the existing certified LUP for the identification and monitoring of archaeological and paleontological resources, including requirements for any development within an area of known or likely significance of such resources to provide a field survey to determine the extent of those resources on the site. Mitigation measures, including avoidance and permanent protection as open space, are required for any identified resources. Additionally, Policy C-HAR-5 requires all development located in historic areas and/or involving pre-1930 structures to conform with the Commission-certified "Design Guidelines for Construction in Areas of Special Character and Visitor Appeal and for Pre-1930 Structures" and "Coastal Village Community Character Review Checklist". Both of these documents are part of the LUPA's Appendix and are unmodified from the existing LUP.

In general, the relevant LUPA policies focus on the land use constraints and opportunities in each coastal zone planning area, as well as the appropriate location and intensity of new development, and ways to assure that development will not have significant adverse effects, either individually or cumulatively, on coastal resources. These policies ensure community character and significant views are protected; that new development be located within, next to, or in close proximity of existing development areas; and that development within coastal villages reflect the unique character of those communities.

C. Denial as Submitted and Approval with Suggested Modifications

However, the LUP as proposed contains some elements that are not Coastal Act consistent because they are internally inconsistent or need further refinement in order to achieve consistency with the requirements of Coastal Act policies related to visual resources and community character. Therefore the LUPA must be denied as submitted and only approved as modified as discussed specifically below. (See pages 68 to 91 and 118 to 120 of Exhibit 6 for the Suggested Modifications discussed in this section)

D. Consistency Analysis

First, Policy C-DES-4 requires all development to be a maximum of 25 feet. However, this height limit does not account for certain land uses that are allowed in the proposed LUPA, such as telecommunications facilities and agricultural structures, and therefore, the policy creates an internal inconsistency. Thus, a suggested modification is necessary in Policy C-DES-4 to clarify that such structures may exceed the 25' height limit, but that any height allowance requires findings of consistency with other LUPA policies, including the protection of significant views and community character. The modification also adds that specified height limits are maximums and not entitlements and that all structures may be limited to lower than the maximum height allowed in order to achieve consistency with LUPA view and character policies.

Second, Policy C-PFS-19 provides new additional policies specific to telecommunications facilities. The policy requires telecommunications facilities to be designed and constructed to minimize impacts on coastal views, community character, and natural resources by measures including co-location and stealth design. While this proposed list of requirements is appropriate, it does not include protection of significant public views, as is defined in Policy C-DES-2 to include views to and along the coast as seen from public viewing areas. A suggested modification therefore is necessary to require telecommunications facilities to be located outside of significant public views, to the extent feasible. Additionally, while federal law regulates telecommunications facilities to large extent, including by prohibiting a public agency from applying regulations that have the effect of prohibiting the provision of personal wireless services, other than the federally enumerated limitations on a public agency's authority, the facility still must meet otherwise applicable land use regulations. For example, telecommunications facilities must meet applicable LUPA requirements, including being located outside of significant public views, unless denial would be inconsistent with federal law. However, the policy as written does not acknowledge federal law requirements nor discuss how to apply the LUPA policies in conjunction with federal law. Therefore, suggested modifications to Policy C-PFS-19 are required to clearly state that a coastal permit consistent with all applicable LCP policies is required for all telecommunications facilities unless denial of such facility would be inconsistent with federal law (see page 107 of Exhibit 6).

Third, Policy C-DES-3 requires the protection of visually prominent ridgelines. The policy allows development in a ridgeline-protected area only if there is no other buildable site, and if such development is in the area least visible from public viewing areas. However, the policy does not require structures built within the protected ridgeline to be sited and designed to limit public view impacts to the maximum extent feasible. As written, the policy only requires the structure to be in the least visible location, but does not also address the siting and design of the structure itself. Therefore, a suggested modification is required in this policy to require any structure built in the protected area to be sited and designed to limit public view impacts to the maximum extent feasible, including through landscaping and screening. The modification adds additional clarity that such development must reduce its visual impacts to the maximum feasible extent. Thus, as modified, the policy is consistent with Coastal Act Sections 30250 and 30251 because it requires development to avoid adverse impacts on public views and other coastal resources.

Fourth, several policies address exterior lighting, but do not adequately ensure that the impacts of exterior lighting are avoided and minimized, as required by Coastal Act Policies 30250 and 30251. Policy C-DES-7 requires exterior lighting to be the minimum for public safety and

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downcast to prevent glare. However, a suggested modification is required to also state that such lighting must limit its visibility from public viewing places as much as possible, consistent with the LUPA's overall objective of protecting significant public views per Policy C-DES-2, as well as Coastal Act Policy 30251. In addition, Policy C-CD-20 prohibits night lighting for privately-owned recreational facilities such as tennis courts, and only allows such lighting for publicly-owned facilities. However, in order to provide additional clarification and consistency with the Coastal Act and other LUPA policies, including those protecting visual and biological resources, a suggested modification is required to state that any night lighting, even if for a publicly-owned facility (such as a park), can only be allowed if it is designed to protect against impacts to coastal resources as required by the LUPA. As modified, these policies that address exterior lighting are consistent with Coastal Act Sections 30250 and 30251 because they ensure that lighting will not have adverse impacts on significant public views, community character (including the coastal zone's rural character defined by dark skies), and other coastal resources.

Fifth, several suggested modifications are necessary to address Coastal Act policies dealing with concentration of development in existing developed areas. Policy C-CD-3 states that land divisions must conform with the land use categories and densities of the LUPA. However, missing from this policy is Coastal Act Section 30250(a)'s requirement that land divisions outside of developed areas shall only be permitted when 50% 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, as well as a general requirement that all new parcels be consistent with all LUPA policies (and not just density). This last insertion ensures that no land division is allowed if the resulting parcel configuration cannot accommodate LUP-consistent development.

In addition, Policy C-CD-11 lists the required criteria to be considered for any proposed boundary changes to the nine coastal villages. These criteria include: boundaries of existing and proposed public open space (including local, state, and federal parks), areas zoned for agriculture, natural and man-made barriers, and floodplains. However, while the list is extensive, it does not include Coastal Act Section 30254's requirement that coastal resources, including those protected by the LUPA (including public views, public service capacities, and ESHA), be protected. Thus, a suggested modification is required to add a tenth criteria: potential impacts to coastal resources, to the required issues and constraints needed to be reviewed in any village limit boundary adjustment.

Finally, Policy C-INV-3 contains additional guidelines for development within Paradise Ranch Estates, a community in the hills above Inverness on the western slopes of Tomales Bay. While the policy retains much of the language from the existing certified LUP, it does not retain the additional requirements for parcels identified for acquisition into Point Reyes National Seashore or those parcels identified for lot consolidation in the Paradise Ranch Lot Consolidation Plan. In the current LUP, if development is proposed on any lot that is identified within either of these plans, the County is to notify either Point Reyes National Seashore or the Coastal Conservancy, whichever is applicable, of such development. Thus, a suggested modification is required to reinsert this requirement in the LUPA, stating that the appropriate entity shall be notified of pending development proposals on any identified parcels.

In addition to these issues, a series of suggested modifications are required throughout the policies related to visual resources and community character to ensure clarity and internal

consistency. For example, Policy C-CD-5 allows existing, lawfully established non-conforming structures and uses to be maintained or continued, so long as they are not enlarged, intensified, or moved to another site. However, missing from this policy is a reference to the redevelopment definition provided in Environmental Hazards Policy C-EH-5, which defines the point at which an existing structure has been altered to the point at which it is now new development (resulting in the entire structure needing to conform with applicable LUPA policies). Thus, the modification to Policy C-CD-5 adds this cross-reference to the non-conforming policy.

In addition, Policy C-DES-5 retains a policy from the existing LUP that requires new signs to be of a size, location, and appearance so they do not detract from scenic areas or views from public roads and other viewing points. However, a suggested modification is required in this policy to clarify that the standards apply to all signs, including reconstructed and/or modified signs, and not just “new” signs.

Further, in the Community Development chapter, Policy C-CD-7 allows existing structures on public trust lands along the shoreline of Tomales Bay to be rebuilt if damaged or destroyed by natural disaster, in conformance with Section 30610(g) of the Coastal Act. However, 30610(g) only allows for structures *destroyed* by natural disaster to be rebuilt without a coastal development permit. *Damaged* structures requiring repair and maintenance within coastal waters are required to obtain a CDP per Section 13252 of the Commission’s regulations. Thus, a suggested modification to this policy is required to delete the allowance for damaged structures on public trust lands to be exempt from CDP requirements.

Policy C-CD-15 discourages the conversion of residential to commercial uses in coastal villages. The policy as proposed may preclude the ability to provide for commercial uses in existing developed areas, inconsistent with Coastal Act Sections 30222 (which prioritizes visitor-serving commercial recreational facilities over private residential development) and 30250, which directs development to already developed areas. Additionally, any potential issues from overdevelopment of commercial uses can be appropriately addressed by other LUPA policies, including policies that protect the character of the villages. Thus, as proposed by Marin County staff, a suggested modification would delete Policy C-CD-15.

Finally, with respect to the Community Specific Policies chapter, while a few minor modifications are required to clarify terms (see suggested modifications to Policy C-PRS-4, for example, which modifies the policy to read that there *appears to be* development potential for *up to* a 20-unit motel on a particular parcel in Point Reyes Station, as opposed to the language as proposed which offers a definitive statement that the site can accommodate such development), a few modifications are more substantive. For example, Policy C-PRS-5 describes additional criteria for new development within Point Reyes Station. The policy allows for potential exceptions to the maximum permitted floor area (designated at 4,000 square feet) subject to a list of five criteria, including that adequate setbacks are retained, the parcel is large enough to accommodate the additional floor area, and sun and light exposure on adjacent properties is not significantly limited. While the list is appropriate, a suggested modification is required to include protection of significant views and compatibility with the natural and built environment. This modification ensures that any development exceeding 4,000 square feet protects significant public views and is sited and designed so as to be compatible with the surrounding environment, consistent with Coastal Act Section 30251.

If modified as described above, the LUPA's Community Design and Community Development chapters would include appropriate policies related to land use and development, including related to the kinds, intensities, and densities of uses, consistent with the Coastal Act.

4. Public Recreational Access

A. Applicable Coastal Act Policies

***Section 30210.** In carrying out the requirement of Section 24 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people, consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212(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.*

***Section 30212.5** Wherever appropriate and feasible, public facilities including parking areas or facilities, shall be distributed throughout an area so as to mitigate against impacts - social and otherwise - of overcrowding or overuse by the public of any single area.*

***Section 30213.** Lower cost visitor and recreational facilities shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

***Section 30214(a).** The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics; (2) The capacity of the site to sustain use and at what level of intensity; (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses; (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. (b) It is the intent of the Legislature that the*

public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution. (c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221. *Oceanfront land suitable for recreational uses shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for the area.*

Section 30222. *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 30224. *Increased recreational boating use of coastal waters shall be encouraged in accordance with this division by developing dry storage areas, increasing public launch facilities, providing additional berthing space in existing harbors, limiting non-water dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Section 30234. *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

The Coastal Act requires the protection of public access and recreation opportunities, one of its fundamental objectives. The Act requires maximum public access to and along the coast, prohibits development from interfering with the public's rights of access, and protects recreational opportunities and land suitable for recreational use. Several policies contained in the Coastal Act work to meet these objectives. The Coastal Act requires that development not interfere with the public right of access to the sea (Section 30211); provides for public access in new development projects with limited exceptions (Section 30212); encourages the provision of lower cost visitor and recreational facilities (Section 30213); addresses the need to regulate the time, place, and manner of public access (30214); requires coastal areas suited for water-oriented

recreational activities to be protected (30220); specifies the need to protect ocean front land suitable for recreational use (Section 30221); gives priority to the use of land suitable for visitor-serving recreational facilities over certain other uses (Section 30222); requires the protection of upland areas to support coastal recreation, where feasible (Section 30223); and provides the location and amount of new development should maintain and enhance public access to the coast through various means (Section 30252).

B. LUP Background

The background section of the Parks, Recreation and Visitor-Serving Uses chapter describes the coastal zone as home to a myriad of protected natural communities and some of the region's most popular national, state and County parks, including Point Reyes National Seashore and the Golden Gate National Recreation Area. Much of the coastal zone lies within publicly-owned and protected parks and recreation areas. In addition to extensive shoreline parks, limited areas are held by non-governmental entities, such as Audubon Canyon Ranch, that also provide opportunities for public coastal access, while protecting wildlife habitat and open space. Communities in the southern part of the coastal zone are in close proximity to the City of San Francisco, and tend to generally have higher demand for day-use opportunities and lower demand for overnight accommodations than communities farther north. Parks throughout the County are critical in providing access to represent a low-cost option for recreational pursuits. Commercial visitor-serving facilities provide much of the supply of overnight accommodations throughout the coastal zone, and generally consist of small inns and bed and breakfast facilities in villages and rural areas. Overnight accommodations are a key element in the provision of coastal recreational opportunities, since many coastal visitors travel long distances to reach the variety of recreation options found throughout the County.

The Public Coastal Access chapter states that opportunities for creating new public coastal accessways are limited in Marin County, given that much of the ocean shoreline is already under public ownership. The shoreline from Point Bonita near the Golden Gate extending north around the Point Reyes Peninsula to Point Reyes Station is largely public parkland. Within this stretch of the coastal zone are the small communities of Muir Beach, Stinson Beach, Bolinas, Inverness, Olema and Point Reyes Station. Within most of these communities, some private land adjoins the shoreline, but even so there are locations at which public shoreline access is available. From Point Reyes Station north along the east shore of Tomales Bay to the Sonoma County line lies a patchwork of public and private land, some of which is within the coastal communities of East Shore/Marshall, Tomales, and Dillon Beach. Within this northern reach of the Coastal Zone, shoreline access opportunities are available at only limited locations, and the dominant land use is agriculture.

The existing LUP requires the protection and enhancement of public access opportunities to the coast, including through the provision of public recreational opportunities and visitor-serving facilities. The existing LUP's Public Access policies require coastal access in all development proposals located between the sea and the first public road, unless access would be inconsistent with the protection of public safety, fragile coastal resources, agricultural production, or privacy of existing homes. Coastal permit applications are required to include evidence showing potential prescriptive rights on the subject property, and if historic use is determined to exist, the development can only be approved if equivalent access is provided. Parking is encouraged in

areas with public access easements and trails, and the County is required to post all County-owned public shoreline accessways. The LUP also provides guidance on the types of recommended development within local, state, and federal parks, including additional hiking trails, improved parking, and potentially a hostel within Mount Tamalpais State Park. The LUP also requires the provision of visitor-serving commercial uses within coastal villages. The Coastal Village Commercial Residential (C-VCR) zoning district is a primary district within the coastal zone's villages that allows a broad range of local and visitor-serving uses, including shops and restaurants. Residential uses are also allowed, but Unit 1 Recreation and Visitor Serving Facilities Policy 14 only allows residential uses when they are incidental to the primary commercial use of the property. Further, the policy only allows exclusive residential uses on no more than 25% of the lots vacant as of April 1980. The Unit 2 coastal zone does not contain this explicit requirement to only allow residential uses on particular vacant lots, but does require (in Unit 2 Recreation and Visitor Serving Uses Policy 3) commercial development to be compatible with the character of the community in which it is located.

The proposed LUPA includes goals, objectives, and policies designed to protect, maintain, and improve a multitude of public access and recreational opportunities in the Marin County coastal zone. The LUPA contains policies that facilitate the development of visitor-serving uses, and also lists recommendations for development within the numerous local, state, and federal parks that would help further increase coastal recreational opportunities and access. Specifically, Policy C-PA-2 requires all new development between the shoreline and first public road to be evaluated for impacts on public access to the coast, and requires new public access to be provided, if appropriate. Policy C-PA-3 allows for potential exemptions from the access provision requirement, including whether the access would be inconsistent with public safety or the protection of fragile coastal resources, adequate public access exists nearby, agriculture would be adversely affected, or the access would seriously interfere with the privacy of adjacent residents. Existing coastal accessways are protected by numerous policies, including Policy C-PA-15, which requires new development to be sited and designed to avoid impacts to users of public coastal access and recreation areas; Policy C-PA-16, which requires public accessways to be maintained and only closed if authorized by a coastal permit and only after the County has offered the accessway to another public or private entity; and Policies C-PA-18 through 20, which require parking and signage at coastal accessways, including evaluating whether closure of public parking facilities at accessways could impact public access requiring mitigation for any access impact. Finally, Policy C-PA-7 ensures development does not interfere with prescriptive rights, by either siting development to avoid the area subject to prescriptive rights or by requiring public easements to protect the types of use.

In terms of the Parks, Recreation and Visitor-Serving Uses chapter, Policy C-PK-1 requires priority for visitor-serving commercial and recreational facilities over private residential or general commercial development. Policy C-PK-7 requires the protection of existing lower-cost visitor and recreational facilities. Additionally, new development of an overnight visitor-serving accommodation must provide 20 percent of its units as lower-cost, including campgrounds, RV parks, hostels, and lower cost hotels, or pay an in-lieu fee. Policies C-PK-10, -11, and -12 list recommendations for development within federal, state, and local parks, respectively, and Policy C-PK-14 supports the completion of the California Coastal Trail, including by listing standards that should be followed in the trail's acquisition, siting, and design. These standards include: locating the trail along or as close to the shoreline as feasible, making the trail continuous and

linking it with other public trails, and avoiding the trail along roads with motorized vehicle traffic.

C. Denial as Submitted and Approval with Suggested Modifications

However, the LUP as proposed contains some elements that are not Coastal Act consistent because they are internally inconsistent or need further refinement in order to achieve consistency with the requirements of Coastal Act policies related to public access and recreation. Therefore the LUPA must be denied as submitted and only approved as modified as discussed specifically below. (See pages 122 to 137 of Exhibit 6 for the Suggested Modifications discussed in this section)

D. Suggested Modifications

First, Coastal Act Sections 30210 and 30211 require maximum public access to be provided and conspicuously posted and requires development to not interfere with the public's right of access to the sea. To carry out these requirements, public access signage and parking is important because it provides the public with the opportunity to access coastal resources. Policy C-PA-20 requires any development that could reduce public parking opportunities to evaluate alternatives and ways to mitigate any potential loss of public coastal access. The policy as written, however, does not specify the types of development that could result in losses of public coastal access. As written, the policy is not clear as to what types of parking and access changes could require mitigation. As such a suggested modification in Policy C-PA-20 is required to clarify that changes to parking timing and availability and any signage indicating parking restrictions, must be evaluated for project alternatives or mitigation. As modified, the proposed LUPA's requirements and protections for public access signage and parking are consistent with Coastal Act policies 30210 and 30211.

Second, the Coastal Act protects visitor-serving uses because they are important to public access and recreation. Coastal Act Section 30222 gives priority to the use of land suitable for visitor-serving recreational facilities over private residential, general industrial, or general commercial development. Proposed Policy C-PK-3 states that commercial and residential uses shall be principally permitted in the C-VCR zone, while residential uses on the ground floor of the road-facing side of the building are a conditional use. As stated earlier, this zoning district is used in the coastal villages to facilitate the development of walkable, mixed-use commercial districts along primary streets, including Highway 1. In many ways, this zoning district implements a type of "Main Street" feel to the coastal villages because it allows a variety of local and visitor serving commercial uses and allows structures to be sited and designed (including through no building setback requirements, for example) so as to allow density and walkability in the village center.

The C-VCR zoning district implements key Coastal Act and LUPA objectives of providing visitor-serving commercial uses (Section 30222) in existing developed areas (Section 30250). Policy C-PK-3, as proposed, amends the existing certified policy by deleting the requirement that only residences incidental to the commercial use shall be allowed. The C-VCR zoning district also applies to some parcels that are not immediately along primary commercial streets, where the residential uses are more appropriate as opposed to along Highway 1 within Point Reyes Station, for example. Thus, residential uses can be an appropriate land use in some areas of C-VCR. However, as proposed, the policy does not provide enough of a priority for commercial

uses to remain the primary use within commercial districts. The policy requires a Use Permit (meaning a conditional, appealable use) for any residence proposed on the ground floor of a structure on the road-facing side of the property, but does not specify any additional requirements or findings that must be made in order to preserve the commercial orientation of the street. Because Coastal Act Section 30222 prioritizes visitor-serving commercial recreational uses over private residential uses, modifications are necessary to ensure that residential uses do not convert village commercial areas to primarily residential districts. Thus, modifications are required that: 1) designate commercial uses as the sole principal permitted use and residential uses as permitted or conditional uses (to be consistent with Coastal Act Section 30603 that each zoning district contain one principal permitted use and to recognize that commercial uses are the primary uses sought for this zoning district); 2) directs new residential uses to either the upper floor of a mixed-use building or the lower floor if not located on the road-facing side of the street; and 3) requires a finding for any residential development on the ground floor of a new or existing structure on the road-facing side of the property that the development maintains and/or enhances the established character of village commercial areas. Such modifications help ensure that commercial uses remain the primary use in the zoning district and that residential uses can only be allowed when they will be found to not impair the commercial orientation of the area.

Third, Policy C-PK-7 requires the protection of existing lower cost visitor and recreation facilities, and also requires 20% of new overnight visitor accommodations to be lower cost. However, the policy as proposed does not protect against the conversion of existing lower-cost facilities to higher-cost or other uses, or require mitigation for such conversions. Coastal Act Section 30213 requires all lower-cost visitor and recreational facilities to be protected. Thus, a suggested modification is required in Policy C-PK-7 to state that conversion of all existing lower-cost overnight facilities is prohibited unless replaced in kind. In addition, the suggested modification prohibits conversion of an existing visitor-serving facility on public land to private membership use.

Finally, a series of clarifications are required to ensure the proposed LUPA is entirely consistent with the Coastal Act's public access and recreation policies. For example, Policy C-PK-11 lists recommendations for future development in the two state parks that are located in the coastal zone: Mount Tamalpais State Park and Tomales Bay State Park. While the recommendations in general appear to improve public access and recreational opportunities and may be appropriate in the future, the policy as written makes a determinative statement that such recommendations are consistent with the LCP. The policy also states that development must be similar to those proposed in the two park's General Plans, which are not part of the LCP. Thus, a suggested modification is required in Policy C-PK-11 to clarify that all development, even those recommended projects listed in the policy and in the parks' General Plans, are simply recommended projects and still must meet all applicable LCP standards.

Policy C-CD-9 requires public access to new piers or similar recreational or commercial structures unless such access would interfere with commercial fishing operations or be hazardous to public safety. However, while such exceptions to public access requirements may be appropriate in certain situations, public access must still be provided, consistent with Coastal Act Sections 30210-30212 and LUPA Policy C-PA-2 (which requires all development between the sea and first public road to provide access if an impact to public access is found). Thus, a suggested modification is required to state that on-site public access, or alternative and

commensurate public access, shall be provided for all new piers or similar recreational structures.

Finally, Policy C-PA-7 requires the protection of prescriptive rights. When prescriptive rights are found to exist, and the requirement of an access easement would preclude all reasonable private use of the property, the County or the Commission shall seek a court determination to confirm such rights. In the absence of a determination, the policy allows the County to issue a coastal permit provided that all impacts on public access are mitigated in the same vicinity substantially in accordance with the LUPA's access policies. However, the policy as written does not provide enough direction or specificity as to how to protect public access. Suggested modifications are required to delete the language that requires "mitigation in the same vicinity" and instead replace it with language clarifying that a coastal permit can only be approved in such a situation if alternative access is provided in an equivalent time, place, and manner so as to assure that such prescriptive rights are protected.

Policy C-PA-10 requires coastal accessways and parking facilities to avoid, if feasible, and only then to minimize significant adverse impacts to sensitive environmental resources and agriculture. However, these resources, such as ESHA, require full avoidance and have strict limits on the type of uses allowed within them. As such, the policy must be modified to require full avoidance of significant adverse impacts to agriculture and sensitive environmental resources, consistent with Coastal Act Sections 30240 (which allows only resource dependent uses within ESHA and only when such uses prevent significant disruption of the habitat) and 30241-30242, which protects agricultural land and strictly limits the ability for non-agricultural uses to convert such land.

As modified, the LUPA's Parks, Recreation and Visitor-Serving Uses and Public Coastal Access chapters protect and provide for public access and recreational amenities and are consistent with Chapter 3 of the Coastal Act.

5. Coastal Hazards

A. Applicable Coastal Act Policies

The Coastal Act recognizes that development along the California shoreline can be affected by a dynamic range of coastal hazards, ranging from strong storms and wave uprush to landslides and liquefaction. Thus, the Act places a strong emphasis on minimizing risks associated with such hazards, and assuring stability for development over time in such a way as to avoid adverse impacts to natural processes. The latter concept is particularly important at the shoreline and bluff interface where shoreline altering development is often necessary to protect endangered structures. Such shoreline altering development can lead to coastal resource impacts of many types, perhaps most critically in terms of a loss of beach and shoreline recreation areas. Thus, the Coastal Act does not generally allow shoreline protective devices with new development, and only allows them in limited circumstances and subject to mitigation. Applicable Coastal Act coastal hazard policies include:

Section 30235 Construction altering natural shoreline

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger

from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 Minimization of adverse impacts

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. ...*

Coastal Act Section 30235 acknowledges that certain types of development (such as seawalls, revetments, retaining walls, groins and other such structural or “hard” methods designed to forestall erosion) alter natural shoreline processes. Accordingly, with the exception of new coastal-dependent uses, Section 30235 limits such construction to that which is “required to protect existing structures or public beaches in danger from erosion.” The Coastal Act provides this limitation because shoreline protective devices and similar development can have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site.

Coastal Act Section 30253 requires that risks be minimized, long-term stability and structural integrity be provided, and that new development be sited, designed, and built to allow for natural shoreline processes to occur without shoreline altering protective devices. Therefore, in cases where shoreline protection can be approved, the coastal permit authorization must ensure that the public will not lose public beach access, sand supply, ESHA, visual resources, and natural landforms, and that the public will not be exposed to hazardous structures or be held responsible for any future stability problems that may affect the development.

Thus, these Coastal Act policies require that the proposed LUPA address both existing development that may need shoreline protection, as well as new development that must be sited and designed to avoid the need for shoreline protection at any point in the future. The LUPA needs to effectively translate these requirements in a way that addresses the types and ranges of coastal hazards found in Marin County’s coastal zone.

B. LUP Background

Marin County’s coastal zone, and particularly the shoreline interface, is affected by a variety of coastal hazards, including shoreline and bluff retreat and erosion, ocean storms and waves, tsunamis, potential seismic events and liquefaction, and long-term sea level rise, all of which represent hazards for new and existing development. The Marin coastal zone contains numerous geologic features, including bluffs, steep slopes, and low-lying development subject to flooding, including along Tomales Bay, Stinson Beach, Seadrift, and Bolinas. Significant portions of California’s coastline have been armored with rock revetments, seawalls, or other shoreline protective devices. While Marin’s shoreline includes relatively few shoreline protective devices as compared with many other coastal communities, shoreline armoring is not absent from the

County's coastal zone. Structures within Bolinas and Seadrift in Stinson Beach rely in part on shoreline protective devices to ensure protection against ocean flooding and shoreline retreat. Sea level rise is expected to lead to increased erosion, loss of coastal wetlands, permanent or periodic inundation of low-lying areas, increases in coastal flooding, and salt water intrusion into stormwater systems and aquifers. Structures located along bluffs, including those in Muir Beach and Bolinas, may become susceptible to accelerated erosion, and areas that already flood during high tides, including portions of Stinson Beach, will likely experience an increase in these hazards from accelerated sea level rise. Sea level rise also threatens the integrity of roads and other infrastructure, such as Highway 1. The proposed LUPA recognizes these issues, including providing a background on such hazards in the Environmental Hazards chapter (see pages 39 to 40 of Exhibit 6).

The existing certified LUP requires all development within areas subject to geologic or other hazards to demonstrate that the area of construction is stable for development, the development will not create a hazard or diminish the stability of the area, and that the development will not require the construction of protective devices. It defines "geologic or other hazards" as areas mapped as earthquake zones, areas subject to tsunami runup, landslides, liquefaction, beach and bluff erosion, 35% slopes, and flood hazard areas. The LUP then contains specific requirements for blufftop development, including requiring new development to be setback from the Bolinas and Muir Beach bluffs a sufficient distance to ensure with reasonable certainty that it is not threatened from retreat within its economic life expectancy, currently defined as 50 years. It requires all development within 150 feet of a bluff or on mapped hazardous areas to be supported by a geotechnical investigation that identifies bluff retreat and the appropriate siting and design to ensure protection against hazards. New development is also required to be sited and designed so that no shoreline protective devices (including seawalls, groins, and breakwaters) will be necessary to protect the development during what the LUP calls its 50-year economic life. The existing LUP allows shoreline protective devices subject to seven requirements that must all be met, including that the device is required to serve a coastal-dependent use or existing endangered development, no other non-structural alternative is practical or preferable, the condition causing the problem is site specific and not attributable to a general erosion trend, and public access is not reduced, among others. If each of these tests can be met and the protective device is therefore allowed, the LUP requires the device to meet five design standards, including that they be as visually unobtrusive as possible, respect natural landforms, and minimize the impairment and movement of sand supply.

As stated earlier, the proposed LUPA generally maintains and strengthens the existing certified LUPA's hazards policies by requiring new development to be safe from geologic or other hazards. These policies include Policies C-EH-1 and C-EH-2, which ensure that new development during its economic life (now defined as 100 years, an increase as compared to the existing LUP's 50-year minimum requirement) is safe from and does not contribute to geologic or other hazards (including earthquake, tsunami, landslides, slopes above 35%, beach and bluff erosion, and flooding, including flooding from accelerated sea level rise), and that the development within its economic lifetime will not require a shoreline protective device. All applications for new development within identified hazard areas must include specific geotechnical studies for new development to determine the extent and type of hazards on a site, and the specific siting and design measures that must be implemented to ensure hazards are addressed. For blufftop development, Policy C-EH-5 requires new structures to be set back a

sufficient distance from the bluff edge, as determined by a geotechnical evaluation, to reasonably ensure stability for a minimum of 100 years and to eliminate the need for a protective device during the project's economic life. Policy C-EH-3 requires any development within a mapped hazardous area to record a document that both exempts the County from liability for any damage from hazards and that prohibits shoreline protective devices over the project's economic lifetime. Policy C-EH-13 generally maintains the required criteria for allowing shoreline protective devices, including that the device is to protect a coastal-dependent use, that sand supply impacts are mitigated, and a finding that no other non-structural alternative (such as beach nourishment or managed retreat) is feasible. Policy C-EH-14 maintains the required design standards for otherwise allowable devices, including that such devices blend visually with the natural shoreline and respect natural landforms to the greatest degree possible.

The LUPA also contains new policies meant to address new coastal hazards concerns and/or to expand on existing policies. For example, Policies C-EH-7 and C-EH-16 prohibit new permanent structures on bluff faces, with the exception of engineered public beach access facilities, while Policy C-EH-15 allows accessory structures, including patios and gazebos, to be built within required hazard setback areas so long as they are considered temporary, and they are built in a manner that they could be relocated should they become threatened. Policies C-EH-11 and -12 address FEMA flooding requirements, including by allowing the height of new development in the Seadrift Subdivision to be measured from the base flood elevation (BFE) as opposed to existing grade, and by allowing existing structures that are non-conforming with respect to required yard setbacks to be raised above FEMA's required base flood elevation without a variance. Policy C-EH-19 refers inquiries regarding the Seadrift revetment, permitted by the Coastal Commission in CDP A-1-MAR-87-235-A, to the Commission, and puts in language that exempts certain maintenance work on the revetment from CDP requirements. Policy C-EH-25 requires new development to be sited and designed to minimize the need for fire clearance, while allowing for the removal of major vegetation and ESHA if necessary to address fire safety. Finally, Program C-EH-22.a directs the County to prepare a vulnerability assessment from the potential impacts of sea level rise in the coastal zone. The assessment is to identify the areas, assets, and infrastructure of the County most at risk from sea level rise, along with recommended responses to identified threats, including potential amendment of LCP policies to address coastal resource protection.²

Thus, it is clear that the proposed LUPA represents an improvement with respect to addressing coastal hazards as compared to the existing LUP. For example, the time period for the safety and stability analysis has been increased to 100 years from 50 years, which brings the County up to the timeframe typical of newer LCPs statewide. It also includes many of the best practices as spelled out in the Commission's Draft Sea-Level Rise Policy Guidance,³ which in tandem with the County's current sea-level rise planning efforts should translate into future focused LCP amendments on this topic.

² The County was awarded \$54,000 in grant funds from the Coastal Commission's FY2013-2014 LCP grant fund program to help in this effort which, all told, is nearly a half a million dollar exercise leveraging a variety of funds (e.g., \$200,000 from OPC, etc.), including some \$170,000 invested by the County itself.

³ Such as incorporating sea-level rise into planning and permitting decisions, avoiding significant coastal hazards, and avoiding armoring of the coast.

C. Denial as Submitted and Approval with Suggested Modifications

However, the LUP as proposed contains some elements that are not Coastal Act consistent because they are internally inconsistent or need further refinement in order to achieve consistency with the requirements of Coastal Act policies related to hazards. These issues include defining the actual hazards themselves, clarification of economic lifetime expectations for shoreline and blufftop development (including redevelopment), criteria for approving shoreline armoring, accessory structures in hazardous areas, FEMA requirements, and specifications for fire safety. Therefore the LUPA must be denied as submitted and only approved as modified as discussed specifically below. (See pages 40-48 of Exhibit 6 for the Suggested Modifications discussed in this section)

D. Identifying Coastal Hazards

Proposed Policy C-EH-2 is the primary overall policy directing avoidance of hazards (see page 40 of Exhibit 6). However, the way it is structured implies that the only hazards to be avoided and addressed under this policy are those that are “mapped by the County at the time of coastal permit application”. Although hazards maps can be a great reference for hazards identification, there is no guarantee that the maps are complete, including whether they have been recently updated to reflect the best known science and information. This is a particularly critical issue for sea level rise, since assumptions and projections for future inundation are continuously being refined and amended to reflect new data. As a result of the reference to mapped hazards, the proposed LUPA will not necessarily capture all the cases where hazards need to be addressed in a CDP context.

In addition, the list in C-EH-2 of “geologic and other hazards”, which is the term the LUPA uses for coastal hazards,⁴ even though it uses the qualifier of “including” does not spell out some of the types of hazards known to occur along the coast (e.g., episodic events, tidal scour, etc.). Coastal Act Section 30253 requires new development to minimize risks in high geologic, flood, and fire areas, and thus the LUPA needs to be flexible enough to allow identification of such hazards at the time of a permit application (not only by maps), and comprehensive enough to clearly identify the types of hazards in question. The proposed LUPA can be easily modified to address these issues and allow for a finding of Coastal Act consistency. Regarding the maps, these can and should still be used as a resource for hazards identification, but the language needs to make clear they are not the only way a hazard is identified. Similarly, the list of hazards can be expanded so that it reads “including Alquist-Priolo earthquake hazards zones, and areas subject to tsunami runup, landslides, liquefaction, episodic and long-term shoreline retreat (including beach or bluff erosion), high seas, ocean waves, storms, tidal scour, flooding, steep slopes averaging greater than 35%, unstable slopes regardless of steepness, and flood hazard areas, including those areas potentially inundated by accelerated sea level rise”. In this way, the LUPA’s coastal hazard identification process will be clarified to ensure that all such hazards are identified and addressed through the CDP process. See suggested modifications to Policy C-EH-2 on page 40 of Exhibit 6. As modified, the proposed LUPA will ensure all hazards are evaluated when reviewing new development, pursuant to 30253.

E. Timeframe For Hazards Evaluation

⁴ Note that the changes to the title of C-EH-2 are required to conform the title to the referenced “geologic and other hazards” so as to avoid any confusion in implementation.

As identified earlier, the proposed LUPA increases the time frame for hazards evaluation from 50 to 100 years, which represents a significant improvement over the current LUP and is consistent with numerous other certified LCPs. The LUPA identifies this evaluation period as the “economic life” of the development in C-EH-1, and then references back to the economic life in the provisions of C-EH-2 and C-EH-5, the main hazard avoidance policies of the proposed LUPA, as well as the provisions of C-EH-3 (see pages 40 to 41 of Exhibit 6). Combining the disparate concepts of the economic life of a structure and the time period upon which hazards are to be evaluated presents several issues. As written, there is an expectation that a structure’s economic life is 100 years in all circumstances, and the policy may be interpreted to mean that a structure has a right to exist for 100 years, even if it is threatened by hazards sooner than that. Further, this could potentially allow for an argument that shoreline armoring could be authorized to protect the development for a 100-year economic life. Related, the LUPA does not include any measures to identify what happens at the end of a structure’s economic life, such as a requirement for removal or other “end of life” contingencies. Thus, as written, the LUPA could result in shoreline altering development contrary to Sections 30235 and 30253.

This issue can be readily addressed within the proposed LUPA framework. It is not the LUP that should be defining an economic life, it is the conditions of the site in question. In other words, natural processes at any particular site will dictate when a structure has reached its economic life because it will be endangered by coastal hazards at that point. Because new development will be sited and designed to avoid shoreline armoring, including to meet Section 30253 tests, it is at that juncture that economic life is reached (and removal and/or relocation is necessary).

It is clear that many structures, particularly residential structures, along the California coast remain in place for many, many decades, and it is appropriate to ensure that initial siting and design takes this into account so that they are safe without a reliance on shoreline altering armoring over their lifetime. The County’s proposal to use 100 years is appropriate in this regard but the time period is only the planning horizon for evaluation. CDP decisions need to be made with the best available information, but estimating future impacts from coastal hazards has proven an exercise fraught with uncertainty, and there is always the possibility that hazards issues lead to development being endangered sooner than anticipated.

In addition, to ensure that CDP’s appropriately address the “end of life” of such development, it is important for the LUPA to include provisions for addressing such situations. Namely, because the Coastal Act and the proposed LUPA do not allow development to rely on shoreline altering development to maintain stability and structural integrity, this must be assured when such development is endangered by coastal hazards, including if this occurs earlier than the 100-year setback would prescribe. Thus, the LUPA must specify that such development must be relocated and/or removed at that time.⁵

Each of these issues is addressed by suggested modifications to C-EH-1, C-EH-2, C-EH-3, and C-EH-5 (see pages 40 to 41 of Exhibit 6).

⁵ Similar to the way in which several recent cases have been conditioned in recent Commission actions, including the Monterey Bay Shores Resort in Sand City in CDP No. A-3-SNC-98-114, the Winget residence in Humboldt County in CDP No. 1-12-023, and, in Marin County, the Marshall Tavern in Marshall in CDP No. 2-06-017. These kind of provisions are also similar to recent certified LCP language in this regard (e.g., in the recently certified Seaside LCP).

F. Redevelopment

The proposed LUPA policies do not explicitly address the concept of redevelopment along the shoreline and bluffs. Redevelopment projects may entail renovations, additions, alterations, etc., but typically fall short of a completely new structure. Because the Coastal Act only allows shoreline protective devices for existing development, the point at which existing development becomes new development that must meet all applicable LCP policies, including those for addressing hazards, is a critical distinction.⁶ Without clear direction on this point, the proposed LUPA is not adequate to carry out the Coastal Act's coastal hazards requirements.

For example, in recent LCP decisions, including for Solana Beach, the Commission has defined "redevelopment" as the point at which additions and expansions, or any demolition, renovation or replacement, result in alteration or reconstruction of 50% or more of an existing structure.⁷ The definition also defines redevelopment to include additions and expansions, or any demolition, renovation or replacement which would result, cumulatively, in alteration or reconstruction of 50 percent or more of an existing structure. Thus, the definition requires that if an applicant submits an application to remodel 30% of the existing structure, then, for example, five years later seeks approval of an application to remodel an additional 30% of the structure, this would constitute redevelopment, triggering the requirement to ensure that the redeveloped structure is sited safely, independent of any shoreline protection.

Thus, Policy C-EH-5 has been modified to include a definition of redevelopment (tailored to this LCP to define the starting point at the time the policy goes into effect [e.g. May 2014]). The modified policy ensures that all new development meets applicable LCP policies, and defines when an existing development has been altered to the point at which it no longer is classified as existing development but rather new development, requiring that it be found consistent with the LCP, including the provisions that it not lead to shoreline altering development in the future.

In addition, existing shoreline protective devices cannot be relied upon in hazards evaluations for new development, including redevelopment. Those protective devices can only be understood in terms of their connection to the existing structures being protected (see also discussion below). When considering new development, the existing shoreline armoring cannot be used to make a case for stability consistent with Section 30253. Thus, a change must be made to C-EH-2 and C-EH-5 to make this point clear.

In short, the LUPA must address redevelopment in a way that requires it to be evaluated consistent with Coastal Act policies that disallow the construction of shoreline protective devices that would substantially alter natural processes, and thus modifications are necessary to provide definition to this type of development in the County. In addition, existing shoreline armoring cannot be relied on to demonstrate stability as it would then allow armoring for the protection of new development. See suggested modifications to C-EH-2, C-EH-5, C-EH-13, and C-CD-5 (see pages 40, 41, 42, and 69 of Exhibit 6).

⁶ The County defines existing development in Policy C-EH-13 as only those principal structures, residences, or second residential units in existence prior to May 13, 1982, the date in which the LCP was originally certified and CDP issuing responsibility was transferred to the County.

⁷ The definition acknowledges the Commission's regulations which identify the 50% threshold as the point at which the replacement of 50% or more constitutes a new replacement structure (CCR Section 13252(b)).

G. Shoreline Protective Device Lifetime

Policy C-EH-13 identifies the standards for allowable shoreline protective devices. These standards are mostly retained from the existing LUP with some refinements. The proposed policies, though, raise a series of issues related to the time frame when such protective devices are allowed consistent with Section 30235. As previously described, this section of the Coastal Act limits such shoreline protective devices to those that are required to protect existing structures and public beaches in danger from erosion, and to serve coastal-dependent uses. The proposed LUPA policy states as much. However, it does not provide a mechanism for ensuring that such structures are only allowed during the time that the danger exists. For example, if the shoreline protective device is being reconstructed, expanded, and/or replaced, then the device is a new project that must be found consistent with the Coastal Act with respect to allowing shoreline armoring. Without clear statements to this effect, there is the risk of inappropriate retention of such devices inconsistent with Coastal Act Sections 30235 and 30253, along with their attendant negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately resulting in the loss of beach. The suggested modification to Policy C-EH-13, subsection 8, resolves this problem (see page 43 of Exhibit 6).

In addition, the proposed policy states that shoreline protective devices may be authorized for a specified time period, depending on the nature of the project and other possible changing conditions. However, this policy lacks the specificity identified in Section 30235, which states that such devices are only allowed for existing development when such development is in danger from erosion. Again, absent more explicit definition, this policy does not ensure that the device is only present under the conditions that allow for it under the Coastal Act. In certain past cases, the Commission set a fixed armoring authorization term, such as twenty years. In more recent cases, the Commission has refined its approach, and has limited the length of a shoreline protective device's development authorization to be as long as it is required to protect a legally authorized existing structure. If an applicant must seek reauthorization of the armoring before the structure that it was constructed to protect is demolished or redeveloped, then Section 30235 authorizes the Commission to approve the shoreline protective device if it is still required to protect an existing structure in danger of erosion. However, once the existing structure that the armoring is required to protect is demolished or redeveloped, the armoring is no longer authorized by the provisions contained in Section 30235 of the Coastal Act. Accordingly, if there is no existing structure in danger from erosion, then an otherwise inconsistent shoreline protective device (i.e., in terms of coastal resource impacts, such as on public access) cannot be approved relying on the provisions of Section 30235 of the Coastal Act.

Another reason to limit the authorization of shoreline protective devices is to ensure that Coastal Act Section 30253 is properly implemented together with Section 30235. If a landowner is seeking new development on a blufftop lot, Section 30253 requires that such development be sited and designed such that it will not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Sections 30235 and 30253 prohibit such armoring devices for new development and require new development to be sited and designed so that it does not require the construction of such armoring devices. These sections do not permit landowners to rely on such armoring devices when siting new structures on blufftops and/or along shorelines. If a shoreline protective device exists in front of a lot, but is no longer required to protect the existing structure it was authorized to protect, it cannot accommodate

future redevelopment of the site in the same location relying on the provisions of 30235. Otherwise, if a new structure is able to rely on shoreline armoring which is no longer required to protect an existing structure, then the new structure can be sited without a sufficient setback, perpetuating an unending reconstruction/redevelopment loop that prevents proper siting and design of new development, as required by Section 30253. By limiting the length of development authorization of a new shoreline protective device to the existing structure it is required to protect, Section 30253 is more effectively applied when new development is proposed.

Thus, the length of any authorization for a shoreline protective device needs to be coincident with the time frame when the existing structures it is authorized to protect are present, and requires removal of the armoring when the structures it was authorized to protect are demolished or redeveloped. In this manner, new development will not be able to rely on armoring that no longer meets the provisions of Section 30235 of the Coastal Act. See suggested modifications to Policy C-EH-13 subsection 9 (see page 43 of Exhibit 6).

H. Shoreline Protective Device Mitigation

As described above, Coastal Act Sections 30235 and 30253 acknowledge that shoreline protective devices can alter natural landforms and natural shoreline processes, and have a variety of negative coastal resource impacts. In addition, Coastal Act Section 30235 explicitly requires otherwise approvable devices to be designed to eliminate or mitigate the adverse impacts on shoreline sand supply. And even where a shoreline protective device is determined to be necessary and designed in a manner protective of shoreline sand supply, the structure will often result in other significant adverse coastal resource impacts, such as to beach access and recreation.

The proposed LUPA policies recognize this, and provide reference to the Section 30235 shoreline sand supply requirements, but do not provide additional detail relative to this point. In addition, the time frame for the duration of any required mitigation is not stated. Although it can be implied that mitigation is required for the entire time that the device is present, the policy lacks certainty on this point. Both of these issues could lead to improperly mitigated shoreline protective devices inconsistent with the Chapter 3 policies of the Coastal Act. The proposed policies lend themselves to adjustment to address these problems. In terms of the coastal resource mitigation framework issue, this is easily addressed by ensuring that approvable projects mitigate impacts to shoreline sand supply, public access and recreation, and any other relevant coastal resource impacts. By providing a more complete and encompassing list, it can be assured that projects are mitigated against the range of coastal resource impacts that may be engendered.

In terms of the time frame for mitigation, the issue is not whether to mitigate, it is how. For example, one method of applying the mitigation is to tie the length of the armoring approval to a certain set time frame (e.g., twenty years). In that way, the device is only authorized in increments, and the mitigation is also evaluated in the same increments. As discussed above, though, the life of the armoring needs to be tied to the life of the structure it is designed to protect, which is dependent on physical circumstances and cannot be specified with certainty in advance. Thus, this method is not an effective time frame for mitigation.

Another method that is designed to address that uncertainty is to mitigate yearly (e.g., an in-lieu

fee paid every year to remediation fund). This method has the advantage of neatly addressing the issue because it mitigates in a ‘real-time’ way, and because it addresses the inherent uncertainty in the length of time when an existing structure warranting protection still exists, but it is cumbersome procedurally, including necessitating systems to provide and account for the yearly mitigation. It also does not respond well to changing circumstances (e.g., changing erosion rates that lead to increased impacts). It also has the disadvantage of applying mitigation in smaller increments, which may mean that the impacts are not effectively mitigated for some time because of a lack of overall mitigation ‘banked’ (e.g., less pulled funds in a remediation account).

The method used by the Commission in recent cases is to apply a twenty-year mitigation time period. Using a time period of twenty years for the mitigation calculations ensures that the mitigation will cover the likely initial impacts from the device, and then allows a recalculation of the impacts based on better knowledge of future erosion rates and associated impacts accruing to the armoring when the twenty years is up. Efforts to mitigate for longer time periods would require the use of much higher erosion rates and would bring a higher amount of uncertainty into a situation where a single, long-term mitigation effort is not necessary to be effective. To be clear, the twenty-year period applies just to the mitigation aspect of a shoreline protective device, not the duration that it is permitted. As discussed above, the duration is tied to the time period the structure being protected is present. The twenty year mitigation framework just allows for mitigation in twenty year increments, not that the authorization must be renewed in twenty years.

Thus, consistent with both recent Commission practice in LCPs (e.g., Solana Beach LCP) and CDPs (e.g., Land’s End, CDP 2-10-039), the amended policy requires mitigation for shoreline protective devices in 20 year increments, starting at the building permit certification date. A CDP amendment is required prior to the end of each 20-year period to address the next increment of mitigation. It is not required to extend the duration of the armoring approval, only for the mitigation aspect. Such mitigation reevaluation also provides for the opportunity to consider potential new and innovative ways to reduce impacts, including in response to changing information, ideas, and best practices relative to mitigation (e.g., new techniques for beach nourishment). In this way, allowable armoring can be appropriately mitigated as required by the Coastal Act. See suggested modifications to Policy C-EH-13 subsection 10 (see page 43 of Exhibit 6).

I. Accessory and Access Structures In Hazardous Areas

Policy C-EH-15 allows accessory structures, including patios and gazebos, to be located within a hazards setback so long as the structures are designed and constructed in a way that they could be relocated if threatened, and if the applicant agrees per a condition of permit approval that no shoreline protective device is allowed to protect the accessory structure. Similarly, Policy C-EH-16 allows shoreline access facilities to be located within bluff setback areas. As written, however, the policies would allow all accessory structures to be built within a hazards setback, potentially including structures that have deep structural foundations that may be difficult to relocate. The policies also only require the structure to be removed, but do not also require site restoration. Thus, in order to meet Coastal Act 30253(b)’s requirements that new development assure stability and structural integrity, and neither create nor contribute to erosion or geologic instability, suggested modifications are required in Policy C-EH-15 to define accessory structures as those without structural foundations (including decks and patios but not including

guesthouses, pools, or septic systems). Policy C-EH-15 and -16 must also be modified to require any accessory structure to be sited and designed to be easily relocatable and/or removable without damage to shoreline and/or bluff areas, to require restoration of the site after the structure be relocated. In this way, these types of minor structures and access facilities can be allowed in way that does not compromise Coastal Act requirements. See suggested modifications to Policy C-EH-13 subsection 10 (see page 43 of Exhibit 6).

J. FEMA Flood Hazard Requirements

Policies C-EH-11 and -12 require structures in flood hazard zones to be built from the base flood elevation, which is the flood elevation of a 100-year storm, and also allow existing structures that are non-conforming with regard to yard setbacks to be raised above the base flood elevation without the need for a variance. The policy as written does not also explicitly require adherence to other LUPA policies, including those for the protection of scenic views and community character. FEMA flood elevation requirements are most likely to affect structures within Seadrift, Stinson Beach, and other low-elevation shoreline communities where the protection of views to and along the coast, as required by Coastal Act Section 30251 and LUPA Policy C-DES-2, is of great importance. Thus, a suggested modification is required in both Policies C-EH-11 and -12 to state that maximum allowable building heights shall protect community character and scenic resources, thereby ensuring that meeting FEMA flood requirements does not inappropriately lead to significant visual impacts. See suggested modifications to Policies C-EH-11 and C-EH-12 (see page 42 of Exhibit 6).

K. Fire Safety

The LUPA contains numerous policies that address safety from fire hazards, including Policy C-BIO-4 (allowing for removal of major vegetation to minimize risks to life and property), Policy C-DES-11 (requiring new development to minimize fuel modification, particularly within ESHA), Policy C-EH-23 (requiring new development to meet all applicable fire safety standards), and Policy C-EH-25 (allowing for removal of major vegetation for fire safety purposes and siting new development to minimize need for future fire safety clearance).

Fire safety is an important consideration for both existing and proposed new development. Generally, difficulties arise when fire safety requirements impinge on ESHA areas. For new development, the policies need to clearly state that development, including its fire safety requirements, needs to be sited and designed in such a way as to avoid ESHA, per the Coastal Act's ESHA requirements. For existing development, it must be clear that fuel modification and brush clearance techniques are required in accordance with applicable fire safety regulations and are being carried out in a manner which reduces impacts to the maximum feasible extent. In addition, removal of vegetation that constitutes ESHA, or is in an ESHA, or is in an ESHA buffer, for fire safety purposes may only be allowed if there are no other feasible alternatives for achieving compliance with required fire safety regulations and all ESHA and related impacts are appropriately mitigated, preferably as near as possible to the impact area and in a manner that leads to no net loss of ESHA resource value. See suggested modifications to Policies C-EH-23 and C-EH-25 (see page 47 of Exhibit 6).

L. Other

The proposed coastal hazards provisions also raise a series of other issues that could render them less effective and inadequate to carry out Coastal Act requirements. These include only

addressing blufftop development (and not also shoreline development) when talking about the main types of issues associated with development at the dynamic shoreline/bluff interface (see C-EH-5); allowing infill development (identified as new development between adjacent developed parcels) that does not need to meet the setback requirements for addressing hazards (see C-EH-5); limiting the hazards evaluation to erosion, episodic events, and slope stability, while not also addressing other types of hazards (e.g., coastal flooding, wave uprush, etc.), the interaction of such hazards combined, and the potential for sea-level rise to exacerbate all of them (see C-EH-5); limiting the requirements for protecting against erosion to drainage beyond the setback as opposed to erosion in general (see C-EH-6); limiting the prohibition against structures on bluff faces to additional permanent structures as opposed to all structures (see C-EH-7); a series of design standards for shoreline protective devices that are not fully defined (see C-EH-14); limiting the prohibition against land division to areas abutting bodies of water, as opposed to areas at the shoreline/bluff interface (see C-EH-17); providing prescriptive language for the way in which the Commission needs to evaluate shoreline armoring at Seadrift under the Commission's continuing authority to implement its CDP applicable to the revetment there as opposed to leaving that to the Commission's discretion (see C-EH-19); emergency permit language that does not fully track the parameters for emergency permitting, including limiting its applicability to the County's permit jurisdiction, identifying that emergency projects can be retained (and not necessarily permanently) through a regular CDP process, and requiring complete application submittal (see C-EH-21); explicitly tying the LUPA's sea level rise policy to the coastal hazards analysis required in C-EH-5 (see C-EH-22a); and limiting further study to bluff retreat, and not to shoreline/bluff retreat (see C-EH-22b). Along with the other suggested modifications, changes can readily be made to ensure that these issues do not result in the LUPA not being able to fully address Coastal Act hazard policies. See suggested modifications to C-EH-5, C-EH-6, C-EH-7, C-EH-14, C-EH-17, C-EH-19, C-EH-21, C-EH-22a, and C-EH-22b on pages 41 to 42 and 44 to 47 of Exhibit 6.

M. Conclusion

The proposed LUPA represents an important step forward that refines LCP hazards policies to better protect coastal resources. At the same time, it needs additional specificity and structure, particularly around the questions regarding development at the shoreline interface and involving shoreline protective devices, to be able to be found consistent with Coastal Act Sections 30235 and 30253. As modified, the LUPA's Coastal Hazards policies are consistent with and adequate to carry out Coastal Act Sections 30235 and 30253.

6. Public Services

A. Applicable Coastal Act Policies

Section 30250(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.

***Section 30254.** New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted, consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded, except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services, and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation and visitor-serving land uses shall not be precluded by other development.*

***Section 30260 (part).** Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division....*

The Coastal Act policies listed above address the provision of adequate public services to serve new development, the requirement that Highway 1 remain a scenic two-lane road in rural areas of the coastal zone, that development of new or expanded public works facilities be designed and limited only to serve LCP-envisioned growth, and that, if public services are limited, certain land uses, including coastal dependent and visitor-serving uses, be given priority for those scarce services over other kinds of development.

B. LUP Background

The Background section of the Public Facilities and Services chapter describes the coastal zone's water, wastewater, and transportation infrastructure, as well as other components of the built environment. It states that most development in the coastal zone receives water and sewage services through individual property-specific systems managed by private landowners, since community water supply and sewage disposal systems are limited and exist only in some of the villages. This limited community service capacity is largely due to the local soil conditions and aquifer characteristics. Small water districts provide service in a number of areas, including Bolinas Community Public Utility District (BCPUD), Stinson Beach County Water District (SBCWD), Inverness Public Utility District (IPUD), and Muir Beach Community Services District (MBCSD). The community of Dillon Beach is served by two small independent water companies: the California Water Service Company (formerly Coast Springs Water Company) and the Estero Mutual Water System (EMWS). SBCWD, MBCSD, and the Dillon Beach area primarily use groundwater for their water supplies while IPUD and BCPUD rely mainly on surface water. Beyond the current water service district boundaries, private wells or small mutual water systems rely on individual groundwater wells, surface water, or small spring-based sources. Many of these sources occur in the limited areas of high water-yielding sediments in alluvial valleys, while much of the rest of the area is characterized by low-permeability fractured bedrock and thin alluvial deposits with too little saturated thickness to produce meaningful supplies of water. Sewage disposal is generally provided by individual on-site systems, including along the East Shore of Tomales Bay, Point Reyes Station, Inverness Ridge, Olema, Stinson Beach, and Muir Beach, parts of Dillon Beach, and most of Bolinas. Other areas are served by community sewer facilities, or in a few cases, small package treatment plants. Soil and groundwater conditions can affect the feasibility of new on-site systems or, in some cases, the

functioning of existing systems. In terms of transportation, the scenic character of the County's coastal zone is based in part on the small-scale, winding nature of Highway One and other rural coastal roads. To preserve the visual quality of the coast, it is necessary to maintain Highway One as a two-lane scenic road and to minimize the impacts of roads on wetlands, streams, and the scenic resources of the Coastal Zone.

The existing LUP requires a finding for all new development that adequate public services, including water supply, sewage disposal, and road capacity, are available to serve the proposed development. Lack of such services is grounds for denial of the project or for a reduction in the density otherwise potentially allowed. The existing LUP also contains detailed requirements for water, sewer, and road capacity, including that new development within a water system's boundaries can only use a private well if the water system is unable or unwilling to provide service or if the extension of physical distribution improvements necessary to serve the development is economically or physically infeasible. In terms of sewage capacity, the LUP requires all on-site septic systems to meet the performance standards adopted by the Regional Water Quality Control Board, and, finally, the LUP requires Highway 1 and Sir Francis Drake Boulevard, the two main thoroughfares in the coastal zone, to remain two lanes. Finally, the existing LUP contains a few policies related to the protection of existing and provision for new housing, particularly low and moderate income housing. These policies include a requirement that demolishing existing low and moderate income housing is only allowed in rare circumstances, including for health and safety reasons or when the units are replaced on a one-for-one basis. It also directs such housing, using appropriate zoning tools such as small parcel sizes, into coastal villages.

The proposed LUPA maintains many of the certified LUP's policies, and in many cases updates them with additional clarity and requirements. Foremost, Policies C-PFS-1 and C-PFS-2 implement Coastal Act Sections 30250 and 30254 by requiring a finding for all proposed development that adequate public services are available to serve such development. Required services include water, sewage disposal, and transportation (i.e., road access, public transit, parking, bicycle/pedestrian facilities). Lack of such services constitutes grounds for denial or a reduction in the density/size of the proposed project. Additionally, public service expansions must be limited to the minimum necessary to adequately serve development otherwise allowed for in the LCP, and not induce additional growth that either is not allowed or that cannot be handled by other public services. The LUPA then contains numerous other required findings and standards for particular services, including a requirement that development located within a public or private water system service area connect to that system (and not rely on a private well) and a new requirement that development located within a village limit boundary connect to the public sewer system (and not rely on a private septic system). While Policy C-PFS-14 allows for certain exceptions to the requirement that no wells be allowed within a water service boundary, it clarifies some of the potentially allowed exceptions, including for agricultural or horticultural use if allowed by the water provider, if the water provider is unwilling or unable to provide service, or if extension of physical distribution improvements to serve such development is economically or physically infeasible. No exception is allowed, however, because of a water shortage caused by periodic drought. For allowable wells, the LUPA maintains the existing LUP's policies that require a CDP for all wells, with additional standards for wells serving five or more parcels. In terms of other public services, the LUPA contains a new policy, Policy C-PFS-18, which prohibits desalination facilities in the coastal zone. For transportation, the LUPA

expands the certified LUP's requirement that Highway 1 and Sir Francis Drake Boulevards remain two-lane roads by extending this provision to all roads in the coastal zone per Policy C-TR-1. Additional transportation policies include new provisions for bicycle and pedestrian facilities (Policies C-TR-4 through 9), as well as a new policy for the County to consult with Caltrans on the impacts of sea level rise on Highway 1, including by studying structural and non-structural solutions (including relocation of the roadway) to protect access should the highway be at risk to flooding.

C. Denial as Submitted and Approval with Suggested Modifications

However, the LUP as proposed contains some elements that are not Coastal Act consistent because they are internally inconsistent or need further refinement in order to achieve consistency with the requirements of Coastal Act policies related to public services. Therefore the LUPA must be denied as submitted and only approved as modified as discussed specifically below. (See pages 102 through 113 of Exhibit 6 for the Suggested Modifications discussed in this section)

D. Suggested Modifications

First, Policy C-PFS-4 requires any extension or enlargement of a water or sewage treatment facility to reserve capacity for properties zoned C-VCR (Coastal Village Commercial/Residential) and C-RCR (Coastal Resort and Commercial Recreation). The intent behind the policy is to reserve service capacity for visitor-serving uses within coastal villages. However, the policy as written omits other uses given priority for scarce public resources under Section 30254, including coastal-dependent uses, agriculture, essential public services, and public recreation. Thus, a suggested modification is required for Policy C-PFS-4 to add these other Coastal Act priority land uses and to require a finding for all non-priority land uses that adequate capacity remains for priority uses, as required by Section 30254 (see page 103 of Exhibit 6). As modified, policy C-PFS-4 is consistent with the Coastal Act, including Section 30254.

Second, Policy C-TR-2 requires the protection of the scenic qualities of Highway 1 by ensuring that road improvements, including the improvements listed previously, do not detract from its rural scenic characteristics. Much of Highway 1 traverses state and federal parkland, including Tomales Bay State Park, Point Reyes National Seashore, and Golden Gate National Recreation Area. Thus, a suggested modification is required in Policy C-TR-2 to state that any improvement, particularly for turn-outs, shoulders, and other expansions, must also minimize encroachment into parkland to the maximum extent feasible. Lastly, in terms of the LUPA's transportation policies, the County, Coastal Commission, National Park Service, and Caltrans have been coordinating to develop a set of design guidelines for the repair of Highway 1 in Marin County. These *State Route 1 Repair Guidelines Within Marin County* will define the allowable parameters for the repair of Highway 1, including defining allowable shoulder and lane widths, engineering requirements, and drainage features. While the guidelines are still being prepared and are not available to be incorporated into the LUPA at this time, a suggested modification adds Program C-TR-2.a. This program requires the County to continue working with the relevant agencies and stakeholders in refining and implementing the *State Route 1 Repair Guidelines Within Marin County*, which will ultimately be used to help guide the future physical improvement of Highway 1 in the Marin coastal zone.

Third, Policy C-PFS-18 is a new policy that prohibits desalination facilities within the coastal zone, as discussed above. However, the Coastal Act, in sections 30260 and 30515, places a high priority on the provision of coastal-dependent industrial facilities, potentially including desalination facilities in some situations. Thus, while the LUPA can state its intent to prohibit such facilities in the coastal zone because of the potential adverse impacts to coastal resources, the Commission, rather than the local government is likely to have jurisdiction over such facilities and a blanket prohibition on this coastal-dependent use is not fully consistent with the Coastal Act.⁸ Thus, a suggested modification is required in Policy C-PFS-18 to state that desalination facilities are only prohibited consistent with the limitations of Public Resources Code Sections 30260 and 30515.

Further, clarifications are required to ensure that transportation projects, including those for Highway 1, meet all applicable LCP policies. Policy C-TR-1 limits all roads in the coastal zone to two lanes, and only allows for shoulder widening for bicycles, turn lanes at intersections, turnouts for slow-moving traffic or at scenic vistas, traffic calming, and similar improvements. While these improvements may certainly be appropriate, the policy as written may be interpreted to state that these projects are appropriate at all times and do not need to meet other applicable LCP requirements (including for protection of visual, biological, and/or agricultural resources). Thus, a suggested modification is required for Policy C-TR-1 to state that such projects may be appropriate provided they are also consistent with the LCP's other coastal resource protection policies.

In conclusion, the proposed LUPA's Public Services, Transportation, Energy, and Housing chapters, if modified as suggested, would be consistent with the relevant Coastal Act policies related to the provision of public services, and ensures that new development and its attendant service requirements will be consistent with all relevant Coastal Act policies.

7. Water Quality and Mariculture

A. Applicable Coastal Act Policies

Section 30230. *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of wastewater discharges and entertainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats,*

⁸ Including because Coastal Act Section 30515 specifically mandates a local government or the Commission to hear a request by any person authorized to undertake a public works project or energy facility development to amend a LCP to allow for such facilities.

and minimizing alteration of natural streams.

The Commission shares responsibility for regulating non-point source water pollution in the coastal zone with the State Water Resources Control Board (SWRCB) and the coastal Regional Water Quality Control Boards (RWQCBs). The Commission has primary responsibility for protecting many coastal resources, including water quality, from the impacts of development in the coastal zone. The SWRCB and RWQCBs have primary responsibility for regulating discharges that may impact waters of the state through issuance of discharge permits, investigating water quality impacts, monitoring discharges, setting water quality standards and taking enforcement actions where standards are violated. Coastal Act Sections 30230 and 30231 mandate the protection of the biological productivity and quality of coastal waters, including through both direct discharge of wastewater and runoff and through limiting the types of uses allowed in and around coastal waters and their riparian habitats.

B. LUP Background

Tomales Bay, Walker Creek, and Lagunitas Creek have been designated by the State Water Resources Control Board as impaired water bodies, based on the presence of pollutants such as sediments and nutrients. Other pollutants, such as oil, grease, and heavy metals, are also present in the watersheds of the coastal zone. Land development and construction activities are key contributors to sedimentation and nutrient inputs to coastal waterways. Furthermore, sewage disposal methods may contribute to nutrient loads in waterways, and parking and transportation facilities can contribute oil, grease, and heavy metals to coastal waters.

As previously discussed, the County's LUPA submittal includes a variety of important policies to address water quality issues, including policies that require the protection of natural drainage systems, site planning to address drainage and polluted runoff, and the use of Best Management Practices (BMPs). The storm water and water quality provisions were coordinated through Commission water quality staff, including to ensure that they address current water quality planning standards such as the prevention of non-point source pollution. Whereas the existing LUP requires rather broad policies requiring "sediment, erosion, runoff control, and revegetation measures" and "maximum groundwater recharge" (Unit I Grading Policy 26), the proposed LCP includes more robust and quantitative storm water and water quality protection provisions to mitigate both construction and post-construction water quality impacts. In addition to general provisions that require all development to minimize grading and impervious surface area through measures such as Low Impact Development (LID), the proposed LUPA also targets specific types of development, defined as high-impact projects, for their particularly acute water quality impairment potential. Policy C-WR-14 defines eight types of High-Impact Projects, including commercial facilities, automotive repair shops, restaurants, uncovered parking lots, any development impacting 10,000 square feet or more of impervious surface area, and any other development determined by the County to have a high potential for generating pollutants. These projects are required to prevent pollutants from entering coastal waters both during construction and post-construction by filtering, treating, or infiltrating stormwater runoff from the 85th percentile 24-hour storm event (or 85th percentile 1-hour storm event for flow-based BMPs, both commonly accepted water quality metrics). These requirements complement other LCP policies, including protections against development in and surrounding coastal waters and requiring allowed land uses in coastal waters, such as mariculture operations, to only be allowed when they meet specific LUPA water quality protections. For example, Policy C-MAR-3 requires

mariculture operations to protect eelgrass beds, provide for public shoreline access on facilities that serve mariculture operations, and also requires the protection of visual resources and water quality. All of the policies within the LCP work together to ensure the protection of the biological productivity of coastal waters.

C. Denial as Submitted and Approval with Suggested Modifications

However, the LUP as proposed contains some elements that are not Coastal Act consistent because they are internally inconsistent or need further refinement in order to achieve consistency with the requirements of Coastal Act related to water quality. Therefore the LUPA must be denied as submitted and only approved as modified as discussed specifically below. (See pages 50-51 and 54-59 of Exhibit 6 for the Suggested Modifications discussed in this section)

D. Water Quality

Several modifications are necessary to clarify terms and ensure that specific types of development meet particular water quality requirements. These modifications include defining a High-Impact Project in Policy C-WR-14 as any development that results in the creation of 5,000 square feet of impervious surface and occurs within 200 feet (instead of 100 feet as proposed) of the ocean or coastal wetlands, streams, or ESHA (as opposed to simply coastal waters). This modification is necessary because the LUPA's Biological Resources policies define the area within 100 feet of wetlands, streams, and ESHA as buffers. Coastal Act Section 30240 and the LUPA require buffers to be maintained in a natural condition and restrict the types of allowable development within them. Because there are rarely development projects allowed within 100 feet of ESHA and hence directly affecting the sensitive resource, impacts tend to occur offsite and are potentially carried to sensitive habitats through runoff and other drainage. To address this problem, the Commission has recently required similar stormwater and grading restrictions to apply within 200 feet of a watercourse, not within 100 feet. In order to meet these ESHA buffer protection requirements, all development in and around the buffer must be subject to the LUPA's strictest water quality protection criteria. Additionally, the policy as written only requires protection around the ocean and coastal waters but not other ESHA; thus, the modification adding any development around ESHA is necessary because all ESHA requires strict LCP protection. Another suggested modification is required in Policy C-WR-14 to require High-Impact Projects, where feasible and appropriate, to connect to sanitary sewer systems as a means of treating polluted runoff that cannot be addressed by typical BMPs. This modification is necessary because BMPs and other siting and design measures may not be adequate to meet necessary water quality objectives, and therefore, directing runoff to the sanitary sewer system, in cases where there is a sanitary sewer system present and available for this purpose, may be required in order for the development to meet the LCP's policies. Finally, a suggested modification is required in Policy C-WR-6 requiring all High-Impact Projects to prepare an erosion and sedimentation control plan, thereby ensuring that High-Impact Projects' construction-phase water quality impacts are appropriately addressed.

E. Mariculture

Although the LUPA's mariculture policies, as proposed, protect mariculture and generally require it to be operated in a manner that protects other coastal resources, several suggested modifications are necessary to clarify terms and requirements. Policy C-MAR-1 states that mariculture must provide for other uses, such as commercial fishing and protection of coastal

LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update)

wildlife. However, the policy's requirement that mariculture operations solely "provide for" other uses does not adequately reflect the importance of other Coastal Act priority uses and may be interpreted to mean that mariculture operations should be given preference over other Coastal Act priority uses. A suggested modification is therefore required in Policy C-MAR-1 to clarify that mariculture operations must be consistent with other Coastal Act priority uses and standards, such as commercial fishing and the protection of marine biological resources. In addition, Policy C-MAR-3 states that the coastal permitting agency, whether it is the Coastal Commission and/or Marin County, shall apply the listed standards and procedures for mariculture operations. However, mariculture operations are for the most part located in coastal waters below the mean high tide, including public trust lands. As such, per Coastal Act Section 30519(b), they are located within the Commission's retained coastal permitting jurisdiction and regulated by Chapter 3 of the Coastal Act, not the LCP. Therefore, the LUP's policies for mariculture operations would be advisory only in a coastal permit context. Thus, a suggested modification is required to delete Policy C-MAR-3's statement that the listed standards apply to the Coastal Commission. Finally, Policy C-MAR-3 states that mariculture operations should avoid interference with eelgrass beds in Tomales Bay, in conformance with Section 30.10, Title 14, California Code of Regulations. However, the policy as written is not consistent with Section 30.10's language that prohibits disturbance or cut of eelgrass along the entire coast, and not just limited to Tomales Bay. Thus, a suggested modification is required in Policy C-MAR-3(1) to state that mariculture operations shall avoid disturbance or damage to eelgrass beds, and deleting the requirement that it only apply to those operations within Tomales Bay.

If modified as described above, the LUPA's Water Resources and Mariculture chapters would include a comprehensive and appropriate set of policies to meet the goal of protecting and enhancing water quality of local coastal waters from adverse impacts related to development, consistent with the Chapter 3 policies of the Coastal Act.

8. Other

Affordable Housing

The LUPA's Housing chapter provides new policies for the provision of housing within the coastal zone, including Policies C-HS-2, -3, -5, and -9, which allow for affordable housing (including by requiring 20% of the units in new development consisting of two or more units to be affordable, by allowing for second units in residential neighborhoods, and by allowing for density bonuses consistent with Coastal Act 30604(f). While the policies as proposed for the most part are consistent with the Coastal Act, including by ensuring that second units are only built within existing residential neighborhoods, a few modifications are necessary to clarify terms and delete cross-references to non-LCP provisions. For example, suggested modifications are required in Policies C-HS-3 and C-HS-9 to delete references to the County's affordable housing and density bonus ordinances, which are not proposed to be part of the LCP (see pages 98-100 of Exhibit 6).

Appendices and Maps

The Appendix of the LCP includes the following seven items:

- Appendix 1: List of Recommended Public Coastal Accessways
- Appendix 2: Inventory of Visitor-Serving, Commercial, and Recreation Facilities in the Coastal Zone

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- Appendix 3: Coastal Village Community Character Review Checklist (Local Coastal Program Historic Review Checklist)
- Appendix 4: Design Guidelines for Construction in Areas of Special Character and Visitor Appeal and For Pre-1930's Structures
- Appendix 5: Seadrift Settlement Agreement
- Appendix 6: 1977 Wagner Report "Geology for Planning, Western Marin County"
- Appendix 7: Categorical Exclusions Orders and Maps
- Appendix 8: Certified Community Plans:
 - a. Dillon Beach Community Plan
 - b. Bolinas Gridded Mesa Plan

As previously discussed, nearly all of these documents are not being amended and are simply being retained as is from the existing certified LCP (the exception being the updated inventory of visitor serving facilities). The proposed maps, however, are new and show, among other things, the boundary of the coastal zone; locations of special-status species, wetlands, and areas subject to sea level rise and flooding; land use and zoning maps; and maps showing the boundaries of the categorical exclusion orders. Since these maps are intended to be for planning purposes only and are not intended to be definitive delineations of ESHA or coastal hazards, nor for actual boundaries of the coastal zone, for example, suggested modifications are thus necessary to clearly state as such. Thus, a suggested modification is required for all maps to state that they are illustrative only, and also include the following disclaimer (from the Commission's mapping unit):

The Coastal Zone Boundary depicted on this map is shown for illustrative purposes only and does not define the Coastal Zone. The delineation is representational, may be revised at any time in the future, is not binding on the Coastal Commission, and may not eliminate the need for a formal boundary determination made by the Coastal Commission.

Further, a series of corrections are required to ensure the maps are used appropriately (see pages 38-39 of Exhibit 6). In addition, Maps 28a and b do not accurately depict the location of the first public road. Again, while these would only be illustrative since the appeal and jurisdiction boundaries are determined by the maps certified by the Commission and on file in the Commission's offices, the maps must be corrected to ensure clarity. Therefore, a suggested modification is required to replace the proposed maps 28a and b with maps that accurately depict the location of the first public road. See pages 38-39 of Exhibit 6 for suggested modifications pertaining to the LCP's maps.

As modified, the proposed maps and Appendix are consistent with the Coastal Act.

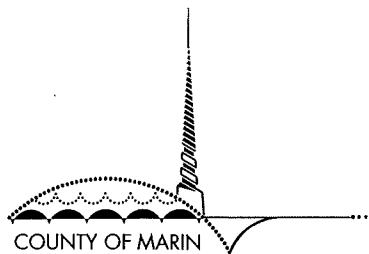
C. California Environmental Quality Act (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus,

LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update)

under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP submittal, or, as in this case, an LUP amendment submittal, to find that the approval of the proposed LUPA, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LUP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f) and 13555(b). In this particular case, all of the proposed amendments are being approved as submitted. Thus, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LUP, as amended, conforms with CEQA provisions.



COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

May 15, 2014

Honorable Commissioners and staff
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Dear Commissioners and Staff,

It is a great pleasure and an honor to bring Marin County's Land Use Plan Amendments to your Commission today.

First we wish to thank your staff for, particularly in the past several weeks, working so hard and diligently with our staff to resolve differences between the County's proposals and the various Suggested Modifications. That effort has yielded important results.

Our appreciation similarly goes out to the hundreds of people throughout Marin's coast and beyond who gave of their time, expertise and passion to this process. Their input has made the County's exceptionally broad, open and inclusive process of public participation an essential part of the development of our Local Coastal Program (LCP) Amendments.

We now look forward to receiving your feedback about how well the County's LCP Amendments have responded to an evolving world with new elements of our plan, firmly rooted in the certified plan that has served us well in the past. Our work is by no means over, as your Commission is only being asked to act on the Land Use Plan portion of our Amendments today. As you may know we have submitted a complete Implementation Plan (IP) that shows how the already highly detailed policies of the LUP Amendments (LUPA) will be carried out through specific zoning standards and procedures. However, your staff recommended, and we agreed, to defer action on the IP because we were together concentrating on getting the LUP policies right and to ensure the Commission had the opportunity to consider approving the LUP at a local public hearing in Marin County in the interest of maximizing participation of the public.

With the cooperative effort of our two staffs, the areas of disagreement have been dramatically reduced, and as of this writing center on certain specific issues including:

- Crafting coastal hazard policies that recognize fundamental differences between blufftop development and shoreline areas subject to flooding and inundation with coming sea level rise. The Commission has approved an LCP grant to the County, which together with substantially larger amounts of other support, commits the County to completing a science-based, participatory process over the next two years to propose sound strategies to be included in a new LCP Amendment. In light of this commitment, we request that individual

residents not be subject to interim policies that are untested and lack the benefit of a fully informed study.

- Providing for human safety in existing homes where surrounding vegetation needs to be managed to create defensible space in the face of fire hazards.
- Clarifying policies to provide for adequate visitor serving uses in coastal village areas.
- Defining workable policies for individual landowners where public service capacity has not been specifically reserved for priority Coastal Act uses.

Our respective staffs have been working closely and intensely to develop solutions to these issues and hope that the Staff Addendum expected to be published soon will contain Modifications the County can accept.

Given the time and expense invested in this LCPA process by both the County and all the participating members of the public, it is important to us to settle as many of the issues in the LUPA as possible so we can concentrate efforts on the remaining issues and the IP. The County specifically submitted six separate Amendments, as detailed in its Resolution of Submittal. The separate proposed Amendments correspond to individual Chapters, or groups of Chapters of the LUPA, as shown in the following excerpt of the Resolution:

NOW, THEREFORE, BE IT RESOLVED, that the Marin County Board of Supervisors authorizes the filing of the following Amendments to the certified Marin County Local Coastal Program included in Exhibit 1 for approval by the California Coastal Commission:

1. Amendment 1.1: Amended Agricultural Policies
2. Amendment 1.2: Amended Biological Resources
- a. Amendment 1.3: Amended Environmental Hazards, Mariculture, and Water Resources Policies
3. Amendment 1.4: Amended Built Environment Policies
4. Amendment 1.5: Amended Socioeconomic Policies
6. Amendment 1.6: Amended Development Code Implementation Measures

We hope you will act on all of these today. If for any reason your Commission does not conclude action on Amendment 1.3 Environmental Hazards et al, we ask that you take action on the others, so the County can continue to work with your staff and the public to resolve any remaining issues. The LCPA cannot be certified today in any event, as the IP is not before you yet. This procedure will allow our staffs and the public to work to resolve those remaining issues without having to resort to a more cumbersome and time consuming Resubmittal process.

With respect to the substance of the matters before you, recent communications appear to have gained attention and caused concern that the proposed Amendments to the County's Agricultural policies will result in 1 million square feet of new development in the County's Coastal Agricultural Production Zone (the County's agricultural preserve zone). This

hypothetical prediction has no basis in reality and is misleading by attributing such development to the County's proposed Amendments.

The hypothetical build out prediction appears to be based on basic yet unrealistic math and unfounded assumptions that fail to reflect existing LCP policies and the history of development in the Coastal Agricultural Production Zone. What is certain is the fact that the proposed LCP Amendments would not allow more residential building square footage than existing policy and standards potentially allow. To the contrary, the proposed LUP Amendments establish a new 7,000 square foot cap on residences (other than state-mandated and urgently need agricultural worker housing) for each lot in the Agricultural Production Zone. This limit applies to cumulative total of the potentially permitted single farmhouse and maximum of two intergenerational homes. It is important to keep in mind there is no maximum building square footage limit for agricultural property in the County's existing LCP. The current average house size (which includes some homes dating back to the 1800s) is approximately 1940 square feet. This building limitation has its origins in agricultural protection policies adopted in the County's general plan (Marin Countywide Plan) update of 2007 as a means of discouraging speculators looking to build rural mansions.

Second, the strong agriculture protection policies in our current LCP have been retained. One of the most important of these is C-AG-6:

Require that non-agricultural development ... shall only be allowed upon demonstration that long-term agricultural productivity... would be maintained and enhanced as a result of such development.

This is a high bar that has, and will continue to be effective in preserving agriculture, as evidenced by the County's strong history of protecting our agricultural lands and heritage in Marin. Since 1987, the County has approved only 13 new single family homes in the Coastal Agricultural Production Zone (see Exhibit 1), fewer than an average of one-half a home per year. At this rate, the buildout of the remaining lots that may have remaining development potential for a farmhouse would be spread over more than 160 years.

The County has strongly supported the Marin Agricultural Land Trust (MALT) to protect agricultural land and agriculture families. Those efforts have already yielded conservation easements protecting 14,705 acres or about 47% of the Coastal Agricultural Preserve Zone, an amazing track record of success in conservation. MALT's future efforts are expected to reduce the number of unbuilt agricultural parcels, with a consequent reduction in the number of new farm residences.

The proposed Amendments also continues the stringent rules limiting subdivision that have worked so well for more than thirty years. Under the LUPA they will continue to strongly discourage the subdivision of Agricultural Production land in the Coastal Zone.

The LUPA provides for a maximum of 27 “intergenerational homes” for the entire coastal zone, unless a new LCP amendment is approved by the Commission. This would allow some of the current generation (the average age of Marin farmers and ranchers is 60) to stay on their land when they retire, and to advise and pass on their hard-earned knowledge and experience to the upcoming generations, who would also then have the opportunity to live on the land they farm. No subdivision would be allowed for the intergenerational units – they stay with the farm. Moreover the intergenerational homes are restricted to use by the farm operator and family.

The Amendment would add a new policy establishing a priority system to protect the land most suitable for agricultural production by restricting development that may be allowed:

- First, to non-agricultural land;
- Second, to non-prime land; and
- Last to Prime land.

When new development is permitted, it would be located on no more than 5% of the lot (applies to all buildings and access roads).

Other improvements to LUPA Include:

- Additional detail and clarity for **biological resource protection** standards, including the requirement that development proposals within or adjacent to an Environmentally Sensitive Habitat Area prepare a biological site assessment which will accurately identify sensitive coastal resources and provide specific measures to protect them.
- While we may have an issue with some **Hazard policies**, the LUPA significantly strengthens the balance of them. New development would be required to demonstrate it is safe from geologic or other hazards for 100 years (a more realistic lifespan for valuable coastal homes) rather than the 50 years the current LCP requires. Geotechnical studies would have to take into account the most up-to-date information, including the potential effects of sea level rise, to determine the extent and type of hazards on the site, and provide specific siting and design measures to avoid and mitigate these hazards.
- As previously mentioned, the LUPA commits to the first significant study of the potential hazards of **sea level rise** on Marin’s coast, and the adoption of an LCPA amendment to incorporate the study’s findings as a future update to the LCP. The County has already secured \$274,000 in grants and outside support to match the commitment of County staff time to the project.
- Additional updated policies related to **housing, transportation, public facilities and services, public recreation, public access**, and others are provided.
- New policies addressing coastal resource issues including heightened requirements for protection of **water quality**, protection of **scenic areas**, and encouragement of **multi-modal access** are included as well.

We sincerely appreciate the Commission hearing and your willingness to consider acting upon the Marin County Land Use Plan Amendments today. We also look forward to our continued work with your staff and to meeting with you again for certification of the full LCPA.

Sincerely,



Brian C. Crawford
Agency Director



Jack Liebster
Planning Manager

COUNTY OF MARIN COASTAL PERMIT RESIDENTIAL APPROVALS IN C-APZ ZONING DISTRICTS
(Since 1987)

Project	Address	Home Size (A)	Garage Size (B)	Detached Residential Accessory (e.g. guest house) (C)	Total Non-Agricultural Building Area (A+B+C)	Agricultural Building(s) (e.g. barn, greenhouse, etc.) (D)	Total Building Area (A+B+C+D)
Barboni/Kivel	18400 State Route One, Marshall	2,450	595	0	3,045	680	3,725
Benetti	2000 Franklin School Road, Valley Ford	2,639	0	0	2,639	0	2,639
Brennan	9800 Marshall-Petaluma Road, Marshall	1,843	0	0	1,843	0	1,843
Dillon Vision (Magee)	17990 State Route One, Marshall	3,165	648	0	3,813	1,456+1,792=3,248	7,061
Furlong	65 Sheep Ranch Road, Marshall	1,806	515	0	2,321	1,400 ag worker unit, 864 garage	4,585
Hachigian	3251 Dillon Beach Road, Tomales	2,800	0	600	3,400	1,296	4,696
Hansen/Brubaker	17500 State Route One, Marshall	3,467	0	2,850	6,317	1,360	7,677
Jablons	5488 Middle Road, Petaluma	3,785	0	0	3,785	2,808*	6,593
Moritz	5675 Horseshoe Hill Road, Bolinas	2,917	1,130	0	4,047	0	4,047
Osterweis	200 Pine Gulch Road, Bolinas	1,178	0	1,178	1,178	5,942+800=6,742	7,920
Parks	28375 State Route One, Tomales	1,701	0	0	1,701	0	1,701
Spaletta	1250 Estero Road, Valley Road	2,943	973	0	3,916	0	3,916
Williamsen	3599 Dillon Beach Road, Tomales	2,964	862	0	3,826	0	3,826
Average		2,589					
TOTAL					41,831		60,229

* Includes 2 agricultural worker units

EXHIBIT 2

Below are some notes Marin County staff provides the Commissioners addressing the material distributed by EAC.

“EAC: Marin County’s LCP Amendment would allow **over 1 million square feet of new residential and commercial development by right** in the Coastal-Agriculture Production Zone district without almost any public hearings and no public right of appeal to the Coastal Commission. Conversely, Marin’s existing Certified LCP purposely limited residential development with support from the agricultural community in order to maintain the maximum amount of agricultural production land in active production.”

Comments:

“...allow **over 1 million square feet of new residential and commercial development**”

- The current rate of home approvals is less than 5 per decade. At this rate it would take more than 160 years for the 83 C-APZ parcels to be built out.
- The above also assumes that MALT would not acquire easements to any of these during that time.
- The 1,000,000 square feet (sf) figure apparently assumes that all 83 parcels build out to the maximum extent, that all existing homes currently average 3500sf, and that each of these will double in size to also “max-out” all existing parcels.
- “Acres” are more commonly used when discussing agriculture. By that measure 1,000,000sf is less than 23 acres.
- There are approximately 30,800 acres of land in the C-APZ zone.
- 23 acres out of 31,000 is a fraction equaling 0.00075 of the zone (0.075%).
- Exhibit 2.1 shows what that amount looks like in a pie chart.
- Exhibit 2.2 shows it a different way (p 5) (ex 2.3) DevelopmentSquare3
- Except for the 27 intergenerational homes- *which would have to fit under the limit on cumulative square footage*- the LCPA is the same at current LCP in term of the number of homes on parcels.
- The LCPA caps the size of farmhouses, thus discourages speculators and non-farmers seeking rural mansions and statement homes.
- The CCC’s *Sterling case* indicates one house per legal lot may be allowed by other legal considerations.

“...allowed **by right** in the Coastal-Agriculture Production Zone district. “

- The only development allowed “by right” in the C-APZ is Categorically Excluded and statutorily exempt development. All Administrative and Appealable Coastal Permits are discretionary and subject to all the policies of the LCP.

“...without almost any public hearings....”

- The coastal permit process will come before the Commission when you consider the Implementation Plan.
- In any event, the County CDA Director can already send an item to hearing when there is controversy:
Marin County Code, Sec 22.40, Table 4-1:

The Director or Zoning Administrator may refer any matter subject to the Director's or Zoning Administrator's decision to the next highest authority, so that the next highest Review Authority may instead make the decision.

- This is county practice and has happened most recently in the "Robertson" where the Director elevated it an administrative project to the Planning Commission.
- Most importantly, aggrieved parties party can always appeal an administrative decision to the Planning Commission and Board of Supervisors for hearing at both levels.

"...no public right of appeal to the Coastal Commission..."

The writer seems to completely ignore the geographical appeal area established by the LCP consistent with the Coastal Act. Again this question will be addressed when the Commission considers the IP. But since the County has already drafted the IP, we can provide the definition of the geographic appeal area:

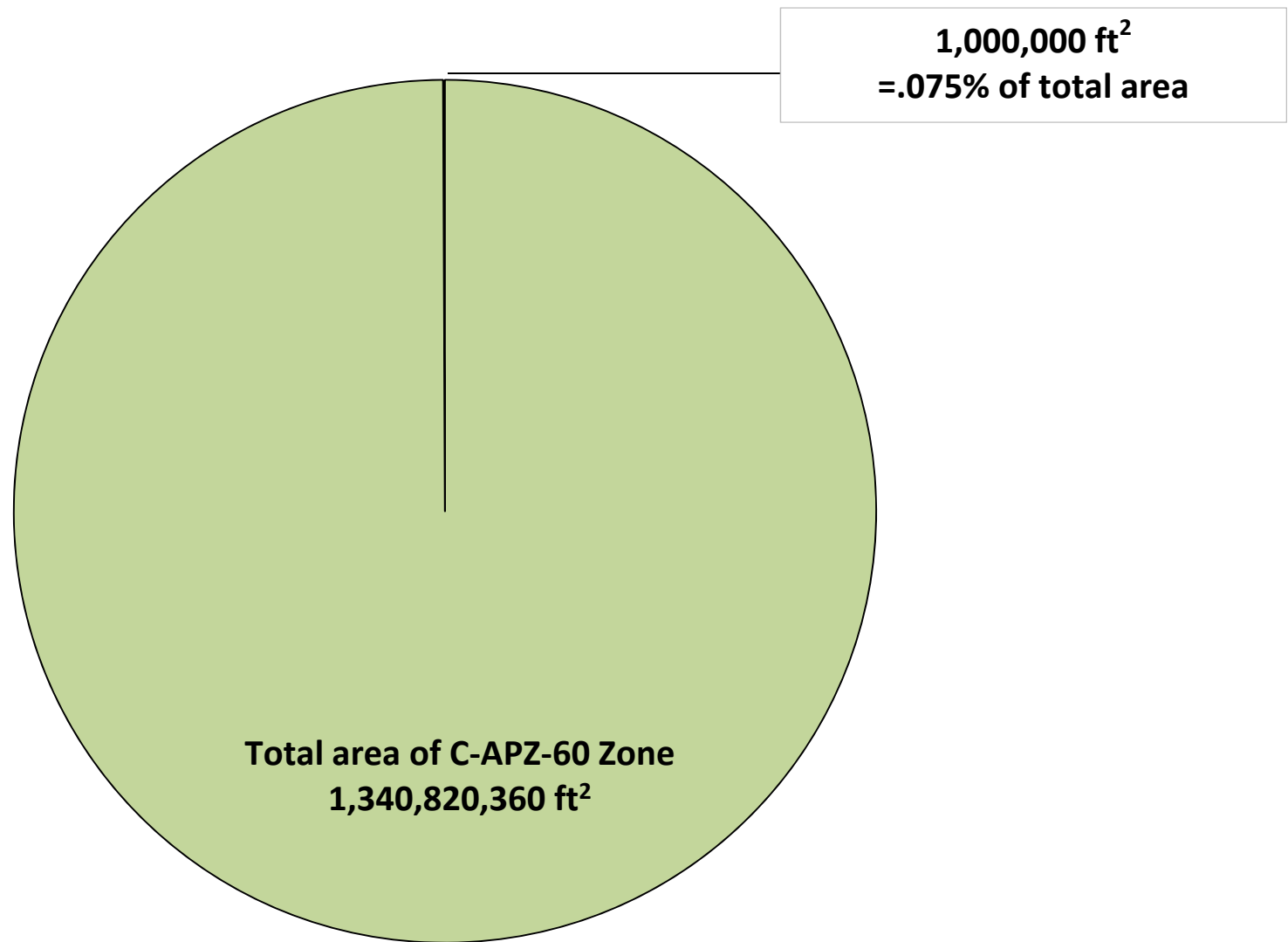
22.70.080 – Appeal of Coastal Permit Decision...

1. Appealable Development. For purposes of appeal to the Coastal Commission, appealable development includes the following:

- (a)** Development approved between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance;
- (b)** Development approved, not included in paragraph (a) above, that is located on tidelands, submerged lands, public trust lands, within 100 feet of any coastal wetland, estuary, or coastal stream, or within 300 feet of the top of the seaward face of any coastal bluff;
- (c)** Development approved that is not designated as the Principal Permitted Use (PP) by Tables 5-1, 5-2, or 5-3 in Chapter 22.62 – Coastal Zoning Districts and Allowable Land Uses; and
- (d)** Any development which constitutes a major public works project or a major energy facility.

Of course the drafters of the Coastal Act that the most sensitive resources of the Coast would be protected by recourse to your Commission. Thus 22.70.080.1(a) automatically makes development seaward of the first public road, 300 feet from any beach, as well as coastal streams, wetland, and estuaries and an area around them than happens to be **equal to the buffer area** specified in the LCP.

As displayed in the following figures (ex. 2.3, 2.4 and 2.5), the geographic appeals area encompasses the sensitive areas of the coast, and in the northern part of the County, a vast rural area as well.



**Total area of C-APZ-60 zone
1,340,820,360 ft²**



**New development allowed
1,000,000 ft² = .075% of total area**



Appeal Areas: See Attached Inset Maps

Map A



Map B

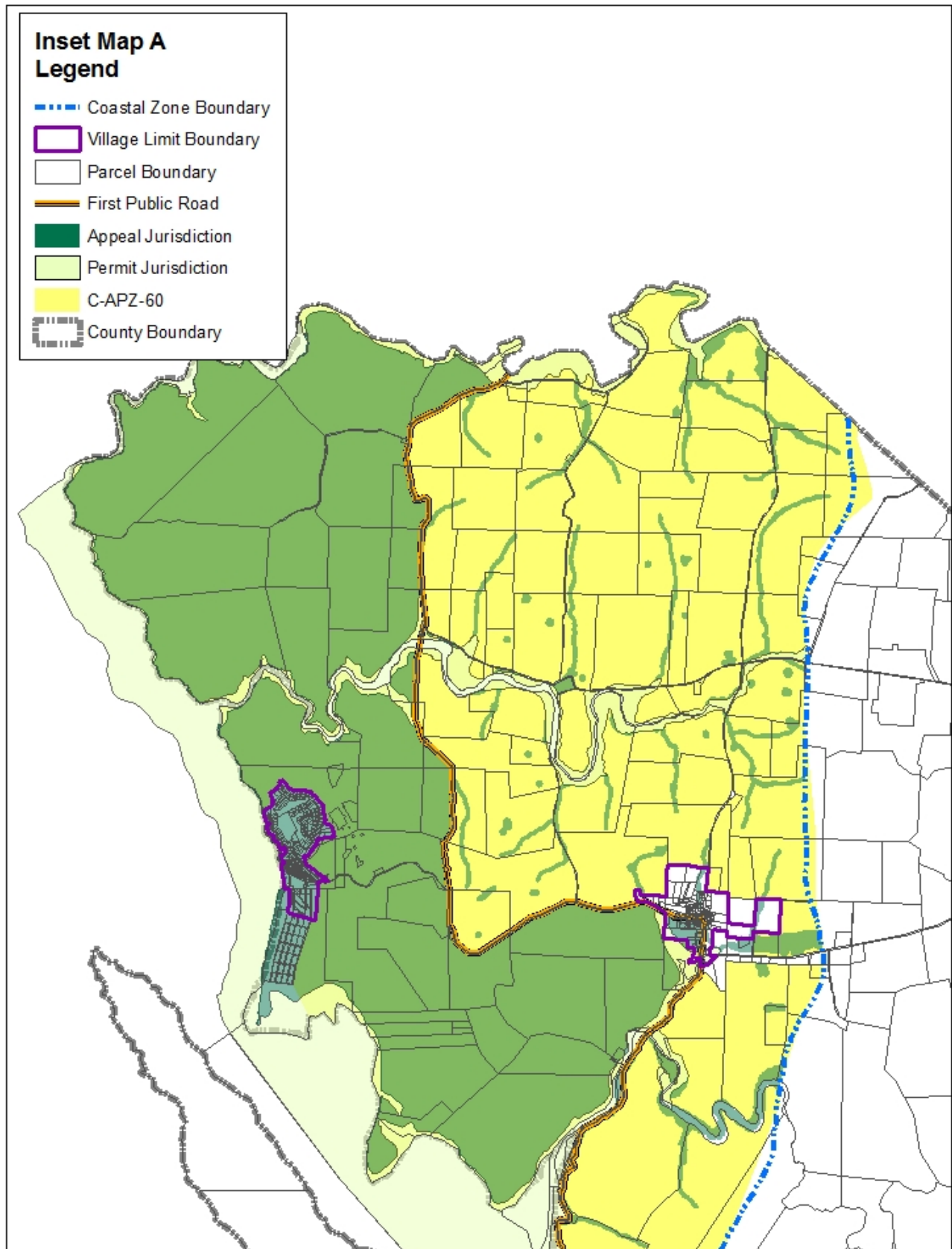


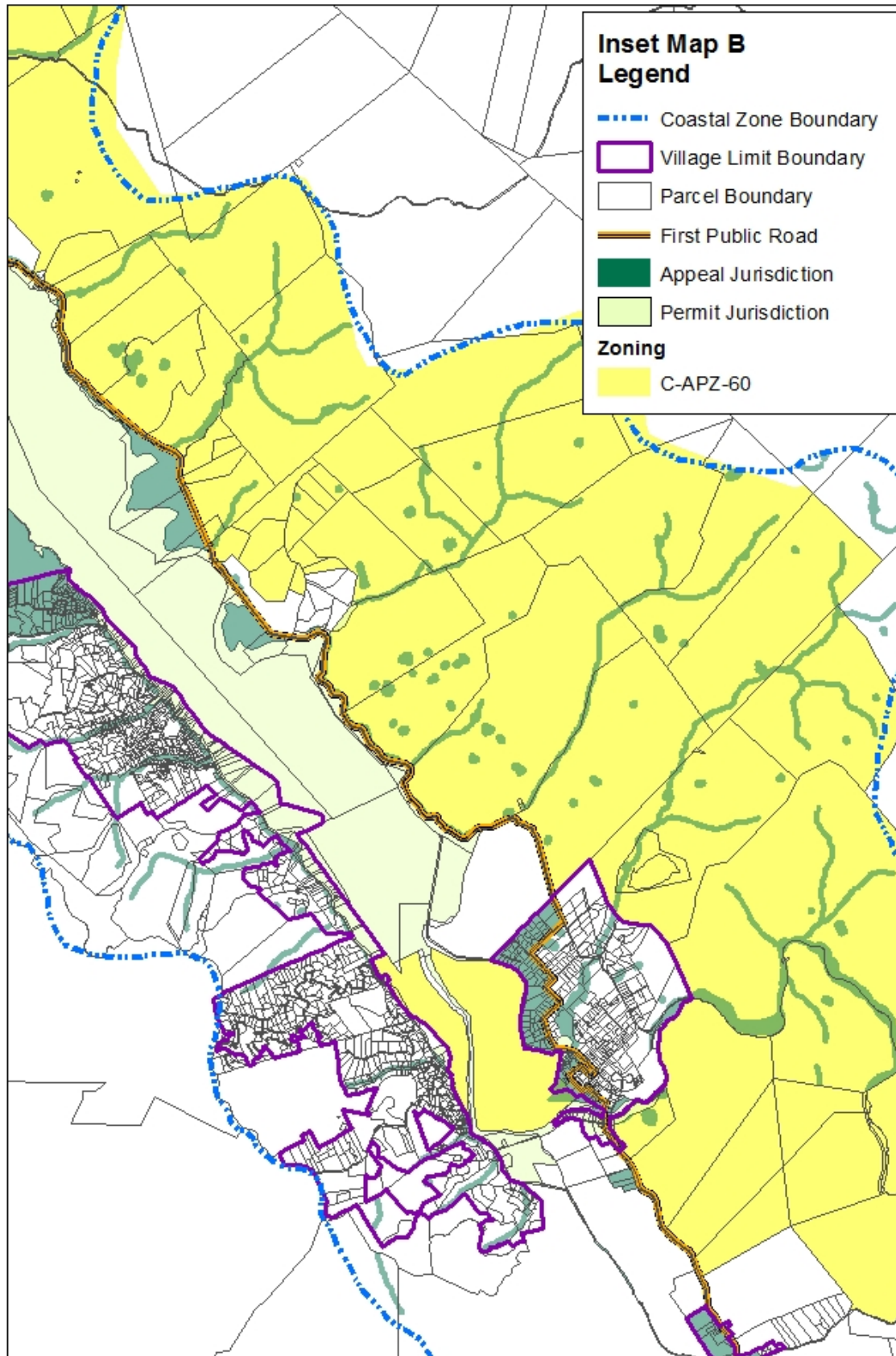
Legend

- Coastal Zone Boundary
- Village Limit Boundary
- Highways and Major Roads

TYPE

- Lakes
- First Public Road
- Appeal Jurisdiction
- Permit Jurisdiction
- C-APZ-60
- County Boundary





Corrections to EAC Comparison Chart

Comparison Chart of Marin's Existing and Proposed Coastal Zone Regulations

<u>Type of Proposed Development On Agriculture Production Lands</u>	<u>Certified LCP</u>	<u>LUP Amendment Proposal</u>
Density calculation based upon definition of "parcel"	<p>A parcel is defined as all contiguous legal lots under common ownership.</p> <p><i>Response: No, certified.sec.22.57.0321 states:</i></p> <p><i>Principal Permitted Uses. The following uses are permitted in all C-APZ districts subject to an approved master plan:</i></p> <p>...</p> <p>2. <i>One single-family dwelling per parcel. Parcel is defined as all contiguous assessor's parcels under common ownership (unless legally divided as per Title 20, Marin County Code).</i></p>	<p>A parcel is instead defined as a legal lot of record. A farm can consist of multiple legal lots.</p> <p>Response: Yes</p>
Farmhouse	<p>Entitled to 1 by right with public hearing</p> <p>- public appeal right to CCC.</p>	<p>Entitled to 1 per legal lot by right up to 7,540 sf</p> <p>- generally no public hearing required</p> <p>- no public appeal to CCC unless ESHA impacted</p>



May 14, 2014

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

Re: May 14, 2014 Addendum to staff report on Marin LCP Rewrite

Dear Charles,

Thank you and your staff for the Addendum to the Marin LCP staff report released earlier today. After skimming it over, it does provide good clarity that we agree with at first glance. We greatly appreciate your continued time and attention to the Marin LCP.

In particular, we agree with the additional modifications to C-AG-5 and C-AG-7(A)(4) and Agriculture Section G. Other. (Please note that not all of the addendum changes appear to be shown as *double_underlines/strikeouts*.) Despite this agreement, we still have several unresolved issues with the C-APZ zoning district.

1. Housing on Coastal Agriculture Production Zone Lands.

While your text about the new parcel definition, pasted below, does clarify what the definition is, it does not seem to clarify the apparent conflict with Marin County's build-out analysis that clearly states that as long as each legal lot has appropriate acreage, 129 new residential units are possible in the C-APZ zoning district.

Addendum: "First, although the terminology has been updated, the LCP's intended definition of a parcel remains the same."

Response: The intent of the 1981 Certified LCP is unambiguous: a parcel is defined as "all contiguous lots under common ownership." We agree completely with you that the "farm" is the appropriate unit against which all development and the 7,500 square foot maximum square footage should be measured. We believe that in the event of a development of a "farmhouse" by a new owner/operator, an Agriculture Stewardship Plan must be required.

The Addendum still does not address the Marin Community Development Agency's January 2013 build-out analysis, which has continued the uncertainty. If Commission staff purport to only allow 27 new residential dwelling units total

under the proposed LUPA – whether farmhouses, 1st inter-generational houses or 2nd inter-generation houses – could you please state that in simple and specific terms in order to eliminate the confusion created by the Community Development Agency’s build-out analysis? Thank you.

Addendum: “ ... comments indicating that the LUPA is somehow increasing development potential by referring to legal lots as the unit of measurement are incorrect.”

Response: EAC’s comments expressly rely on the Marin County’s Community Development Agency’s Supplemental Analysis, submitted to the Board of Supervisors, January 15, 2013 (and further described in their January 10, 2014 response letter as having been discussed with your staff). That analysis reports potential build-out on C-APZ by considering each assessor’s parcel (193 in total) and arrives at a potential build-out of 242 new units. Marin County’s LCP Rewrite created new and conflicting definitions without adequate facts, data, or explanation which has led to considerable uncertainty in the amount of new residential development that could be developed on agricultural production zone lands given the build-out analysis.

EAC’s synthesis of the Community Development Agency’s data distinguishes between 1st Inter-generational houses, and 2nd Inter-generational houses, and finds that under the Williamson Act restrictions 129 new units could be built under Marin County’s submitted LCP Rewrite even with Commission staff report’s modifications.

If something is incorrect, we respectfully suggest that it is the County’s submission to the Commission and the public, not our analysis of those data. In any event, the County’s build-out analysis clearly shows what the consequence of their definition changes, and their apparent intention in rewriting the LUP is – the potential for much more residential development on agricultural production land. The additional staff modifications appear to do a good job in reining this in, but again, we need the Commission staff to directly address the County’s build-out analysis.

2. Appealability of agricultural housing development.

Addendum: “. . . the proposed LUPA, as modified, actually narrows the amount of development that would be principally permitted, as compared to the existing LCP.”

Response: We strongly disagree. Previous Commission staff reports on two appeals of proposed residential development on C-APZ parcel in West Marin held very clearly that such housing is not the Principally Permitted Use in the zoning district.

In sharp contrast, staff reports from Marin County’s Community Development Agency to the Planning Commission and Board of Supervisors hearings during the LCP Amendment have consistently contended that residential development proposals in C-APZ under the redefined and proposed definition of “agriculture”

are the Principally Permitted Use, and thus are not appealable to the Commission for review [unless within the 300-foot geographic appeals zone or within 100 feet of ESHA]. The Commission staff report and today's Addendum are also saying that all housing uses defined as "agriculture" are the PPU for the C-APZ district and are not appealable [unless within the 300-foot geographic appeals zone or within 100 feet of ESHA].

EAC and the public are strongly against including any type of agricultural residential use as a Principally Permitted Use in the coastal agricultural production zone in order to maintain the public's right to 1) always have public notice and a public hearing of such development, and 2) maintain the public's right to appeal an erroneous decision by Marin's Community Development Agency.

Addendum: "... plan allows all coastal development permits to be appealed to the County Planning Commission for a full public hearing, and therefore, the public has the ability to participate in the process for all coastal development permits ..."

Response: The ability to appeal at the local level to a public hearing of the Planning Commission is little comfort when 1) the development receives only limited public notice, 2) the coastal permit is issued administratively without a public staff report, 3) the development does not receive design review, and 4) requires payment of an appeal fee.

Appealability to the Commission is needed and necessary to ensure compliance with the substantially amended LCP, all Coastal Act policies, and protection of coastal resources. The two appeals to the Commission of C-APZ residential development amply document the importance of Commission-level appealability for any residential development on the East Shore of Tomales Bay.

3. ESHA protection and parcel definition

While this issue is not specifically addressed in the Addendum, defining a parcel so that all contiguous lots under common ownership are required to be taken into account should be applied broadly in all zoning districts in order to require the siting of proposed development outside ESHAs and ESHA buffers without effecting a legal taking of private property.

Thank you for your consideration of our comments, and your continued commitment to Marin's LCP process.

Respectfully yours,



Amy Trainer, Executive Director

Law Office of Samuel B. Johnston

Samuel B. Johnston
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May 13, 2014

California Coastal Commission
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San Francisco, CA 94105-2219
MarinLCP@coastal.ca.gov

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CALIFORNIA
COASTAL COMMISSION

Via email and U.S. mail

Re: **Marin County LCP Amendment No. LCP-2-MAR-13-0224-1 Part
A (Marin LUP Update) (and staff report "Th12a" dated May 2, 2014)**

Dear Coastal Commission Staff:

This letter is submitted on my own behalf as an individual and not in any representative capacity. I reside and keep an office in Stinson Beach, CA, 94970.

As a member of the Board of Directors of the West Marin Environmental Action Committee ("EAC"), I have been following with considerable interest the proceedings of the County of Marin ("the County") with respect to the development and submission to the California Coastal Commission ("the Commission") of the proposed Local Coastal Program Amendment ("LCPA") to be heard by the Commission this coming Thursday, May 15, 2014. I am an attorney whose practice focuses on the area of environmental law (and in particular the area of the California Environmental Quality Act, or "CEQA"). This brief letter serves as a summary of the reasons why, in my professional opinion, the proposed certification by the Commission as set forth in the Commission's staff report dated May 2, 2014 and entitled "Subject: Marin County Local Coastal Program Amendment Number LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update)" is legally deficient and cannot properly serve as a certification of the County's LCPA. Accordingly, the Commission should withhold certification of the County's LCPA until the County and the Commission have developed a legally sufficient LCPA and have circulated the document for public review pursuant to legal requirements.

Please include this letter and the exhibit thereto in the record of proceedings for this matter.

Introduction

The County has submitted its proposed LCPA (or LUPA¹) to the Commission for certification pursuant to the Commission's authority under CEQA's Certified Regulatory Program provisions. CEQA exempts certain specified regulatory programs such as a County's LCPA from the requirement of preparing an Environmental Impact Report (EIR). (CEQA §§ 21080.5, 21080.9)² Nevertheless, the lead agency, in this case the Commission, must comply with CEQA's substantive and procedural requirements; CEQA exempts only specified sections (primarily concerned with the technical requirements of EIRs) from a lead agency's duties when approving a Certified Regulatory Program. (PRC § 21080.5(c).) Thus, when considering whether to approve a Local Coastal Program Amendment, the Commission must provide an analysis of feasible alternatives and mitigation measures and either adopt those or explain why it did not adopt those alternatives or mitigation measures. The lead agency must also prepare findings, a cumulative impacts analysis, and comply with CEQA's requirements for public notice and comment. The Commission has fulfilled none of these requirements. Moreover, the Commission's staff report reveals that the proposed LCPA with modifications fails to meet other legal requirements, as detailed below. All of these legal deficiencies must be corrected before certification of the LCPA can proceed.

Detailed Comments

I. California Environmental Quality Act

The Commission has proposed a modified LCPA that fails to meet CEQA's requirements in numerous respects, as detailed below.

A. The "project"

To the extent the LCPA *as modified by the Commission* constitutes the "project" under CEQA, the Commission as lead agency must evaluate that project pursuant to CEQA's requirements. Instead, the Commission has only evaluated the LCPA as submitted by the County and prior to the Commission's modifications. The LCPA as modified, in any event, has not been adequately evaluated for its environmental impacts, feasible alternatives, and feasible mitigation measures.

¹ This letter uses the following two acronyms interchangeably: "LUPA" (Land Use Plan Amendment) and "LCPA" (Local Coastal Program Amendment). Technically, the LUPA is a portion of the broader LCPA.

² References to the CEQA portions of the Public Resources Code (PRC) are denoted by "CEQA."

The Commission's proposed Findings state that the modifications to the County's submitted LCPA contain the feasible alternatives and mitigation measures as required by CEQA. (Staff Report, pp. 12-13.) This indicates that the Commission considers that the "project" to be evaluated for impacts consists of the LCPA as submitted by the County. But the County's submission of the LCPA is not what has been certified by the Resources Secretary as the Certified Regulatory Program. Rather,

"Section 21080.5 of the Public Resources Code provides that a regulatory program of a *state agency* shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, Negative Declarations, and Initial Studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible." (Italics added)

(CEQA Guidelines § 15250.)

Moreover, "For the purpose of Section 21080.5, a *certified* local coastal program or long-range land use development plan *constitutes a plan* for use in the California Coastal Commission's regulatory program." (CEQA § 21080.9.) Thus, it is the LCPA as certified by the Commission that constitutes the "project" for CEQA purposes. The certified LCPA (not the County-submitted LCPA), accordingly, is the document that must comply with CEQA's requirements for analysis of direct and cumulative impacts, feasible alternatives, feasible mitigation measures, and public review. The Commission's proposed LCPA as modified in the Commission staff report does not comply in this regard.

B. CEQA Requirements

CEQA lays out numerous requirements for a lead agency in the context of the consideration of a Local Coastal Program Amendment, which is a Certified Regulatory Program pursuant to CEQA §§ 21080.5 and 21080.9.

1. CEQA Guidelines requirements under Section 15252

15252. SUBSTITUTE DOCUMENT

(a) The document used as a substitute for an EIR or Negative Declaration in a certified program shall include at least the following items:

(1) A description of the proposed activity, and

(2) Either:

(A) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(B) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

The Commission's staff report does not contain the required analysis under Section 15252(a)(2)(A) and (B) of the Guidelines. While the staff report contains a description of the proposed activity, it does not contain "...[a]lternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment." That is so in part because the staff report does not contain an identification or description of the exact direct and cumulative environmental impacts of the LUPA as modified. Rather, the staff report contains a description of the proposed changes to the LUPA with the impacts thereof omitted (staff report, pp. 13-14). It is impossible to understand how any purported alternatives or mitigation measures lessen any impacts if the impacts are not identified. This violates CEQA and constitutes a failure to proceed in the manner required by law.

The Commission is required to quantify impacts so that the public can conduct a meaningful review. For example, the subsection "Agriculture" found on pp. 15 to 16 fails to state how many acres of farmland would potentially be impacted by the described rule changes. How many more acres within the Coastal Zone would be subject to development without any permit requirement as compared with current conditions? How many more acres would be subject to development with a permit requirement but without a right of appeal to the Coastal Commission? How many acres would be subject to development with a permit requirement and with a right of appeal to the Coastal Commission? The reader is left wondering.

The fundamental problem with the Commission's staff report is the lack of a meaningful *impact analysis* to guide the resulting analysis of alternatives and mitigation measures. Certification of the LUPA under these circumstances would violate CEQA and constitute a failure to proceed in the manner required by law.

2. CEQA Guidelines Requirements under Section 15253(b)(6)

Similarly, if the County as Responsible Agency is to approve the ultimate certification by the Commission of the LUPA, the Commission as Lead Agency is required to make Findings pursuant to CEQA. The Guidelines provide:

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in subdivision (b) have been met. In this situation, the certified agency shall act as Lead Agency, and the other permitting agencies shall act as Responsible Agencies using the certified agency's document.

(b) The conditions under which a public agency shall act as a Responsible Agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or Negative Declaration are as follows:

[...]

(6) The certified agency exercised the powers of a Lead Agency by considering *all* the significant environmental effects of the project and making a finding under Section 15091 for *each* significant effect.

(italics added)

Moreover, the Guidelines provide as follows:

15021. DUTY TO MINIMIZE ENVIRONMENTAL DAMAGE AND BALANCE
COMPETING PUBLIC OBJECTIVES

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

[...]

(c) The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

Section 15091, in turn, provides:

15091. FINDINGS

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes *one or more written findings for each of those significant effects*, accompanied by a brief explanation of the rationale for *each finding*. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

[...]

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(italics added.)

The Commission, however, made no detailed Findings in compliance with this Section. For example, without limitation, separate findings were not presented for each significant effect; and no monitoring program was presented. This omission violates CEQA and constitutes a failure to proceed in the manner required by law.

The omission of Findings in compliance with CEQA likewise frustrates public review. As noted above, the public is left wondering what the effects of the extensive changes proposed to the Local Coastal Program will be. This is especially troubling given that many of the

proposed changes will affect the ability of the public to evaluate future projects that fall under the scope of the Marin County LCP. (For more details, see the comment letter of the West Marin Environmental Action Committee dated May 12, 2014³ regarding the changes proposed by the Commission-modified LCPA in the definition of such terms as, without limitation, “agriculture,” “parcel,” and the changes in which activities are considered, without limitation, “principally permitted,” “permitted,” and “conditional.”) Thus, the failure to provide for public input at this stage also prevents meaningful public input at future stages. To the extent that future projects rely on the environmental analysis contained in this LCPA, the public will by virtue of the deficiencies in this LCPA be deprived of its right to evaluate the effects of those future projects, in violation of CEQA and relevant law.

Indeed, CEQA Guidelines § 15184 provides that “[i]f a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR.” Thus, the Commission proposes to enable the County to approve future projects in reliance on this deficient CEQA analysis, in a manner that deprives the public of its right of review both at this critical program stage and at later stages of individual project approval. Any meaningful analysis of, among other things, cumulative impacts of either this LCPA or individual projects is foreclosed by this process. This violates CEQA and constitutes a failure to proceed in the manner required by law.

Finally, the County, as Responsible Agency, is required to make Findings separately from the Commission. The CEQA Guidelines provide:

15096. PROCESS FOR A RESPONSIBLE AGENCY

(a) General. A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a Responsible Agency.

[...]

(h) Findings. The Responsible Agency shall make the findings *required by Section 15091 for each significant effect* of the project and shall make the findings in Section 15093 if necessary.

(italics added.)

3. Cumulative Impacts Analysis

The California Supreme Court has held that a certification of a regulatory program such as the Commission’s LCP process does not excuse the program from the duty to evaluate cumulative impacts of a project. (Environmental Protection Information Center v. Johnson, (1st Dist. 1985) 170 Cal. App. 3d 604, 624-625.)

³ The May 12, 2014 letter from the EAC to the Commission is hereby incorporated herein by reference.

The CEQA Guidelines contain the following directions for the consideration of cumulative impacts. Although the discussion is framed in terms of the requirements of an EIR, the courts have directed that those kinds of substantive requirements of an EIR are also required in the context of an EIR substitute produced by a certified regulatory program lead agency. (*Id.*)

15130. DISCUSSION OF CUMULATIVE IMPACTS

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065 (a)(3). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.

Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature

of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

(3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available; and (5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

(d) Previously approved land use documents, including, but not limited to, general plans, specific plans, regional transportation plans, plans for the reduction of greenhouse gas emissions, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section 15183(j).

Of the many relevant requirements contained in this portion of the Guidelines, I would point out the option of creating:

A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.

Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program.

This kind of projection would have made sense for this LCPA, but it was not done. Unfortunately, the staff report lacks such a projection, and the West Marin Environmental Action Committee ("EAC"), by its President of the Board of Directors, Bridger Mitchell, Ph.D.,⁴ was left

⁴ Dr. Mitchell is a former professor of economics at Stanford University.

to conduct that analysis on its own. The conclusion Dr. Mitchell reached is that the LCPA enables over 1 million square feet of development in the agriculture production zoning district. This figure represents a significant departure which will almost certainly result in significant foreseeable adverse impacts on the environment. For example, according to the EAC, "...[t]he Rewrite would ... allow an entitlement by right to new residential development on the 37,000 acres of agriculture production land for each legal lot, rather than each farm as it has existed since 1981." Nowhere is presented any analysis of the impacts of this change. Such impacts, taken together, will adversely affect, without limitation, the areas of agriculture, biological resources, and water resources (in the context of likely future drought conditions resulting from climate change) and will result in socioeconomic impacts and growth – inducing impacts.

Another grave concern is the potential for conversion of coastal lands for residential, commercial or industrial development. The proposed LCPA fails to assess such potential cumulatively considerable effects of this LCPA. One of many potential concerns in this regard was raised by the May 12, 2014 letter from the EAC to the Commission containing this paragraph:

"In addition to the current number of legal lots of record, numerous additional parcels may be uncovered through survey work to obtain "Certificates of Compliance" (COC). Development on legal, non-conforming parcels legitimized through the issuance of COCs, and adjusted by lot line adjustment has plagued communities statewide. The Coastal Commission has made significant efforts in the Santa Monica Mountains, San Luis Obispo County, and elsewhere to try to minimize damage from this pernicious land use practice. Under the Certified LUP, there is little incentive for agricultural operators to research and obtain COCs. But if the Commission allows the County's new definition of "parcel," a veritable land rush could ensue."

(EAC to Commission, May 12, 2014, p. 9.)

None of these factors has been properly evaluated in the context of the added foreseeable development that will result from the LCPA. This omission constitutes a violation of CEQA and a failure to proceed in the manner required by law.

4. Impacts on Biological Resources

The proposed LCPA as proposed by the Commission fails to mitigate for the significant and foreseeable impacts to biological resources that would result therefrom in violation of CEQA, CESA, and other Fish and Game Code provisions such as protections for "fully protected" species. This is because the proposed LCPA would enable future projects to alter prescribed buffer widths on streams and in wetlands without ensuring that, without limitation, 1) listed species' habitat will not be adversely impacted; 2) listed species will not be taken in violation of CESA; and 3) impacts to listed species will not improperly be deferred. Moreover, the Commission has failed to evaluate whether the changes in the definition of "agriculture," "parcel," and the changes in what activities are "principally permitted," "permitted," and "conditional" will have on, without limitation, listed, sensitive, special status, or fully protected species.

The staff report indicates that buffer requirements for streams and wetlands are allowed to be reduced to 50 feet or, in the case of terrestrial ESHA, a mere 25 feet. The reduction or elimination of buffer widths is left to some vague determination of a future "site assessment." No criteria are stated for how these site assessments will determine the reductions in buffers, and no qualifications are prescribed for persons who will conduct the site assessment. (The selection of site assessors should not be left exclusively to the County but should be required to be approved by the California Department of Fish and Wildlife.) This is woefully inadequate as a protection measure for protected biological resources. This arguably violates not only CEQA but also various provisions of the Fish and Game Code including the California Endangered Species Act protecting listed and fully protected species, among other biological resources. This also violates Coastal Act Section 30240. These violations, jointly and severally, constitute a failure to proceed in the manner required by law.

5. Certification of this LCPA would violate CEQA's requirement for full information disclosure.

The EAC letter dated May 12, 2014 states on p. 13 as follows:

"On April 22, 2009, the Commission staff sent a letter to Marin County stating that 'Where you [county] proposed to alter or delete standards in the certified LCP it is important to provide data and analysis explaining the change so it can be evaluation for conformance with the Coastal Act.' EAC and others have asked the County repeatedly for such data analysis but still have not been provided any."

This referenced letter from Commission staff (which actually appears to be dated April 24, 2009) goes on to state: "...the County must still be able to comply with requirements of the California Code of Regulations sections 13552 and 13511 for adequacy of information to file an LCP amendment. In considering the proposed policies for private water wells, more information and analysis is needed in order to evaluate consistency with Coastal Act policies. The LCP update should contain sufficient information, especially updated information on changed conditions. For example, where there are existing community systems and what effect might that have on land use and intensity of development?"⁵

This excerpt perfectly illustrates what is a much broader problem with the process by which this LCPA has progressed, both with respect to the adequacy of information contained in the record and the failure to evaluate the impacts of the proposed LCPA. Time and time again the Commission attempted to obtain information from the County to perform the needed analysis, but the County did not provide the requisite needed information. The analysis therefore could not be adequately performed. The public is left wondering what the impacts will be; and without the needed information, the public cannot evaluate "what effect [the rule changes] might ... have on land use and intensity of development." This issue of the intensity of development is the lynchpin of the grave concerns raised by the County's failure to provide the Commission with information needed to properly evaluate the impacts of the LCPA.

⁵ This letter from Commission staff to the County and dated April 24, 2009 is attached hereto as Exhibit 1.

As this and other letters from the Commission to the County demonstrate, the Commission was repeatedly frustrated by the County's failure to provide information. Despite the best efforts of the Commission staff, the information was not provided and the resulting proposed LCPA as modified by Commission staff falls short of legal requirements. I have assembled and am submitting for the record a set of letters from the Commission to the County attached to a separate letter, dated today, May 13, 2014, which is hereby incorporated herein by reference.

The Supreme Court of California has issued a clear mandate that a certified regulatory program must include all necessary information to make a "meaningful assessment of the potentially significant environmental impacts." (*Sierra Club v. State Board of Forestry* (7 Cal. 4th 1215 at pp. 1236-1237). To the extent that the Commission has omitted any necessary information to assess the impacts of the LCPA, prejudicial abuse of discretion is presumed. In fact, it does appear that the Commission will commit precisely that omission of necessary information, given its unsuccessful attempts to obtain that information from the County and its intention to proceed with certification nonetheless.

II. The Coastal Act

A. Statutory Requirements

As noted above, the May 12, 2014 letter from the EAC to the Commission is incorporated herein by reference. That letter details a number of ways in which added development is likely to occur in the Marin County Coastal Zone as a result of the changes in rules contemplated by the LCPA.

These concerns amount to a general assertion, supported by the evidence presented by the May 12, 2014 letter and elsewhere in the record, that this LCPA proposal will result in significant conversion of land out of agricultural use and to residential, commercial and/or industrial development, in violation of the Coastal Act's provisions, including without limitation Sections 30241, 30242, 30243, 30250, 30251, 30252, and 30255.

B. Regulatory Requirements

Public agencies, when approving certified regulatory programs, must comply with their own procedures. "In order to claim the exemption from CEQA's EIR requirements, an agency must demonstrate strict compliance with its certified regulatory program." *Mountain Lion Foundation v. Fish and Game Commission*, (1997) 16 Cal. 4th 105, 132.

The regulations pertaining to the adoption and implementation of Local Coastal Programs by the Commission are set forth in California Code of Regulations Title 14, Section 13500 *et seq.*

From what I have observed, it is questionable whether the following provisions, without limitation, of the California Code of Regulations have been complied with:

1. § 13511. Common Methodology.
2. § 13515. Public Participation and Agency Coordination Procedures.
3. § 13523. Summary of the LCP or LRDP.
4. § 13524. Written Notice.
5. § 13525. Distribution of Public Comments.
6. § 13529. Determination of Substantial Issues.
7. § 13530. Additional Hearing on Land Use Plans.
8. § 13531. Staff Analysis.
9. § 13532. Staff Recommendation.
10. § 13552. Contents of LCP or LRDP Amendment Submittal.

For example, I believe that the following requirement may not have been complied with and I would request that the Commission include in the record of proceedings evidence that it was complied with: "In order to assure adequate notification the final staff recommendation shall be distributed to all commissioners, to the governing authority, to all affected cities and counties, and to all other agencies, individuals and organizations who have so requested or who are known by the executive director to have a particular interest in the LCP or LRDP, within a reasonable time *but in no event less than 7 calendar days prior to the scheduled public hearing.*" (italics added)

Furthermore, as noted above, it would appear that the Commission certified the County's LCPA submittal as complete in violation of, without limitation, Sections 13511 and 13552.

Among the procedural requirements the Commission must adhere to is the following:

§ 13540. Findings for Certification.

[...] (f) ... Any final action taken by the Commission either certifying or denying certification to a land use plan or LRDP must include written responses to significant environmental points raised during the evaluation of the land use plan.

The effective date of certification under the regulations is as follows:

§ 13544. Effective Date of Certification of a Local Coastal Program.

After the certification or conditional certification of a local coastal program, the executive director of the Commission shall transmit copies of the resolution of certification and any suggested modifications and findings to the local government that submitted the local coastal program, and to any interested person(s) or agencies. The certification of a local coastal program resulting in the transfer of coastal development review authority pursuant to Public Resources Code Section 30519 shall not be deemed final and effective until all of the following occur:

(a) The local government with jurisdiction over the area governed by the certified local coastal program, by action of its governing body, acknowledges receipt of the Commission's resolution of certification including any terms or modifications which may have been suggested for final certification; accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications (e.g. implementation of ordinances); and agrees to issue coastal development permits for the total area included in the certified local coastal program;

(b) The executive director of the Commission determines in writing that the local government's action and the notification procedures for appealable development required pursuant to Article 17, Section 2 are legally adequate to satisfy any specific requirements set forth in the Commission's certification order;

(c) The executive director reports the determination to the Commission at its next regularly scheduled public meeting and the Commission does not object to the executive director's determination. If a majority of the commissioners present object to the executive director's determination and find that the local government action does not conform to the provisions of the Commission's action to certify the LCP, the Commission shall review the local government's action and notification procedures pursuant to Articles 9-12 as if it were a resubmittal; and

(d) Notice of the certification of a local coastal program shall be filed with the Secretary of the Resources Agency for posting and inspection as provided in Public Resources Code Section 21080.5(d)(2)(v).

III. The Williamson Act

While the LCPA as proposed by the Commission mentions the Williamson Act in passing, there is not a sufficient analysis of the extent to which the proposed changes in the current LCP will impact prime agricultural land in the County Coastal Zone. Given the obvious importance of preserving agricultural land against conversion to other uses, and the critical role of the Williamson Act in implementing California's stated policy of preserving agricultural land, this omission is significant. Prior to certification, the Commission should perform or have the County perform an analysis presenting how much Williamson Act land is in the County's Coastal Zone and the extent to which land under Williamson Act contract would be impacted by the foreseeable development or conversion of agricultural land under the proposal. Moreover, explicit requirements for ending Williamson Act contracts should, consistent with the Williamson Act, be made a part of the LCPA.

Thank you for your consideration of these comments.

Yours Truly,

A handwritten signature in black ink, appearing to read "S. Johnston", with a long horizontal flourish extending to the right.

Samuel B. Johnston

Exhibits

1. Letter from Ruby Pap, North Central Coast District Supervisor, to Marin County Planning Commission, April 24, 2009, "RE: Preliminary Comments on Issue Summary Public Facilities & Services, Energy and Transportation"

Exhibit 1

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94103-2219
VOICE AND TDD (415) 904-5250
FAX (415) 904-5400



April 24, 2009

Marin County Planning Commission
Marin County Community Development Agency - Planning Division
3501 Civic Center Drive
San Rafael, California 94903-3501
ATTN: Kristin Drumm

RE: Preliminary Comments on Issue Summary Public Facilities & Services, Energy and Transportation

Dear Members of the Planning Commission,

The staff of the Coastal Commission is coordinating with your planning staff to provide ongoing staff input to the County update of the Local Coastal Program. We appreciate your staff's efforts to facilitate communication and coordination on this update. With limited resources at both the county and state level, we agree early coordination can help us identify and address any issues with regard to conformance with the Coastal Act. We will strive to provide continued input to the draft planning documents as our resources allow.

As part of this coordination the Commission staff reviewed the draft Attachment 1: Issue Summary Public Facilities & Services, Energy and Transportation and offer the attached preliminary comments. While the draft in several places notes the Commission as commenting on the policies, it should be clarified that the comments are from the staff of the Coastal Commission not the Coastal Commission itself. As we have indicated to your staff, at this issue identification stage we offer these early comments in order to identify potential issues and further information that the County may need to provide in order for the Commission to evaluate the proposed LCP update for consistency with the Coastal Act. These comments should be taken as initial feedback that may be further revised. As the update process continues, and as more updated information is presented, including other components of the update and public input, we will continue to work with your staff to address proposed LCP revisions. We will also continue to point out areas where more specific information and analysis is required as part of the LCP update.

We look forward to continuing to work with your staff as the LCP update proceeds.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruby Pap", written over a horizontal line.

Ruby Pap
District Supervisor
North Central Coast District

Attachment

Preliminary CCC Staff Comments:
Issue Summary Public Facilities & Services, Energy and Transportation

Issue 2: Onsite wastewater treatment facilities

In general we note that consistency regarding sewage treatment terms would be helpful-sometimes they are referred to as onsite treatment systems, on-site wastewater treatment systems, septic systems, and sewage disposal systems all within the policies.

Page 5: The discussion notes that some of the standards for onsite wastewater treatment systems (such as chapters 18.06 and 18.07) have been amended as part of the County Code but are not part of the LCP. We believe Alternative #3 that would merely refer to rules and regulations that are currently in effect may not be sufficient to comply with Coastal Act requirements and Alternative #4 should be considered. While we will continue to discuss the exact policies or implementing regulations needed, it is important to include specific implementing provisions in the LCP to ensure protection of water quality and marine resources and to find that the ordinances are in conformance with and adequate to carry out the certified LUP. In prior LCP amendments the Commission recognized that policy approaches to address water quality concerns (such as from septic systems) differ in each jurisdiction. As a result we are continuing discussions with your staff on the county's existing water quality protection framework and the specific water quality protection measures that would need to be included in updating your LCP.

Page 6: In the issue summary there are four policy alternatives proposed. Alternative 4 would provide additional substantive requirements for septic systems and we suggest that the updated LCP include the two requirements cited as examples at the bottom of page 6 to ensure setbacks are addressed.

LCP Policy C-PFS-6 (p. 7): we suggest adding language to this policy
Require new and expanded sewage disposal systems to be designed, constructed, installed, operated, and maintained to avoid release of pathogens and nutrients so as to protect the biological productivity and quality of coastal streams, groundwater, wetlands, and other waters.

LCP Policy C-PFS-7: We believe this policy revision is unclear and suggest that the update maintain essential parts of the existing policy Unit 1 Policy 9. The policy should clarify that if the intensity of use of a structure changes or the structure is enlarged, that the coastal permit for that structure requires an upgrade to existing septic systems to accommodate the change.

LCP Policy C-PFS-9 and C-PFS-11: The report includes a good discussion of AB 885 and it might be helpful to also include reference to the State Water Resources Control Board in these policies. But, as we have discussed with your staff there may be specific standards which should be added to the LCP rather than merely referring to the Regional Board regulations. We will be meeting with County staff to continue to discuss these policies.

LCP Policy C-PFS-12.b. Alternative technologies may offer options for improving water quality but they may also be growth inducing on sites previously constrained by septic capacity. In addition to the limited circumstances listed, the policy should ensure that use of alternative on site systems will not induce growth inconsistent with other policies of the LCP.

Issue 3: Offsite septic systems

LCP Policy C-PFS-13: We support the County's efforts to update the LCP to address this problem but in order to evaluate this proposed policy for consistency with the Coastal Act, we request more specific information about when and where these systems are anticipated to be proposed and allowed – including an assessment of the need for such facilities, which zones and geographic areas are affected, and the anticipated amount of such systems.

We also suggest that the consideration of offsite systems include not just shoreline public access, but all access and also visitor serving uses to reflect Coastal Act priority uses.

The Commission has considered such offsite systems in some permit applications, but the draft discussion correctly notes that establishing offsite systems has the potential to result in additional growth and conversion of agricultural lands. The Coastal Act policies 30242, 30241 and 30241.5 contain strong standards to protect agricultural lands and to avoid conversion of such lands to nonagricultural uses. Where the Commission has addressed these facilities it has been based on specific information and conditions of a particular site. As a filing requirement for the LCP Update application to the Commission, staff will likely request additional information and studies to evaluate the consistency of the potential agricultural conversions implicated by this proposed policy with the Coastal Act.

LCP Policy C-PFS-13

In limited cases allow use of offsite septic systems.

Allow construction of an off-site individual or community septic system (that is, on a site other than as allowed by LCP Policy C-PFS-10) only where the system would:

- *Provide for correction of a failing sewage treatment system that serves existing development where the County Health Officer has determined that no other reasonable corrective actions exist, or*
- *Serve one of the following land uses that cannot be constructed feasibly in any other way; coastal-dependent land use, public access facility, affordable housing, or visitor serving use ; and*
- *Not interfere with the continued and future operation of agriculturally zoned lands; and*
- *Not result in impacts to or conversion of agricultural lands; and*
- *Ensure development avoids or minimizes and fully mitigates impacts.*

Approval of an off site septic system requires a finding that it would comply with all applicable provisions of the Local Coastal Program, including that it would not interfere substantially with existing or continued agricultural operations, and that the legal and funding mechanisms are in place to ensure proper future operation of the system. Use of an off-site septic system to support new or expanded development on adjacent properties or increased densities inconsistent with the LCP, other than as provided by this policy, is not allowed.

Also, incorporation by reference of Code sections 18.06 means that code section needs to be reviewed for conformance with the Coastal Act and certified as part of the LCP. We have not fully evaluated these code sections for conformance with the Coastal Act and we will continue to discuss with your staff how best to address these provisions.

LCP Policy C-PFS-13.a: We will continue to work with your staff on the consideration of potential service areas. The LCP background analysis should include information/ studies/analysis of the service area, the proposed boundary, the planned levels of development, whether this would serve existing development only, the expected additional capacity needed beyond the permit already approved and how agricultural lands will be adequately protected. Based on the information submitted, we may propose additional comments.

General comment: We would like some clarification on the policies that will address development of community systems and whether existing LCP policies will continue. We will continue to discuss this issue with your staff.

Issue 4: water supplies

The proposed update appears to remove some specific detail from the certified LCP such as policies for specific areas (Unit II pages 187-189) that address reservation of water for priority visitor serving uses. Where you proposed to alter or delete standards in the certified LCP it is important to provide data and analysis explaining the change so it can be evaluated for conformance with the Coastal Act. While there

is no required format for such information, the County must still be able to comply with requirements of the California Code of Regulations sections 13552 and 13511 for adequacy of information to file an LCP amendment.

In considering the proposed policies for private water wells, more information and analysis is needed in order to evaluate consistency with Coastal Act policies. The LCP update should contain sufficient information, especially updated information on changed conditions. For example, have there been new studies on groundwater conditions? Are private wells allowed where there are existing community systems and what effect might that have on land use and intensity of development?

Draft Exhibit 2 appears to update some of the LCP figures for projected buildout but there seems to be some further explanation needed. As one example, we note the figures for NMWD in the Point Reyes area as described in the Unit 2 LCP (page 187). The LCP says that water was available for 354 more units than existed at that time. How many units have been built since certification of the LCP? Draft Exhibit 2 seems to say the 2005 CWP DEIR noted 970 units existing? The LCP required that the county stop issuing building permits unless more capacity is certified as available. More analysis of changed conditions is needed to explain/support the proposed changes and also an explanation of how updated buildout figures were calculated. This information is likely to be needed to file the LCP Amendment.

LCP Policy C-PFS-15: The existing LCP policy includes standards that no exception can be granted because of a water shortage and we believe this standard should be retained.

LCP Policy C-PFS-16: Test wells are development that required a coastal development permit and the Commission has not generally exempted similar test/exploratory wells in other areas of the coast. If an exclusion from permit requirements is proposed, the County should submit a proposed Categorical Exclusion Order to the Commission for consideration.

LCP Policy C-PFS-18.a. We agree a handbook would be a good guidance document, but we need to understand what specific requirements would be certified in the LCP because as written reference to the handbook would become the standard of review in the LCP. We will continue to discuss with your staff how best to address including this information.

Issue 5: Capacity in Specific Areas and Issue 6: Priority Uses

As noted above, the draft currently does not include the data and analysis to support all of the proposed changes to the policies and to determine consistency of the policies with the Coastal Act. It is important that the analysis of public facilities also be considered along with any proposed land use changes (i.e. land use designations and zoning changes) as well as policies on the kinds, location and intensity of development proposed. As such, since we have not yet seen the proposed land use changes for the LCP update, we cannot provide comprehensive comments on this public facilities document. In addition, many of the area specific standards in the certified LCP address protection of capacity of public services to serve high priority visitor serving uses. Updating the specific information and details is needed to ensure conformance with the Coastal Act and until such data and analysis is provided we do not recommend deletion of the specific standards in the LCP.

Issue 8: Telecommunications

We support the County's efforts to update the LCP to address telecommunication facilities. The Commission has reviewed some LCP Amendments on this topic, mainly as implementation code revisions. We have not yet had time to retrieve the most recent examples for your staff to consider, but will do so as soon as we can. In addition to avoiding and minimizing impacts to visual resources, there may be other considerations such as minimizing the effects of lighting, and siting and design to assure that facilities will not impact other coastal resources, including but not limited to environmentally sensitive

habitat, coastal waters and public recreation and access areas. We support the co-location except in cases where it would cause greater impacts. Also, by referring to the Telecommunications Facilities Policy Plan in LCP C-PFS-21 that plan will need to be reviewed for conformance with the Coastal Act and if certified would be the standard of review in the LCP. We have not yet had a chance to fully review that Policy Plan and will continue to work with your staff to provide comments.

Issue 9: Energy Efficiency

This section identifies some of the possible benefits of alternative energy from WECS, solar or biogas. The Commission is supportive of combating climate change through emissions reductions, and alternative energy is an important aspect of this. Any such facilities must be sited, designed and operated consistent with the public access and resource protection policies of the Coastal Act. As such, any proposed LCP standards must conform to Coastal Act policies, such as avoidance of impacts to environmentally sensitive habitat areas and scenic areas, public access and recreation, and agricultural lands and productivity. And, it is important that standards also apply to related accessory/ancillary facilities needed to support the operation and transmission of the energy, and standards may also need to differentiate between small scale and larger commercial facilities. In the case of wind energy, we recommend that policies require that facilities protect against bird strikes. In addition, we recommend standards should not preclude appropriately designed and sited landing areas for potential offshore wind facilities.

We also suggest that the County should consider the potential environmental impacts of some alternative energy technologies and avoid alternative energy installations that in manufacturing or operations themselves have greater environmental impacts than the benefits they would provide. For example, we suggest some policy language:

Important public and environmental benefits are advanced by promoting and encouraging energy production from renewable sources such as solar, wind, biofuels, and hydrokinetic. At the same time, it is important to ensure that renewable sources of energy, the technologies used to generate such energy, and the necessary infrastructure and ancillary facilities required for transmission and delivery to consumers are not themselves harmful to the environment and humans. Accordingly, it is the policy of the County to encourage thorough environmental impact analysis of every renewable energy source that is approved for use in this jurisdiction, including impacts from manufacture, production, processing, storage, and delivery.

Consistent with Coastal Act planning and coastal resource protection goals, policies and objectives, including the precautionary principle and in recognition that many adverse environmental impacts are extra-jurisdictional in nature, both in cause and effect (e.g., they occur or originate beyond, or originate within but are felt beyond the jurisdictional boundaries of a particular public agency), it is the policy of the County to take into account the direct and indirect adverse environmental impacts of renewable energy that is utilized or authorized within its jurisdiction. This statement of intent and policy is intended to encourage suppliers, buyers, and users of, and contractors for renewable energy to evaluate and avoid technologies, methods of production, processing, construction storage and distribution that have significant adverse environmental impacts, irrespective of other environmental benefits, such as reduction of green house gas emissions.

In addition to our preliminary recommendations, we note that additional information on the kinds, location and intensity of potential uses and proposed standards for energy development will be required in order to determine if the proposed energy policies are consistent with the Coastal Act. This includes studies and information on alternative energy siting. The proposed policies that reference design and location pursuant to the Marin County Code may not be sufficient to find consistency with the Coastal Act, and may depend on what is proposed as part of the LCP Implementation Plan. Based on a brief review, Code

22.32.180 appears to be incomplete in addressing all Coastal Act policies and issues discussed above. We have not yet reviewed any proposed update to the LCP Implementation Plan, but we believe the LUP policies should include more specific standards to ensure that facilities are sited, designed and operated consistent with Coastal Act policies and will continue to work with your staff to discuss such measures. This is an area where we will continue to provide comments to your staff.

Also, please clarify if other energy policies will be included in the Update. If you plan to modify or delete existing energy policies (e.g. unit II pages 198-199, 209) or modify land use designations related to energy facilities, the LCP should include an analysis of proposed changes. We may have additional comments when more information is submitted.

Concerning Policy C-EN-3.b: We cannot support this policy to exempt a class of permits through an LCP policy. Exclusions from coastal permits can be addressed by the Coastal Commission through a proposed categorical exclusion order. Additionally, permit exemptions are different from categorical exclusions, are typically contained in an implementation Plan, and cannot go beyond those outlined in Coastal Act Section 30610 and Title 14 CCR Sections 13250, 13252, and 13253.

Issue 10: Protect rural character by maintaining 2 lane routes.

In order to fully understand and address the transportation issues in coastal Marin County through LCP changes, an update of the data and information in the LCP related to transportation capacity, land use buildout and priority land uses is needed. In addition, the policies need to assure that transportation capacity for priority uses is not precluded by other development. Other provisions of suggested new policies to reduce congestion such as limiting local parking as suggested in C-TR-1a may promote alternative transportation and reduction of vehicle miles traveled, but may also potentially impact public access and recreation. We will need to review this proposed policy in conjunction with other proposed land use policies and the revised Public Access Component.

LCP Policy C-TR-3.3. This policy to reduce congestion due to visitor traffic in West Marin recommends coordinating with other agencies to provide alternatives to recreational automobile travel to recreational areas in the coastal zone. Encouraging additional transit is appropriate but more information is needed to evaluate how capacity and service to priority uses such as visitor serving uses is protected under section 30254 and how public access and recreation is maximized. It is necessary to evaluate transit proposals in conjunction with any proposed land use changes and update of the Public Access Component.

Issue 11: Safe Bicycle and Pedestrian Access

Developing new and expanding bicycle and pedestrian policies is a positive approach. We will also need to review such policies and development standards in conjunction with our review of the required Public Access Component. As this is not available for review our comments are not complete on this topic. References to the Bicycle and Pedestrian master plan have been included in proposed draft LCP policies (C-TR-2.3). If these references are adopted, that master plan will need to be submitted to the Coastal Commission for review and would need to be certified as part of the LCP. Alternatively, applicable specific location, siting and development standards from the Master plan could be incorporated into the LCP.

General Comments

It is not yet clear what the county intends to do regarding the update of various Community Plan policies and standards in the LCP as part of the overall LCP update, for example, the Dillon Beach Community Plan. There are policies in the Community Plans that may need to be revised and updated.

Updating the background analyses in the existing LCP for public facilities is very important. The certified LCP contains significant data, studies and analyses on the existing use and available capacities of all

*Comment letter to Planning Commission
Public Facilities & Services, Energy, and Transportation
April 24, 2009*

public facilities (water, sewer and transportation) including, for example, estimates of existing capacity and demand at buildout under the LCP and demand of visitor serving and other priority uses. This information needs to be updated to present current and projected figures. New and updated information is an important component to support any proposed policy revisions and to address consistency with the Coastal Act. While there may be alternatives for the format in which such data are provided, such analysis and background studies throughout this and other issue topics will need to be provided in support of the policy changes and to allow complete analysis of proposed policies with the Coastal Act and to meet filing requirements of California Code of Regulations 13552. In addition, public service policies need to be reviewed in conjunction with any changes to the kinds, location and intensity of land uses. As these components are not expected until later this year, these comments are preliminary and we will continue to work with your staff to comment further on whether the public facilities policies are adequate to serve new development and reserve capacity for priority uses consistent with the Coastal Act.

Law Office of Samuel B. Johnston

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May 13, 2014

California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RECEIVED
MAY 14 2014
CALIFORNIA
COASTAL COMMISSION

Via U.S. mail

Re: **Supplementary letter re Marin County LCP Amendment No. LCP-2-MAR-13-0224-1 Part A (Marin LUP Update) (and staff report "Th12a" dated May 2, 2014)**

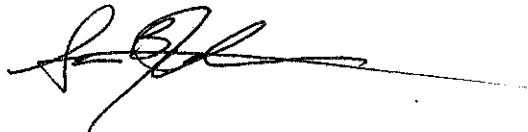
Dear Coastal Commission Staff:

As indicated on p. 11 of my initial comment letter dated today, May 13, 2014, I hereby submit this supplementary letter attaching certain comment letters for the purpose of inclusion in the record for the above-captioned proceeding. The submission herein of comment letters is not meant to exclude the relevance of other comment letters not included in this submission.

Please include this submission in the record of proceedings for this matter.

Thank you for your attention to this submission.

Yours Truly,



Samuel B. Johnston

Enclosures

List of Exhibits

1. Kevin Kahn to Marin County Board of Supervisors, January 14, 2013
2. Ruby Pap to Jack Liebster, September 15, 2011
3. Ruby Pap to Jack Liebster, January 7, 2012
4. Kevin Kahn to Marin County Board of Supervisors, November 9, 2012
5. Ruby Pap to Jack Liebster, October 4, 2011
6. Ruby Pap to Jack Liebster, November 30, 2011
7. Ruby Pap to Jack Liebster, January 22, 2012
8. Ruby Pap to Jack Liebster, August 10, 2011

Exhibit 1

CALIFORNIA COASTAL COMMISSION

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January 14, 2013

Marin County Board of Supervisors
3501 Civic Center Drive
Room 329
San Rafael, CA 94903

Re: Marin County Local Coastal Program (LCP) Update - Board of Supervisors' Hearing on January 15, 2013 regarding Agriculture and Biological Resources

Honorable Supervisors:

Please accept the following comments on the staff report for changes to certain portions of the Agriculture and Biological Resources components of the Marin County Planning Commission-approved draft of the LCP Update, which you will be discussing on January 15th. Please note that these comments are solely related to the subset of issues presented by County staff for consideration at this hearing. As we have identified in previous comment letters and in discussions with your staff, we continue to have outstanding concerns with regard to certain proposed agriculture and biological resource policies that are not among the subset of issues identified for consideration on the 15th, and we will be providing comments on those, as well as the entire LCP Update as currently proposed, in the near future. Please accept the following comments for the topics being considered on the 15th.

Intergenerational Housing

As discussed in our previous comment letter for your November 13, 2012 hearing, we continue to be concerned about the proposed concept of intergenerational housing in C-APZ zoned land. Our concerns relate to whether such housing is needed (i.e., is the existing LCP's allowance for a farmhouse and for farmworker housing insufficient to meet farmers' housing needs?), and whether the proposed LCP has proper standards and findings for approval of such housing. We also disagree with the LCP's definition of intergenerational housing as "agriculture". We continue to have those concerns.

At the direction of the Board from previous hearings, County staff's proposed changes to language in Development Code Section 22.32.024.B attempt to clarify appropriate uses for intergenerational homes in the event that family members no longer live in them. Provided intergenerational homes are reclassified as we have suggested, we agree that the first two potential allowable uses are appropriate (housing for farm workers or for agricultural homestays). However, we do not support their use as housing for members of the community who are not associated with the farm. While the goal of creating deed restricted affordable housing is honorable, such allowance is inconsistent with Coastal Act Sections 30241 and 30242, which strictly limit non-agricultural uses, including residential development, on agricultural lands. Thus, if the County continues to pursue the concept of intergenerational housing, in

addition to our previous comments, we also recommend that any use of structures built as intergenerational housing be used only for family members of farmers, or for farm worker housing directly tied to and necessary for agricultural production on the farm in question.

Grading

In the staff report, the County seeks direction from your Board as to a limit on the quantity of grading that would be the threshold for when coastal development permits are required. The report offers a range of thresholds, from as low as 50 cubic yards to as high as 250 cubic yards. The 250 cubic yard number is the current threshold in the County's Grading Ordinance for determining when a grading permit is required (not when a coastal development permit is required), and the 50 cubic yards, the report suggests, is the limit approved by the Coastal Commission for San Luis Obispo County's LCP. We would like to clarify that the 50 cubic yard minimum approved for San Luis Obispo County¹ was for the County's grading permit requirements, *not* for coastal permit requirements. Section 30106 of the Coastal Act defines development to include *all* grading. Thus, the San Luis Obispo County LCP amendment clarified that while grading under 50 cubic yards was exempt from the County's grading permits, it was not exempt from coastal development permits (the amendment also approved an expedited review process for projects that involve such "de minimus" grading). Thus, the County should not specify any minimum quantity of grading that would be exempt from coastal permit review, and instead require coastal permits for any grading that is not otherwise exempt, as required by the Coastal Act and the Commission's regulations.² It would seem appropriate to incorporate some processing streamlining for smaller amounts of grading, such as was done in the San Luis Obispo County LCP case, but processing streamlining needs to be kept separate from the question of whether a coastal permit is required at all. Commission staff is available to work with County staff in developing such a streamlined approach for Marin.

Finally, the proposed definition of grading excludes routine agricultural practices, such as plowing, tilling etc. However, many routine agricultural practices include earthwork that constitutes grading. As we have suggested in the past, grading associated with ongoing agricultural activities would not require a coastal permit (see also below), but that is a separate question than whether certain types of grading associated with agricultural activities is grading at all. We believe that the two concepts need to be kept separate, and that the County should therefore revise the definition of grading to incorporate all earthwork, including earthwork for routine agricultural practices.

Coastal Permits for Agriculture

As discussed in previous comment letters, the proposed LCP Update is not entirely clear with regard to what agricultural activities might require a coastal permit. Pursuant to the Coastal Act and the Commission's Regulations, all development, including agricultural activities that require grading or changes in the intensity of use of land or water, requires a coastal permit unless it is exempt through Section 30610 or subject to a categorical exclusion. Unless agricultural grading

¹ San Luis Obispo County LCP Major Amendment SLO-1-10, Grading and Stormwater Management, approved in August 2012.

² Grading could potentially be exempt from coastal permit requirements through the coastal permit exemptions put forth in Coastal Act Section 30610.

or changes in use, such as removing vegetation or grading for the planting of row crops, are part of an ongoing agricultural operation (in the last five years, as previously identified in our comments),³ such activities require a coastal permit. The County's staff report provides a revised definition of ongoing agriculture to more clearly address when coastal permits are required. The proposed definition exempts agricultural activities on all lands presently used for agriculture, as well as lands historically used for agriculture so long as there is no new encroachment within 100 feet of a wetland, stream, or riparian vegetation. Additionally, regardless of whether the land is currently or has historically been used for agriculture, any time new water wells or surface impoundments are developed, a coastal permit is required. Therefore, as long as agricultural activities are located on land that is currently used for agriculture, or is on land historically used for agriculture *and* is 100 feet away from wetlands, streams, and riparian vegetation, all agricultural activities may occur without a coastal permit. We believe that some of the criteria built into this definition are appropriate (e.g., sensitive habitat setbacks), but continue to believe that only ongoing activities are exempt under the law, and not activities that seek to resurrect some long since abandoned use, and not activities that change the intensity of use (such as changing from grazing to crop production). Note that past Commission guidance on this topic has specified that lands traditionally used for grazing and then converted to row crops is considered a change in the intensity of use of land and water and therefore considered development. Thus, we are supportive of the additional habitat setback criteria, but continue to recommend that the LCP clarify that the use of land for new or expanded agriculture activities, unless part of an ongoing agricultural operation, requires a coastal permit.

ESHA Definition

The proposed revised definition of ESHA excludes riparian vegetation "areas" and instead states that only riparian vegetation itself is considered ESHA. We recommend that the County retain the original or substitute similar policy language as certified by the Planning Commission that ensures that the entirety of riparian areas and corridors be given ESHA protection.

Wetland and Stream Buffer Adjustments

We recommend clearer language in Policy C-BIO-20.1(b) and Policy C-BIO-25.1(b) to state that buffer adjustments may only be allowed after siting, design, and sizing alternatives have been studied and deemed infeasible. For example, C-BIO-20.1(b) could be revised to state that the buffer adjustment may only occur after it is demonstrated that all siting, design and sizing alternatives have been proven infeasible.

Vegetation Management and Fuel Modification

We recommend policy language that requires development to be sited and designed a sufficient distance from ESHA and ESHA buffers in order to avoid any disturbance associated with fire safety measures. Such language should clearly indicate that fuel management is only allowed within ESHA under limited circumstances (and where it is resource-dependent development) and that required setbacks for fuel modification in new development need to be in addition to required ESHA buffer distances. We recommend modifying Policy C-EH-25 by removing the allowance for removal of major vegetation and ESHA for fire management, and instead indicate

³ As was found to be the case in San Luis Obispo County LCP Major Amendment SLO-1-10, and as is the case in the currently proposed Ventura County LCP update.

Marin County Board of Supervisors
January 14, 2013
Page 4 of 4

that siting and design measures, including appropriate buffers that account for and provide space for fire safety measures, are the proper methods for ensuring fire protection.

In closing, thank you for consideration of these points. We understand that you and your staff have identified a schedule for considering these and other Update issue areas over the course of the next several months leading to Board adoption. We will do our best to provide feedback and comments during that time, and look forward to working together to shape an Update that preserves, protects, and enhances coastal resources consistent with our mutual objectives for Marin. If you have any questions, please don't hesitate to contact me at (415) 904-5260, or at the address above.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Kahn", written in a cursive style.

Kevin Kahn
Coastal Planner

Exhibit 2

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
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**MEMORANDUM**

DATE: September 15, 2011

TO: Jack Liebster, Marin County Community Development Agency

FROM: Ruby Pap, North Central Coast District Supervisor *RP*
Rick Hyman, Senior Statewide Coastal Planner

RE: Preliminary staff comments on LCP Agricultural Provisions

This memo provides additional staff comments on LCP provisions related to Agriculture. The following were reviewed:

- Agriculture (AG) chapter of *Marin County Local Coastal Program*, June 2011 draft
- Ch. 22.32, Section 22.62.060, Table 5-4-b, Sections 22.65.030, 22.65.040, 22.65.050 and associated definitions in the proposed *Marin County Implementation Plan*, June 2011 draft (i.e. LCP development code amendments [hereafter referred to as the "Code"]).

In preparing this memo we reviewed our past comments (of July 10, 2009 and March 4, 2010 [attached]) and incorporated or revised those that remain relevant. Also, please note that some previous comments in this latest round of memos touch on agricultural issues, such as our comments on the Built Environment and Socioeconomic sections of the Draft LCP sent August 29, 2011 (e.g., on C-D-22, C-HS-8.a, Land Use Designations, Code Amendment Consistency, C-ED-5) and on LCP development code structure and process sent August 10, 2011 (e.g., on 22.68.030; 22.70.080).

I would appreciate it if you would share these comments with the members of the Planning Commission.

We have not reviewed the Natural Systems Resource Management Standards chapter, as it is our understanding that future Planning Commission meetings will discuss the LCP issue by issue, addressing the LUP and IP side by side. Also, the above sections and our preliminary comments have not undergone legal review.

General comments applicable to agricultural provisions:

The County's existing certified LCP contains strong policies to protect coastal farmlands. This includes requirements that the maximum amount of land remains in agriculture, and require permanent conservation easements over portions properties not used for physical development.

Overall, it appears that proposed LCP policy changes would provide updated agricultural protection measures, such as restrictions on house size, while allowing more non-agricultural

uses on agricultural lands and exempting certain uses, from required agricultural protection measures (e.g. Master Plans and agricultural conservation easements). Our comments on these issues, below, reflect a general concern that existing protections would be weakened and the need for adequate analyses to evaluate the consistency of these changes with the Coastal Act. We would like to set up a meeting with County staff as well as a tour of the agricultural lands in order to come to resolution on these complicated issues.

Missing from the LUP policies and Code sections are adequate provisions to ensure that structural and extensive agricultural uses -- other than direct production using the ground -- do not adversely affect long-term productivity. Barns, greenhouses, farmer workers quarters, etc., even though supportive of agricultural operations, still need to be designed and sited in a manner that is protective of the soil's productivity. For example, the criteria for agricultural accessory structures in § 22.32.022 -- i.e., that they need to be compatible with agricultural production -- is a start, but is not directive enough. Other jurisdictions have provisions to locate structures off of productive parts of the land, cluster them, limit their size, etc. that would be relevant for the County to emulate.

Also, there need to be provisions that address uses and structures adjacent to agricultural lands to ensure that they do not adversely impact the agricultural lands. Typically, there are buffer or setback provisions for potentially incompatible development adjacent to agricultural land. In addition Code Chapter 23.03 Right to Farm should be included in the LCP and submitted for the Commission's review.

Specific comments:

RE: C-AG-2 Coastal Agricultural Production Zone (C-APZ). ...Development shall not exceed a maximum density of 1 residential unit per 60 acres... and Map Set 18a - 18m Land Use Policy Maps and 22.64.030 TABLE 5-4-b COASTAL ZONE DEVELOPMENT STANDARDS Maximum Residential Density (2) C-APZ; C-ARP See Zoning Map and (2)c. C-APZ districts shall have a maximum residential density of one unit per 60 acres.

First, the land use plan maps need to be revised to reflect this policy because all the densities that they show are greater. Also, we need to review the zoning maps to ensure that they are consistent with the land use maps and the policy text.

Second, it would be clearer to rewrite this provision to say that no new parcel can be created that is less than 60 acres and to specify the actual densities that other policies provide for (assuming that we are correctly interpreting various provisions in the land use and implementation plans); i.e.:

- For parcels less than 60 acres (legal, non-conforming) -- one owner/operator house and some appropriate amount of worker housing commensurate with parcel size and agricultural production need;
- For parcels 60-119 acres -- one owner/operator house, one intergenerational house and some appropriate amount of worker housing commensurate with parcel size;

- For parcels at least 120 acres -- one owner/operator house, two intergenerational houses and some appropriate amount of worker housing commensurate with parcel size.

Third, as previously noted the 60 acre density coupled with the limitation on homes per parcel may actually encourage subdivision; i.e., if a property owner had 240 acres, the only way another home could be added is through subdivision. Although there are fairly strict subdivision standards, it may be worth adding to the LCP consideration of alternatives to subdivision. We would also like to discuss the 60-acre standard and whether that is adequate to protect agriculture in rural areas.

Please, see also other comments below related to density; e.g., on Program C-AG-2, Code § 22.32.028, Table 5-1 and Table 5-4-b.

RE: Program C-AG-2.a Allowed Uses: Use allowed by right. No permit required. *Seek to clarify...or add to these [exclusion] orders to specifically incorporate agricultural uses as defined in the Local Coastal Program, including commercial gardening, crop production, dairy operations, beekeeping, livestock operations....*

We note that if this program is in the certified LCP it does not guarantee Coastal Commission approval of an amended exclusion order. As noted in the comment on § 22.68.030 (memo of August 10, 2011) general routine, on-going agricultural operations would not require coastal permits; what require permits are the grading, intensification and structures associated with these operations (please see Coastal Act definition of development). The existing exclusions cover structures, tanks, lines, impoundments and the like. Because some of the developments associated with agricultural operations that are not excluded could have adverse environmental impacts, a broadened exclusion for all aspects of all operations is probably not approvable. For example, approved Commission exclusion orders generally do not encompass developments in or adjacent to water bodies. The burden will be on the County to provide evidence that there will be no adverse environmental impact from additional categories of exclusion. Some text similar to the following could be added to Program C-AG-2.a to guide the County's work: "Review aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that do not cause adverse environmental impacts and, hence, could be eligible additions to the categorical exclusion."

RE: Program C-AG-2.b Develop Implementation Measures for the C-APZ. *Amend the Development Code to incorporate the following provisions: Permitted Uses in the Agricultural Production Zone; and 22.62.050 Table 5-1*

We continue to question the appropriateness of including some clearly non-agricultural uses within the C-APZ district; such as campgrounds, private residential recreational facilities, mineral resource extraction, and waste disposal sites. Areas not appropriate for agricultural production but appropriate for these other uses may need to be re-designated and rezoned. We would like to see some analysis of why these types of uses are appropriate in agriculturally zoned districts. Regarding allowing group homes or residential care facilities for 6 or fewer residences or small family day-care homes, in accordance with State law, it should be clear that they occur in an otherwise allowed home; e.g., in an existing owner/operator or intergenerational house. We

are concerned about constructing a new group or care home in an agricultural zone away from urban services and amenities. Large group homes, family day-care homes, or residential care facilities and more than one of these in total per parcel should not be allowed in the C-APZ district. Echoing the comment on §22.32.028 in our previous letters, where residential structures are appropriate, priority should be given to their use by farm workers. Regarding allowing wind energy systems, please see our comments of August 29, 2011 on the subject. Although LCP provisions distinguish among system sizes and incorporation various environmental protections, they do not appear to adequately address impacts on and compatibility with agricultural production. More precise direction as to what wind energy facilities would be allowed in the C-APZ district is necessary.

RE: Program C-AG-2.b. 2. Principal Permitted uses. Bed and breakfast inns or agricultural homestay facilities, with three or fewer guest rooms, appurtenant to and compatible with agriculture. and 4. Conditional Uses. u. Bed and breakfast operations with 4 or 5 rooms and agricultural homestays with 4-6 Rooms and §22.32.023 – Agricultural Homestays (Coastal)

We note that currently Bed and Breakfast facilities is a conditional use in the C-APZ zone. We have concerns about potential weakening of agricultural protections by changing this use to principally permitted; as well as adding additional residential uses. For purposes of addressing the Commission's appeal jurisdiction under Coastal Act 30603, the County must designate a single principally permitted use in the APZ zone (Agricultural Production e.g.).

Agricultural homestays require one household to be in permanent residence and must look like single-family residences. Residences in the C-APZ zone are limited to owner/operator, intergenerational, and worker housing. To comply with the apparent intent of this provision, it should be clear that the homestay occurs in one of the buildings permitted for single family dwellings or, if not, then in a building within the farm building complex that is run by an occupant of one of the residential dwellings – in other words, the homestay should not be a combination single family residence/visitor overnight accommodation in addition to the maximum amount of residential dwellings allowed.

Also, it needs to be clear that there is only one small or large bed and breakfast or one small or large agricultural homestay per parcel.

Having said this, a means that could promote equity and discourage subdivision would be to link the amount of homestay or bed and breakfast rooms to parcel size; e.g., none for parcels under 60 acres; a small homestay or b & b for parcels 60 to 119 acres; a large homestay or b & b for parcels at least 120 acres.

RE: Program C-AG-2.d Amnesty Program for Unpermitted and Legal Non-Conforming Agricultural Worker Units.

This program needs clarification. If the units are legal, non-conforming units then they would fall under the general non-conforming ordinance provisions. If there are certain additional exceptions to that ordinance that you want to make for farmer worker housing, then the Commission would

have to review such language. If the units are unpermitted, then an amnesty program should be limited in that the must be consistent with local coastal program requirements (e.g., location and density requirements). Only requirements that do not have a coastal resource impact should be part of an amnesty program.

RE: Program C-AG- 2.f Facilitate Agricultural Tourism. *Review the agricultural policies and zoning provisions and consider seeking to add farm tours, homestays and minor facilities to support them as a Categorical Exclusion.* and 22.62.060.F. 2. **Facilitate Agricultural Tourism.** *Consider seeking to add farm tours, homestays and minor facilities to supporting them as Categorical Exclusions.* Same comment as to Program C-AG-2.a. And, as we previously commented, "minor" will have to be better defined.

RE: Program C-AG-2.e Establish Criteria for On-site Agricultural Sales and Processing...*e. Sufficient off-street parking is provided.* and 22.32.027.A.5

We had previously commented, "We are concerned about implementation issues with this requirement - would agricultural lands be converted to comply? It may be best to allow roadside parking for farm stands." Is it the intent that §24.04.340(g) -- One space per 200 s.f. of gross floor area -- would apply? On one hand, the 250 sq. ft. maximum size of farm stands would mean at most two spaces would be required. On the other hand, if sufficient room for parking exists on the roadway shoulder or on unpaved areas of the site, it would seem unnecessary to require formalized parking for farm stands. Perhaps, this provision can be revised to state that parking standards for retail sales may be adjusted for farm stands to ensure sufficient parking opportunities without requiring unnecessary paving or conflicts with other agricultural operations.

RE: C-AG-5 Intergenerational Housing....*Such intergenerational homes shall not be subject to the requirement for a...permanent agricultural conservation easement...* and 22.65.040 - C-APZ

Zoning District Standards 2. Conservation easements. *Consistent with State and federal laws, the approval of nonagricultural uses, a subdivision, or construction of two or more dwelling units, excluding agricultural worker or intergenerational housing, shall include measures for the long-term preservation of lands proposed or required to remain undeveloped. Preservation shall be accomplished by permanent conservation easements or other encumbrances acceptable to the County*

The exception for the first (primary) dwelling unit, worker, and intergenerational housing should be deleted. The certified LCP requires permanent conservation easements for all development proposals (see Section 22.57.035 of the certified zoning code) therefore the current proposal represents a weakening of the current standard. If the primary, worker or intergenerational housing-- whose stated purposes are to support continued agricultural operations -- is to be permitted, then the land should be dedicated to permanent agricultural use through some protective measure.

If the County chooses to go forward with the current policy language, as a filing requirement for the LCP update submittal, we will request analyses and accompanying data as to how this is consistent with Coastal Act Sections 30241 and 30242. For example, how much vacant agricultural land is out there, and how many applications for residential units and intergenerational housing are expected? How would the lack of requirements for master plans

and agricultural easements affect agricultural viability on the subject and surrounding agricultural lands?

RE: C-AG-7 Master Plan for Non-Agricultural Development of Agricultural Production Zone (C-APZ) Lands. *Prior to approval of non-agricultural development, including a land division, in the Coastal Agricultural Production Zone, require submittal of a Master Plan or other appropriate development applications showing how the development would be consistent with the LCP. Approve a proposed Master Plan or development application and determine the density of permitted residential units only upon making all of the following findings and incorporating the conditions listed below. No Master Plan shall be required for: ...*

See also our comment above (**C-AG-5 Intergenerational Housing**) regarding the weakening of agricultural protection standards for residential development on agricultural lands.

This and other provisions for Master Plans and Production and Stewardship Plans (see comment on § 22.65.040 below) have some potentially confusing aspects. First, when are they prepared? Master Plans are required as part of a submittal. Our previous comments questioned whether the Stewardship Plan would be required as part of the application or as a permit condition and this is still not clear.

Second, when are they processed? Is the Master Plan approval process conducted independently from the coastal permit process? Is the alternative of "other appropriate development applications" referring to the coastal permit application?

Third, how do they relate to other requirements? Code § 22.62.040 has provisions for a Master Plan, but is not fully consistent with policy C-AG-7. Neither are the provisions of Chapter 22.44 - Master Plans and Precise Development Plans. And in Table 5-1 the notes only refer to Master Plans for Livestock Operations outside of the Coastal Permit process.

In addressing these questions, provisions for Master and Stewardship plans could be better integrated into the coastal permit process. Filing versus condition requirements could be distinguished. Some elements would be part of the application submittal process, such as showing the proposed extent of development on the subject parcel; specifying design parameters, demonstrating agricultural viability, etc. Other elements could be required in the conditions of approval. All Master Plan and Stewardship Plan standards and conditions need to be incorporated into the coastal permit approval. However, the coastal permit approval needs to clearly distinguish between what aspects of the Master Plan are being approved and which are only illustrative of future proposals that will need separate coastal permit approval. Finally, because the County already has specific Master Plan provisions that do not fully address the intent of this policy, confusion might be reduced by using different terminology for agricultural master plans.

RE: C-AG-7 Development Standards: 4. Adequate water supply, sewage disposal, road access and capacity and other public services are available to support the proposed development after provision has been made for existing and continued agricultural operations and 22.65.040.D.4.

We remain concerned that this policy can be interpreted to allowing extension of public services into agricultural areas. One way to address this concern is to add the caveat, "without extending urban services" to the sentence.

RE: C-AG-9 Residential Development Impacts and Agricultural Use. and 22.62.060 – E. Residential Development Impacts and Agricultural Use. Ensure that lands designated for agricultural use are not de facto converted to residential use, thereby losing the long-term productivity of such lands.... (b) The County shall exercise its discretion in light of some or all of the following criteria and for the purpose of ensuring that the parcel does not de facto convert to residential use:

Although the intent of these provisions is apparent, a literal application of these policies may not be sufficient to result in the desired intent. It is not clear to which residential development -- e.g., agricultural owner, intergenerational, agricultural worker homes -- this section applies. Although only single-family homes are linked to this section in Table 5-1, it has some provisions applicable to any type of residence on the site. To what § 22.62.060 applies should be made explicit. Again, our general comment that there should be some siting and design criteria applicable to any home on agriculturally zoned land is applicable here.

Also, it is unclear what "exercise its discretion" means -- to allow or not to allow homes? To determine how many homes? To address siting, size and design? Important criteria should be mandatory and tied to the decision being made. Or perhaps, if the County wants flexibility in which criteria to consider, there could be some kind of point system whereby the more of these criteria that are met, the more homes allowed, or the bigger, etc. (up to the specified maximums).

RE: 22.32.026 – Agricultural Processing Uses A. Limitations on use: 1. ... located at least 300 ft from any street or separate-ownership property line (and not within an Environmentally Sensitive Habitat Area).

We can understand that you might want to give more scrutiny to agricultural processing facilities closer to the street or neighbors to ensure that there are no adverse impacts on them. But this outright restriction could work against achieving the best siting for such facilities which, as discussed above, should generally be clustered with other buildings on the part of the property least suitable for agricultural production.

RE: 22.32.028 – Agricultural Worker Housing (Coastal) B. Limitations on use:

While up to 36 beds is considered a principally-permitted use on agriculturally zoned land, there appears to be no upper limit on additional beds other than how many are "necessary to support agriculture." As a filing requirement for the LCP Update application we will most likely request data on how many farmer workers are employed on average on an agriculturally zoned parcel, how many have off-site housing versus how many need on-site housing, and how many are seasonal. There can be a great difference in impacts from a 12 unit -36 bed permanent structural complex and 12 temporary trailer spaces for a maximum of 36 people. As discussed above, the LCP needs additional criteria to ensure the protection of agriculturally productive land, including specifying a size limit on the structure. Additionally, the LCP should add some direction to

ensure the best overall placement of farm labor housing. For example, there may be locations within village boundaries where some permanent farm labor housing could be built. This has the advantage of ensuring infrastructure is available to support the units and that residents have the benefit of living in residential areas close to services to use when they are not at work. Similarly, there may be locations within the rural agricultural areas that are less suitable for agricultural production and more suitable for clustering some farm labor housing. In addition, we still require more information on the appropriate number of units and mix of permanent versus more temporary housing on individual parcels. Further, the LCP should require that any request for farm labor housing on agriculturally designated land be accompanied by a needs and location assessment.

RE: 22.32.062 – Educational Tours (Coastal) and corresponding use charts in 22.62.060:

Please consider whether these uses would need to allow for associated interpretation facilities, such as kiosks, and outdoor group assembly seating; and if so, specify these uses in the Code.

RE: 22.32.115 – Non-Agricultural Uses *This Section applies only in those instances where Table 2-1, Table 3-5 or Table 5-1 expressly refers to this Section.... A. Permitted use, zoning districts. This Section does not apply to the following zoning districts: ARP-1 to ARP-5, C-ARP, CAPZ, and C-OA.* First, we have not seen Table 2-1 or Table 3-5.

Second, there is an apparent contradiction: in Table 5-1 there are references to this section; for example agricultural homestays in the C-APZ zone are subject to § 22.32.115. However, this provision of § 22.32.115 says it does not apply to the C-APZ zone. Please explain.

Third, some non-agricultural uses in the Tables are shown as subject to § 22.32.115 (e.g. affordable housing, nature preserve, mineral extraction); others are not. Does that mean that they can be approved even if they are not accessory and incidental to agriculture? In other words, it appears that these can become the dominant use of a property.

Fourth, although the stated purpose of this section is to ensure that uses are accessory and incidental to agricultural production, the criteria that have to be met related mostly to the current agricultural operation; not what it may evolve to over time. Only one possible criterion -- *B.2(a) whether the aerial extent of land dedicated to agriculture is sufficient to support agricultural production* -- reflects some long-term consideration in that it implies that the non-agricultural uses will not be allowed to cover too much productive farmland. As discussed in our general comment, more needs to be in the LCP to address siting and coverage of non-agricultural uses.

RE: 22.62.040- Allowable Land Uses and Coastal Permit Requirements B. Coastal zone permit requirements. 5. Land uses that are not listed in Tables 5-1, 5-2, and 5-3 or are not shown in a particular zoning district are not allowed, except where otherwise provided by Section 22.06.040.B (Determination of Allowable Land Uses), or 22.68.050 (Exempt Projects).

Exempt projects refer to those that do not need a coastal permit – please consider whether it really is the County's intent that any exempt project would be allowed in any zoning district. Does this mean, for example, that temporary events not on beaches, such as musical concerts (which are exempt from coastal permits), could be allowed on C-APZ zoned land? This would raise Coastal Act consistency issues.

RE: 22.62.050 – Coastal Zoning District Regulations

We advise that you add "land divisions" to each of the Tables. Since they have differing permit and appeal requirements, they should be listed.

RE: 22.62.050 – Coastal Zoning District Regulations Table 5-1

Homestays, intergenerational homes, owner/operator homes, and worker housing are in Table 5-1 – listed as "Agricultural" uses. We disagree that homestays and intergenerational homes are "agricultural uses," and they should be more appropriately categorized as residential, visitor-serving uses, or educational uses. Agricultural worker housing may be considered an "agricultural use" if there are sufficient guarantees and restrictions in place that the use is related to agriculture. In terms of the owner/operator home, this does not appear to be an agricultural use. In terms of intergenerational homes, you have clearly stated that the occupants do not have to be involved with the agricultural operation. In certain cases, the Commission has taken the position that if an agricultural easement is placed on the property, thereby ensuring that it will be used for agriculture, then the owner/operators house could be considered a "farmhouse." However, we do not see any such guarantees in the amendment, as currently drafted.

In addition, this zoning section includes single family dwellings and affordable housing as entries in the "residential" category, and this appears to be separate from and in addition to the owner/operator single family dwelling, worker housing, and intergenerational housing allowed. This is confusing because LUP policies (and even Table 5 note #8) appear to prohibit more single family dwellings than these specifically listed ones. If "single-family dwelling" in the Table is to mean that in case the parcel does not have an owner/operator house (principle use) there could be a non-owner/operator house (conditional use) this should be made clear; otherwise, the entry should be deleted. Similarly, since worker housing is in the Table, affordable housing should be deleted. In general, the residential uses in the ag zones listed in Table 5-1-c need to be harmonized with the LUP policies.

In Table 5-1-d the explanation for notes # 8 and 10 is missing.

RE: 22.64.030 TABLE 5-4-b COASTAL ZONE DEVELOPMENT STANDARDS (3) Setbacks are determined through the Coastal Permit.

This provision would mean that almost any front, side, or rear property setback would be permissible because there do not appear to be many criteria elsewhere in the LCP for determining setbacks, other than, for example, the 300 foot front setback for processing structures. In general setbacks on agricultural land may not be important. In fact property line setbacks should not be imposed that would require development to adversely impact agricultural production.

RE: 22.65.030 - Planned District General Development Standards A. Access:

Although these standards are said to apply in the C-APZ zone, would they apply to farm roads which are typically narrower and unpaved?

RE: 22.65.030 - Planned District General Development Standards D. Building location: 1. Clustering requirement. Structures shall be clustered in the most accessible, least visually prominent, and most geologically stable portions of the site, consistent with needs for privacy where multi-family residential units are proposed.... In the C-APZ and C-ARP agricultural zones, non-agricultural development shall also be clustered or sited to retain the maximum amount of agricultural land and minimize possible conflicts with existing or possible future agricultural use.... Non-agricultural development shall be placed in one or more groups on a total of no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space.

We see a potential conflict between siting criteria in D(1), in particular between choosing locations to protect agricultural land versus locations that are least visually prominent or the most accessible. We suggest that for clustering on ag lands, there be a hierarchy of consideration, e.g. (1) ESHA, (2) agricultural production, (3) visual resource protection, etc. A visible farm complex may actually be part of the rural character.

Second, in the C-APZ and C-ARP zones all structural development (not just non-agricultural) should be clustered as much as possible consistent with operational needs.

Third, the qualifier "to the extent feasible" diminishes the 5% coverage standard, which appears lenient, especially for large parcels (a 500 acre parcel could have building coverage over 25 acres). It is somewhat contradicted by the criteria that at least 95% of the land covered by Agricultural Production and Stewardship Plans remain in agricultural production (22.65.040). More protective approaches could be to: vary the coverage percentages by lot size, establish absolute coverage requirements instead of a percentage, or simply require as tight a cluster (or clusters) as possible consistent with operational needs. In past actions, the Commission has required a 10,000 square foot envelope for residential development. Finally we note that the criteria *Proposed development shall be located close to existing roads, and shall not require new road construction* reinforces our comment on § 22.32.026.

RE: 22.65.040 - C-APZ Zoning District Standards C. 3. (b) An Agricultural Production and Stewardship Plan shall provide evidence that at least 95% of the land will remain in agricultural production or natural resource protection and 22.130.030 - Definitions of Specialized Terms and Phrases Agricultural Production and Stewardship Plan (coastal). (5) at least 90% of the usable land of the property will be engaged in agricultural production.

There is a contradiction in percentages between standard and definition.

RE: 22.65.040 - C-APZ Zoning District Standards C. 3. (b) The requirement for an Agricultural Production and Stewardship Plan shall not apply to agricultural worker housing or to permitted intergenerational operation and succession housing units.

This section appears to render the APSP requirement meaningless, as there are numerous exemptions and waivers of the requirement. We suggest that this section be deleted. If the County were to waive the requirement for an APSP based on a finding that the proposal would enhance current or future agricultural use of the property, what would such a finding be based on? It would seem that the County would require such evidence as that would be contained in an APSP in order to make such a finding. We suggest that an

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APSP is an important and necessary document for determining a project's consistency with LCP agricultural protection policies.

RE: 22.65.040 - F. Other Implementing Actions. 1. Commercial Agricultural Production. *Develop criteria and standards for defining commercial agricultural production so that Agricultural Production and Stewardship plans can differentiate between commercial agricultural production and agricultural uses accessory to residential or other non-agricultural uses.*

This should be re-written in Code language to be useable. Until such criteria are developed, the provision could say (probably integrated into #3a) that the Stewardship Plan will contain measures that demonstrate commitment to producing sufficient product for marketing and to actually market what is produced.

Exhibit 3

CALIFORNIA COASTAL COMMISSION

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**MEMORANDUM**

DATE: January 7, 2012

TO: Marin County Planning Commission
Jack Liebster, Marin County Community Development Agency

FROM: Ruby Pap, North Central Coast District Supervisor

RE: Marin County Local Coastal Program (LCP) Update: Staff comments on the carry-over policies for the January 9, 2012 Planning Commission hearing.

Commission staff has been working closely with Marin County Staff on the LCP Update, and appreciates the time the Planning Commission has spent on important coastal protection issues. These comments focus on the topics that are brought up in the County staff report for the January 9, 2012 Planning Commission hearing: Carry over issues in Development Code Structure and Process, Agriculture, Community Development, and Agriculture.

Development Code Structure and Process**Section 22.68.050 – Exempt Projects:**

The deletions should be undeleted. According to the Coastal Commission's regulations, replacement of 50% or more of a seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not considered solely repair and maintenance, but instead constitutes a replacement structure.

Section 22.70.030.B.5 –Public hearing waiver

Coastal Act Section 30624.9(b)(2) does not specify that the request for public hearing be in written form.

Agriculture

As we've stated in our previous comment letters and testimony at hearings, we have some fundamental concerns with the agricultural policy amendments. Although its not explicit in all the policies, it appears that the overall approach is to define agriculture in such a way as to include not only the cultivation of crops and raising of animals; but also to include uses that have deemed to accessory structures or uses appurtenant and necessary to the operation of agricultural uses. Then, using this construct, the standards for development on agricultural lands (in C-AG-7) are divided between 'agricultural uses' and 'non-agricultural uses.' Some of these appurtenant

structures include intergenerational homes for families that aren't required to be working the land, farm worker housing, and agricultural home stays. While these uses may be appropriate under certain circumstances, we have serious concerns with this one-size fits all approach, because we do not believe that they should be defined as agriculture, and that there are insufficient standards for review of these uses. As currently drafted, the policies could open the door to abuse and conversion of agricultural lands to non-agricultural uses, inconsistent with Coastal Act Sections 30241 and 30242.

The draft agricultural policies define the first three homes as agriculture: (1) the first residence or "farmhouse," (2) an intergenerational home, and (3) farmworker housing. These uses, among others, would not be subject to the required findings for agricultural protection and would be exempt from requirements for agricultural easements and agricultural production and stewardship plans. While in a perfect world, where we were absolutely sure that these uses were actually supporting and enhancing agricultural uses on the site, this could be okay. But in reality, it would be very difficult to enforce and make this determination without having tighter regulations to ensure that agriculture is preserved. For example, without an agricultural production and stewardship plan, how would the County know whether they are permitting a bonafide agricultural use? Without the guarantee that agricultural easements provide, how would the County ensure that the agricultural use continues, consistent with the LCP and the Coastal Act?

The Coastal Commission statewide has seen a trend towards proposed estate homes on agricultural lands. These developments greatly impact the agricultural economy and productivity by driving up the value of the land and by bringing non farming related housing into agricultural areas, thereby increasing the potential for conflict between agricultural and rural residential lifestyles, which in turn puts adverse pressure on agriculture.

One way that applicants have dealt with ensuring that their proposed houses are really farmhouses and that the land will indeed continue to be farmed is through proposed affirmative agricultural easements or deed restrictions on their lands. We think that the County should consider this or some equally effective measure to ensure that agriculture in the surrounding area is protected. While we understand the County's intent to streamline permit requirements for bonafide agricultural uses, and to allow certain appurtenant uses to support agriculture, we believe the draft policies need to be reworked and supplemented with additional standards before we can recommend to the Coastal Commission that they are consistent with the Coastal Act.

In addition, as proposed, there is a whole list of potential allowable non-agricultural uses in the C-APZ zone. Some of these uses may be appropriate under certain circumstances, but none of those standards have been laid out in the policies. Also, as drafted, it is unclear what the maximum amount of structures on the agricultural lands would be. For example, homestays, bed and breakfast inns, mobile homes, residential care facilities, group homes, and small family daycares are listed as principally permitted or permitted uses. Is it the County's intent to allow these uses within existing structures only, or would there be cases where additional structures for these uses would be allowed?

Built Environment

C-SB-2 Limited Access to Seadrift:

We suggest that the open space and pedestrian easement be shown on a map in the LCP, and that the Declaration of Restrictions be attached to the LCP as an appendix.

C-SB-3 Density and Location of Development in Seadrift:

We suggest attaching the settlement agreements as an appendix to the LCP. Will the proposed zoning maps reflect the minimum lot sizes?

22.66.050(A) Bolinas, Olema, Point Reyes Station, Inverness, Paradise Ranch, Dillon Beach community character:

We have commented in the past that the language and intent of the proposed community character policies is unclear, and appears to leave out the visitor serving recreational priority uses in the coastal zone. The County has made adjustments to the Muir Beach and Stinson Beach policies, but the other community policies appear to remain as originally drafted. We recognize that existing community character needs to be preserved. But, we are confused as to the nature and intent of some of these policies, and whether they could be used to preclude otherwise allowable visitor serving recreational development.

22.32.190 WECs ordinance

Wind Energy ordinances in local coastal programs (LCPs) are a relatively new phenomenon, and therefore we are very interested in working with the County on its proposal and to potentially use it as a model for other jurisdictions. We note that the proposed ordinance language is quite thorough and establishes many standards for review of these facilities. The following preliminary questions have come up in Staff's initial review of this latest draft:

WECs in C-OA zone ("open areas")

We note that large WECS would be prohibited, but that small and medium would be permitted in all zones. We previously commented about allowing WECS in lands zoned 'open area.' Upon consultation with County staff, we learned that the 'open areas' in Marin County contain a variety of facilities as well as open space lands. County staff opined that some of those facilities, such as the Marconi Conference Center, may want to pursue wind power. While we agree that we wouldn't want to preclude that use, we wonder whether the ordinance would also allow mini wind farms in open space areas that are installed for the general grid (rather than supporting an existing building/facility).

Section 22.32.190.G.9.a (Bird/Bat studies)

As we mentioned in our comments dated 10/4/11, the before/after studies have only a marginal likelihood of detecting impacts unless they are very large or result in dead birds that can be recovered. The proposed section states that "If the Bird and Bat Study for a proposed ministerial Small WECs project finds that there is potential for impacts to any listed State or Federal threatened or endangered species or California Department of Fish and Game designated bird or bat species of 'special concern,' or 'Fully Protected species' found to nest or roost in the area of

the proposed WECs site, the project will become discretionary and require a Resource Management and Contingency Plan...”

We think that the first option should always be to site the proposed system conservatively based on the initial Bird/Bat study and the pre-construction survey, rather than simply relying on the mitigation contained in the Contingency Plan. We suggest adding an additional step the standards to make this requirement explicit in the discretionary review.

Streamlining Roof-Mounted Systems

It appears that roof-mounted systems would be exempt from Coastal Permit requirements, but that they would still be subject to all the standards in the ordinance. How would the County enforce this without requiring a Coastal Permit?

Exhibit 4

CALIFORNIA COASTAL COMMISSION

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NOV 19 2012 AM 8:54 Planning

November 9, 2012

Marin County Board of Supervisors
3501 Civic Center Drive
Room 329
San Rafael, CA 94903

Re: Marin County Local Coastal Program (LCP) Update - Board of Supervisors' Hearing on November 13, 2012 regarding Agriculture and Biological Resources

Honorable Supervisors:

Please accept the following comments on the agricultural and biological resource components of the Marin County Planning Commission-approved draft of the LCP Update that you will be discussing on November 13th. We have been working with County staff for a number of years as the Update has unfolded, providing feedback on proposed policy language and Coastal Act consistency issues, and lending expertise from our technical staff on a variety of issues and topics (e.g., land use, biology, water quality, and hazards). We have also provided testimony and input through participation in multiple Planning Commission hearings, as well as through written comment letters, which you will find in the record. Overall, we believe that the process has been productive, and over the last couple of years we have been able to work with your staff to narrow down the list of potential issues, which should go far in assisting with a timely certification process with the Coastal Commission. We sincerely appreciate your staff's time and effort in working with us on identified coastal resource issues and concerns, and believe that it has helped improve and enhance the Update.

We note that we are in the process of developing detailed comments, including suggested alternative policy language, on what we see to be remaining Update issues, and we hope to get those comments to you and your staff in the near future. These upcoming comments are intended to apply to the entire Update, and are further intended to supplement and refine our written and verbal comments provided to date over several years as they apply to the now modified and current version of the Update. Given your current focus on the Update's agricultural and biological resource elements, we felt it was important to highlight certain key issues in those issue areas in advance of our more detailed upcoming comments. We have discussed these same concerns with your staff, and look forward to working together on appropriate resolution.

With respect to agricultural protection, the County should be applauded for recognizing the value and importance of agricultural resources and family farming, and for developing a framework intended to respect and protect such values consistent with the Coastal Act. It is clear to us that agricultural protection is clearly one of the most important objectives in Marin, and equally clear that County staff has been working very hard to come up with solutions to what can be confounding questions when applied in context.

That said, however, we believe that certain currently proposed provisions underscore the difficulty of developing such policies in relation to what have historically been considered non-agricultural, ancillary, and/or supplemental uses and development. This issue is perhaps most clearly present at a foundational level in the proposed Update in terms of the expanded definition of agriculture that goes beyond crop production, cultivation, and grazing to include such things as intergenerational housing and overnight accommodations. It appears clear to us that a more limited and traditional manner of defining agriculture can best allow for its protection, including protecting it from incursion of non-agricultural uses and development. That is not to say that non-agricultural development shouldn't be allowed, rather that it can be more clearly addressed and circumscribed when kept within a framework that recognizes it as separate from the primary use of the land for traditional agricultural activities. In that way, clear parameters for allowing such other uses and development, including in terms of siting and design, can be formulated. When they are instead intermixed and called out themselves as agricultural, then LCP policies struggle to clearly adapt and address such "agricultural" uses and development, including because many of the Update's policies designed to ensure that development does not interfere with agricultural production do not apply (i.e., because the development itself is considered agricultural). We recommend that the LCP be restructured around this baseline understanding of agriculture, and its policies for other uses clearly be structured around such other uses as supplemental and subject to appropriate evaluation criteria. The San Luis Obispo County LCP provides a relevant example in this respect.

The Update's explicit concept of "intergenerational housing" is a relevant and fundamental example of this point. Again, while the goal appears sound, namely to allow for the preservation of family farms by facilitating multi-generational ownership and stewardship of the land, the manner in which the Update approaches this topic raises some question. It is not even clear at this point how the existing LCP's allowance for housing on agricultural land is insufficient to accomplish this goal. The existing LCP allows for one single-family dwelling as a principally permitted use, and farmworker housing as a conditional use. If family members are working on the land, their housing could be considered farmworker housing, and would therefore be allowed. To instead have the LCP call such housing out as agriculture sets in motion an evaluation framework that appears insufficient to address concerns related to residential development on agricultural lands, including in relation to siting and design concerns. Again, that is not to say the goal isn't appropriate, but rather to observe that the manner in which it is implemented should, in our view, be structured around such uses and development not being called out as agricultural, including to provide for consistency with Coastal Act requirements that strictly limit the conversion of agricultural land to non-agricultural uses, including residential uses.

In addition, Coastal Act Section 30603 requires coastal counties to designate a single principally permitted use per zoning district. We recommend that "Agricultural Production" be designated as the one allowed (per Coastal Act Section 30603) principally permitted use for C-APZ lands, and that uses appurtenant and functionally-related to agriculture be designated a permitted use. This will ensure that permitting for agricultural production will be streamlined, and will allow for functionally related uses to occur, subject to the LCP's resource protection standards and requirements.

Finally with respect to agriculture, the Update is unclear with regard to what agricultural activities require a coastal development permit (CDP). Pursuant to the Coastal Act and the Commission's Regulations, all development, including agricultural activities that require grading or changes in the intensity of use of land or water, requires a CDP. Section 30106 of the Coastal Act defines development to include all grading, any changes in the density or intensity of use of land or water, and the removal or harvesting of major vegetation other than for agricultural purposes, meaning the removal of major vegetation, except for harvesting crops. Unless agricultural activities, such as grazing, grading, and planting crops are part of an ongoing agricultural operation, they require a CDP.^[1] Contrary to this requirement, the Update excludes agricultural crop management and grazing from the definition of development entirely. This broad exemption makes it unclear as to which types of agricultural activities are subject to the requirements of a CDP, and could be interpreted to exempt any activity that is otherwise classified as development as long as it is for agricultural purposes. The Update needs to make clear that, as defined by the Coastal Act, only ongoing agricultural activities (such as grazing or grading for the planting of row crops) are exempt from CDP requirements, and that any new or expanded agricultural operations, including converting open fields to row crops, require a CDP.

In terms of biological resources, we continue to have certain concerns with the way in which the Update proposes to address protection of ESHA, perhaps most significantly in terms of the method for appropriately setting back from ESHA. As proposed, wetlands, streams and riparian corridors would qualify as a type of ESHA to which a minimum 100-foot buffer would be applied, and the buffer could be reduced to 50 feet where evidence clearly demonstrated that a lesser buffer would adequately protect such resources. With some minor modifications, including related to assuring that exceptions to larger setbacks were exceptions and not the norm, and including limiting exceptions only to circumstances where there are no feasible alternatives and where significant habitat impacts would be avoided, such a system would appear appropriate for ESHA protection. We note that it is also possible that in certain cases, buffers of greater than 100 feet may be warranted based on the type of resource and its value, and the Update needs to make this clear. With respect to other types of ESHA, however, the Update does not provide a similar system, leaving minimum setbacks undefined. In its place, we recommend that a system similar to the wetlands, streams and riparian system be adopted.

Finally, the allowed activities within ESHA and ESHA buffers require refinement. For example, the Update categorically allows for major vegetation to be removed where necessary to minimize risks to life and property in these areas, but doesn't provide a framework for avoiding such circumstance (e.g., setbacks may need to be greater than 100-feet to ensure that development and ongoing activities associated with the development, like fire safety clearance, are all accounted for within the developable area and not the ESHA and/or ESHA buffer). It also doesn't provide a means of evaluating such circumstances and appropriately responding in a way that addresses ESHA protection. Similarly, using distance (i.e., buffer) as a tool for protecting ESHA is appropriate, but its value and utility can be decreased significantly if inappropriate activities are allowed within buffers, and the appropriate distance must be understood in terms of allowed

^[1] The Commission's most recent action that addresses this specific issue is San Luis Obispo County LCP Major Amendment SLO-1-10, Grading and Stormwater Management, approved in August 2012.

buffer activities, including maintenance of the buffer over time in a way that ensures its continued protective function as well as its relationship to adjacent ESHA. We will be following up with language refinements on these points, as discussed above.

In closing, thank you for consideration of these points. We understand that you and your staff have identified a schedule for considering these and other Update issue areas over the course of the next several months leading to Board adoption. We will do our best to provide feedback and comments during that time, and look forward to working together to shape an Update that preserves, protects, and enhances coastal resources consistent with our mutual objectives for Marin. If you have any questions, please don't hesitate to contact me at (415) 904-5260, or at the address above.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Kahn", with a stylized, cursive script.

Kevin Kahn
Coastal Planner

Exhibit 5

CALIFORNIA COASTAL COMMISSION

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**MEMORANDUM**

DATE: October 4, 2011

TO: Jack Liebster, Marin County Community Development Agency

FROM: Ruby Pap, North Central Coast District Supervisor *RP*

RE: Preliminary staff comments on Draft LCP Biological Resources, Environmental Hazards, Mariculture, and Water Resources chapters

This memo provides additional staff comments on LCP provisions related to Biological Resources, Environmental Hazards, Mariculture, and Water Resources. The comments were prepared with consultation from our Energy Division, our Senior Staff Engineer and Geologist, and Water Quality Staff. The following were reviewed:

- Biological Resources (BIO), Environmental Hazards (EH), Mariculture (MAR), and Water Resources (WR) chapters of *Marin County Local Coastal Program*, Public Review Draft, June 2011
- Ch. 22.64 (Coastal Zone Development and Resource Management Standards), Chapter 22.130 (Definitions), and Section 22.32.180 (Wind Energy Conversion Systems) of the *Marin County LCP Proposed Development Code Amendments*, Local Coastal Program Public Review Draft, June 2011 [hereafter referred to as the "Code"]

I would appreciate it if you would share these comments with the members of the Planning Commission.

Biological Resources**General comments:**

The LCP would benefit from a better/more specific updated map of existing/known habitat as well as a review of areas adjacent to environmentally sensitive habitat areas and parks and recreation areas to ensure land use designations and development standards that are compatible with the protection of the resources.

C-BIO-1: Environmentally Sensitive Habitat Areas:

For ease of implementation for this policy (and others, e.g. C-BIO-3), it might be necessary to put the ESHA definition up front in this policy. The ESHA definition is currently in the code only.

C-BIO-2 Development Proposal Requirements in ESHA:

We suggest deletion of the first sentence, as it is not consistent with the Coastal Act:

~~Consider allowing development in an environmentally sensitive habitat area when the type of development proposed is a permitted use under the LUP policy applicable to that habitat type.~~
Additional permitted developments in environmentally sensitive habitat areas are projects which depend on the natural resources in that habitat area and therefore require a site in that particular environmentally sensitive habitat area in order to function...

Any permitted use must also meet the following general requirements:

1. There is no feasible less environmentally damaging alternative.
2. Feasible mitigation measures are provided to minimize and reduce adverse environmental effects to less than significant levels.
3. Any significant disruption of the habitat values of the resource is avoided.

C-BIO-3 Environmentally Sensitive Habitats of Rare or Endangered Species and Unique Plant Communities:

This policy requires that the Implementation Plan (Code) have detailed provisions for implementing it, including procedures for determining whether the habitat is significantly disrupted, and guidelines for determining the setback area. Currently, the code does not contain sufficient detail to carry out this policy. We also suggest the following language addition:

Environmentally sensitive habitats include, but are not limited to, habitats of rare or endangered species and unique plant communities. Permit development in such areas only when it depends upon the resources of the habitat area and does not significantly disrupt the habitat. Development adjacent to such areas shall be set back a sufficient distance and designed to minimize impacts on the habitat area. Control public access to sensitive habitat areas, including the timing, intensity, and location of such access, to minimize disturbance to wildlife. Avoid fences, roads, and structures that significantly inhibit wildlife movement, especially access to water.

C-BIO-4 Land Form Alteration:

This policy is confusing because the Coastal Act definition of development includes all grading, and this policy reads as if only *significant* alterations of landforms require a Coastal Permit. "Alteration of landforms" is not defined in the code, nor is it included in the definition of development. We suggest that you add this term to the definition of development, and then refer to it in the policy. In addition, please consider revising the exemption for agricultural crop management and grazing to only apply outside of beach, wetland, sand dune, and stream areas, ESHA and further than 100-feet from the edge of a coastal bluff.

C-BIO-5 Ecological Restoration:

The reference in this policy to "development that results in significant adverse effects to environmentally sensitive habitat areas" should be reconsidered in the context of previous policies (such as C-BIO-1) that require ESHA to be protected against any significant disruption in habitat values. Please also consider additional specificity regarding the requirement of an acceptable site restoration program. For example, restoration programs that include quantifiable success criteria and incremental benchmarks and restoration ratios that exceed 1:1 (impact to restoration) are generally considered to be more effective and should be encouraged in this

policy. Further, the code should include implementation procedures for this policy. In addition, we suggest the following changes:

Encourage the restoration and enhancement of degraded environmentally sensitive habitat areas, and streamline regulatory processes whenever possible, consistent with other resource protection policies, to facilitate the successful completion of restoration projects. Development that results in significant unavoidable adverse effects to environmentally sensitive habitat areas shall be accompanied by a site restoration program that reduces the adverse effects of the project to levels of insignificance. Implement and enforce the site restoration program as originally approved, unless circumstances dictate that revisions to the site restoration program are necessary to meet its ecological objectives. In such cases, a coastal permit amendment shall be required to implement such revisions. ~~Any revisions necessary may be considered to substantially conform to the conditions of project approval as long as they~~ Revisions shall provide an equal or greater degree of ecological restoration as the site restoration program.

Program C-BIO-5.a Determine Locations of Environmentally Sensitive Habitat Areas:

This program references a process for determining whether projects are within or adjacent to ESHA. However, there is no such process outlined in the code. It is critical that such a process be outlined in the code so that planners, applicants, and the public understand the methodologies that will be applied to each application. We believe such process can be outlined in such a way that does not require the policy to be updated continuously, but provides enough detail such that there is no ambiguity in implementing the LUP ESHA policies. We are happy to work with County staff on this language. In addition, please consider including in this policy a statement to the effect that regardless of any maps that might be produced to show the location of ESHAs, these maps should not be considered to be comprehensive as ESHA is determined by site specific studies and what constitutes ESHA may change over time base on changed circumstances and ecological understanding.

Program C-BIO-5.b Expand Environmentally Sensitive Habitat Areas:

Commission staff supports the goal of this policy to encourage the expansion and protection of ESHA in buffer areas. Implementation of this policy may prove difficult, however. For example, records of original buffer locations may not always exist in a clear format and it may become difficult to differentiate between development that was not properly set-back and buffer areas into which ESHA has expanded. As a result, buffer enforcement and compliance may decline. Please consider these concerns during the development of the "criteria that would allow property owners to remain subject to the buffers from the pre-existing edge of the habitat area..." Please also consider development and adoption of these criteria in the Title 22 Development Code section dedicated to Biological Resources.

C-BIO-6 Invasive Plants:

We concur with this policy, but suggest adding ice plant to the list of example invasive plants.

C-BIO-8 Stringline Method of Preventing Beach Encroachment:

"Infill" should be defined. Please refer to Malibu LUP policy 4.31 for an appropriate definition. In addition, this policy should exclude shoreline protective devices.

C-BIO-9 Stinson Beach Dune and Beach Areas:

We suggest a change in land use and zoning for the area west of Mira Vista Street to Open Space. The area is currently designed for single-family residential development (C-SF-4), which is inconsistent with this policy. In regards to the pursuit of a land trade between the lots seaward of Mira Vista and the street right-of-way, we would like more information on how such a land trade would work. This may require some detailed implementation language to be contained in the code.

C-BIO-11 Development Adjacent to Roosting and Nesting Habitat:

This policy will benefit from the same implementation measures requested above in comment in C-BIO-3 and program C-BIO-5.a. In addition, please consider providing additional specificity regarding the term "sufficient distance." For example, consider including a specific numeric buffer distance derived from the best available scientific information regarding the susceptibility of roosting and nesting habitats to human disturbance. Alternatively, please consider the following underlined addition to the text of this policy: "...shall be set back a sufficient distance to protect against any significant disruption in nesting and roosting activities and designed to minimize impacts on the habitat area."

C-BIO-12 Grassy Uplands Surrounding Bolinas Lagoon:

The policy language, as amended, does not appear to reflect the intent of the certified LCP language and should be reconsidered. In addition, the non-policy/non-regulatory statements should be removed. We suggest the following changes:

~~Protect upland grassland shorebird feeding areas against significant disruption of habitat values in cases where shorebirds of many species forage on the grassy uplands during high tides and winter storms because suitable habitat at Bolinas Lagoon is unavailable. Limited grazing of these lands may be permitted, does not seem to affect the habitat value of these lands and may even tend to improve it since tall vegetation can obstruct the movements of feeding birds.~~

In regards to the language below, this language is new and does not provide any regulatory direction (i.e. whether it is allowed or not allowed). We would like some additional information on this area such as ownership, existing vegetation control or maintenance activities (such as those carried out by Caltrans), and biological surveys or scientific studies. If grazing, mowing and disking is indeed appropriate, would a permit be required for these activities and has any interest been demonstrated from an organization that may be willing to manage these lands and apply for such a permit?

Grazing, mowing, disking, or some other method of keeping vegetation low would assist in maintaining the habitat value of these lands for shorebirds, since shorebirds do not utilize habitat with tall vegetation.

C-BIO-14 Wetlands:

The intention and meaning of the third evaluation criteria is unclear, please revise. The current version appears to suggest that grazing and agricultural uses could occur in reclaimed wetland

areas for up to five years before a coastal development permit application would need to be filed. Is there a specific future project that the County envisions this policy will need to apply to?

C-BIO-15 Diking, Filling, Draining and Dredging:

Please include or describe the referenced criteria developed by the Commission for marine and estuarine systems. We are not familiar with your reference. The Commission's regulations (Title 14 CCR Section 13577) have criteria for determining the boundaries of wetlands, estuaries, streams, etc. for purposes of appeal jurisdiction boundaries. Is this what you are referring to?

C-BIO-16 Acceptable Purposes for Diking, Filling, and Dredging:

In the interest of increasing the clarity of this policy, please consider the following revision to purpose number eight: "Limit any alterations in the Esteros Americano and de San Antonio to those for the purposes of nature study and restoration." In addition, please include a definition or example of "alterations," as used in this section. Please also clarify or resolve the apparent conflict between this policy, which allows a variety of non-resource dependent uses in wetlands, and the background discussion at the introduction to the biological resources section which states that wetlands should be considered to be ESHA.

C-BIO-17 Conditions and Standards for Diking, Filling, Draining and Dredging:

Please consider revising the second standard to add the following underlined text:

Mitigation measures have been provided to minimize adverse environmental effects to the maximum extent feasible.

C-BIO-18 Spoils Disposal:

Please consider the following underlined addition to the first standard:

The dredge spoils disposal site has been approved by the Department of Fish and Game and all other relevant agencies.

In addition, please note that unless this would apply to some inland location, dredging would occur in the Commission's retained coastal permitting jurisdiction, making this policy advisory only.

C-BIO-19 Wetland Buffers:

Please consider the following revision:

...unless the project is otherwise designed determined to be consistent with...

In addition, regarding the policy excerpt included below, the Code should include a stipulated procedure for determining when a site assessment is necessary. The code should also stipulate the criteria for determining larger and smaller buffer widths. C-BIO-20 is not sufficiently detailed to achieve this. We can provide examples of model language from other certified LCPs.

...An additional buffer width may be required based on the results of a site assessment, if such an assessment is determined to be necessary...

C-BIO-20 Wetland Buffer Adjustments and Exceptions:

Please consider including a requirement of a minimum buffer width beyond which the exception and adjustment would not apply, a generally accepted minimum width is 50-feet. Please also consider whether or not the correct reference in circumstance one would be to policy C-BIO-2(2).

C-BIO-21 Wetland Impact Mitigation:

It is unclear from the language whether the 4:1 ratio for an in-lieu fee means that an applicant would be required to pay four times the fee sufficient to provide an area of equivalent productive value or surface area as the area proposed for fill. Additionally, the restoration section of this policy would benefit from further elaboration. For example, the policy refers to "opening up equivalent areas to tidal action," but does not discuss mitigation for impacts to freshwater wetland areas. It is also unclear what "acquisition of required areas" means.

C-BIO-22 Tomales Bay Shoreline:

Are there other areas of the coastal zone where such a policy would also be applicable (e.g. Bolinas lagoon, the esteros)?

C-BIO-24 Coastal Streams and Riparian Vegetation:

This policy should be changed as follows to ensure consistency with Coastal Act Section 30236:

1. Stream Alterations. Limit stream ~~impoundments, diversions,~~ channelizations or other substantial alterations of coastal streams or riparian vegetation surrounding them to the following purposes:
 - a. Necessary water supply projects, ~~including those for domestic or agricultural purposes where no other less environmentally damaging method of water supply is feasible.~~
 - b. Flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development; or
 - c. Development where the primary function is the improvement of fish and wildlife habitat.

While we understand that in Marin County there have been agricultural stream impoundment projects where the primary function was the improvement of fish habitat, "impoundments" and "agricultural purposes" are not specifically enumerated in Coastal Act Section 30236. Your proposal to include "impoundments" and "agricultural purposes" in the above policy, could (perhaps inadvertently) result in projects that are detrimental to stream resources, such as impoundments for orchards, vineyards, cattle grazing (in an overstock situation), or even rechannelizing streams for the convenience of opening new areas to agriculture.

Also, #3 regarding stream buffers is confusing. Presumably, the last sentence is intended to mean that the total width of the buffer, including both sides of the stream, must be 100-feet. We suggest that the minimum riparian buffer should be 100-feet on each side of the stream rather than 50-feet. The buffer should be measured from the outer edge of the riparian vegetation or the top of the bank, whichever provides the wider buffer. Where the riparian vegetation varies in width, the buffer should be established using a stringline connecting the widest riparian patches.

In addition, please consider including the full Coastal Act Section 30106 definition of development under purpose four, "Development in Stream Buffers."

C-BIO-25 Stream Buffer Adjustments and Exceptions:

Please consider whether or not the correct reference in circumstance one would be to policy C-BIO-2(2). In addition, please consider amending this policy to state that the stream buffer includes riparian areas, which are environmentally sensitive habitat areas that require protection. Please also refer to the above comment on C-BIO-20. In regard to section number four, the County's process for determining legal lots of record, and issuance of certificates of compliance should be contained in the implementation plan. We will provide you with good examples from other LCPs.

Development Code Section 22.64.050 – Biological Resources

22.64.050.B.3 Ecological Restoration

Based on the lack of consistency with which restoration projects accomplish their stated goals, restoration required to address development that adversely affects ESHA should include a ratio of greater than 1:1 (impact to restoration). Please consider the inclusion of a specific restoration ratio in this policy that exceeds 1:1.

B.7. Roosting and Nesting Habitat:

Please consider adding a specific buffer distance requirement to this policy that is based on the best available information. For example, as described in the January 2007 document developed by Commission staff titled, "Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetlands and other Environmentally Sensitive Habitat Areas," scientific research suggests a buffer distance of 900 feet between human disturbance and nesting herons.

22.130.030 – Definitions of Specialized Terms and Phrases

General Comment:

Please include a definition for "temporary" if the LCP will include policy exemptions for temporary impacts. We suggest defining temporary impacts as impacts that last no longer than 12 months. In the case of terrestrial impacts, any impacts that result in significant ground disturbance or the death of the dominant vegetation should be considered "permanent" for determining mitigation. In the case of wetlands, any dredging, fill, or berming that significantly changes the hydrology or results in the death of the major biota, should be considered "permanent" for determining mitigation.

Please also consider the following recommended language changes:

Coastal Stream (coastal).

The word "ephemeral" should be removed from the second sentence. Some intermittent streams are not mapped by USGS.

Streams in the Coastal Zone, perennial or intermittent, which are mapped by the United States Geological Survey (USGS). In addition, those ephemeral streams that are not mapped by the United States Geological Survey if the stream: (a) supports riparian vegetation for a length of 100 feet or more, or (b) supports special-status species or another type of ESHA, regardless of the extent of riparian vegetation associated with the stream.

Environmentally Sensitive Habitat Area (ESHA) (coastal).

Please revise the first sentence of the second paragraph to note that ESHAs include rather than are "habitats that are essential..." Please also include a reference to federally listed species.

...The ESHAs in the County of Marin ~~are~~ include habitats that are essential for the specific feeding, cover, reproduction, water, and activity pattern requirements of existing populations of special-status species of plants and animals, as designated by the California Department of Fish and Game and identified in the California Natural Diversity Database. In addition, ESHAs include existing populations of the plants listed as 1b or 2 by the California Native Plant Society and the following terrestrial communities that are identified in the California Natural Diversity Database...

Exotic Animals

There are carnivorous and poisonous animals that are not exotic and are native to California. We suggest the following change:

~~Non-domesticated animals that are carnivorous, poisonous, or not native to North America, commonly displayed in zoos as per Chapter 8.04 of the Marin County Code California.~~

Marine Environment (coastal)

~~The marine environment consists of the ocean and the associated high-energy coastline. Marine habitats are exposed to the waves and currents of the open ocean and the water regimes are determined primarily by the ebb and flow of oceanic tides. The marine environment consists of the ocean, the high-energy coast line, and bays, inlets, lagoons, and estuaries subject to the tides. Marine habitats are affected by the waves and currents of the open ocean and the water regimes are determined primarily by the ebb and flow of oceanic tides.~~

Riparian Vegetation (coastal)

~~Vegetation associated with a watercourse and relying on the higher level of water provided by the watercourse. Vegetation associated with a pond, lake or watercourse and relying on the higher level of water periodically provided by the pond, lake or watercourse.~~ Riparian vegetation can include trees, shrubs, and/or herbaceous plants. Woody riparian vegetation includes plants that have tough, fibrous stems and branches covered with bark and composed largely of cellulose and lignin. Herbaceous riparian vegetation includes grasses, sedges, rushes and forbs – broad-leaved plants that lack a woody skeleton.

This ordinance relies heavily on referencing the CED & CDFG "California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development." That is a pretty thorough and useful report, though not without its faults. The Marin ordinance requires a "prior to issuance" bird and bats study in all cases that follows the CEC guidance. The study is designed to answer the following questions:

1. Are any of the following species known or likely to occur on or near the proposed project site ("near" refers to a distance that is within the area used by an animal in the course of its normal movements and activities.):
 - a. Species listed as federal or state "Threatened" or "Endangered" (or candidates for such listing)?
 - b. Special status birds or bats?
 - c. Fully protected birds?
2. Is the site near a raptor nest, or are large numbers of raptors known or likely to occur at or near the site during portions of the year?
3. Is the site near important staging or wintering areas for waterfowl, shorebirds, or raptors?
4. Are colonially breeding species (for example, herons, shorebirds, seabirds) known or likely to nest near the site?
5. Is the site likely to be used by birds whose behaviors include flight displays (for example, common nighthawks, horned larks) or by species whose foraging tactics put them at risk of collision (for example, contour hunting by golden eagles)?
6. Does the site or do adjacent areas include habitat features (for example, riparian habitat, water bodies) that might attract birds or bats for foraging, roosting, breeding, or cover?
7. Is the site near a known or potential bat roost?
8. Does the site contain topographical features that could concentrate bird or bat movements (for example, ridges, peninsulas, or other landforms that might funnel bird or bat movement)? Is the site near a known or likely migrant stopover site?
9. Is the site regularly characterized by seasonal weather conditions such as dense fog or low cloud cover that might increase collision risks to birds and bats, and do these events occur at times when birds might be concentrated?

The proposed ordinance should include "fully protected" species among the birds to be considered (sections D.1.a & G.9.a).

Section G.9.b requires the Bird and Bat Study to include a Resource Management and Contingency Plan that provides for pre-approval and post-construction monitoring and reporting. However, the following Section H.1 states that post-construction monitoring *may be* required, but doesn't indicate what the trigger might be. If such monitoring is required it must follow criteria established by a government agency, which is to say the CEC/CDFG guidance. We are not aware of a different guidance document. Whether post-construction monitoring is always required should be clarified.

If a "Before/After-Control/Impact" study design is required as suggested in the CEC/CDFG guidance, it will require at least 1 year pre-construction and 1-year post-construction and will be labor intensive and expensive. Even if several years of "before" and "after" monitoring is done, the study is likely to have only a marginal likelihood of detecting impacts unless they are very large or result in dead birds that can be recovered. For small projects (1 or 2 turbines), the most reasonable approach is to site them conservatively based on a pre-construction survey of bird and bat use and then monitor for dead birds. The latter would probably have to be done by the property owner because it requires frequent, brief checks of the area around the turbine.

Environmental Hazards

Overall comments

- Incorporate evaluation of sea level rise (SLR) into relevant analyses, including projected bluff retreat calculations, flood elevations, and proposed mitigation measures.
- Expand background information on sea level rise, potential impacts, and areas vulnerable to sea level rise.
- Modify bluff retreat and setback calculations to include a quantitative slope stability analysis demonstrating a minimum safety factor against sliding of 1.5. Include evaluation of accelerated sea level rise and changes to storm or El Nino events, and any known site-specific conditions in analysis (C-BH-5).
- There may be some additional SLR specific policies that we would recommend, based on the Commission's recent actions on LCPs. This requires more time for staff to discuss the issue internally and provide guidance to County Staff. We hope to set up a specific meeting with County Staff on this issue.

Background

The background section includes a good description of the hazards related to sea level rise. Consider adding, as available, additional information on the amount of sea level rise projected to occur along the central coast of California and the associated impacts to property, public access, and sensitive ecosystems in the coastal zone. This could include a description of sea level rise projections adopted by the State of California, according to the Ocean Protection Council's State of California Sea-Level Rise Interim Guidance Document, and a description of consequences of SLR for Marin County and areas vulnerable to an increase in sea level rise.

Below is some possible language to add describing sea level rise impacts:

Sea level rise is expected to lead to increased erosion, loss of coastal wetlands, permanent or periodic inundation of low-lying areas, increase in coastal flooding, and salt water intrusion into stormwater systems and aquifers. Structures located along bluffs susceptible to erosion and in areas that already flood during high tides will likely experience an increase in these hazards from accelerated sea level rise.

The last sentence of the background section seems to diminish the importance of local efforts to prepare for sea level rise, given that impacts will vary according to local conditions. Suggested language addition:

Although a global phenomenon, the impacts of sea level rise will vary according to local factors, such as shoreline characteristics, land movement driven by plate tectonics, and local wind patterns. Strategies to reduce impacts are most appropriately designed and implemented at the local level.

C-EH-2 Avoidance of Environmental Hazards

This policy should include consideration of changes due to climate change and seismic hazards over the life of the structure. Possible language changes to the policy include:

...flood hazard areas, and areas potentially inundated by accelerated sea level rise, to demonstrate that:

...

Development Code Section 22.64.060(A)(1) (Geologic Hazards Report):

This section should include a procedure for determining whether development is in an "area subject to potential geologic hazards." In addition, the policy should include a specific reference to climate change evaluations. Please consider using the following language:

The report shall include an evaluation of potential changes in climate, including risks from sea level rise, and seismic risk over the life of the structure.

C-EH-5 New Blufftop Development

The future bluff retreat rate formula needs to be modified to include a safety factor of 1.5 and to include consideration of accelerated sea level rise, future increase in storm or El Niño events, and any known site-specific considerations. Please consider the following language changes:

...New structures except as provided by C-EH-11 including accessory structures and infill development (i.e. new development between adjacent developed parcels) shall be set back from the bluff a sufficient distance to reasonably ensure their stability for the economic life of the development. Such assurance shall take the form of a quantitative slope stability analysis demonstrating a minimum factor of safety against sliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$ or determined through analysis by the geotechnical engineer). Such stability must be demonstrated for the predicted position of the bluff following bluff recession during the 100-year economic life of the development. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat due to continued and accelerated sea level rise, future increase in storm or El Niño events, and any known site-specific conditions.

This procedure should also be reflected in Section 22.64.060 of the development code.

Program C-EH-5.a:

The setback formula should be written as:

setback (meters) = economic life of structure (100 yrs.) X anticipated future bluff retreat (meters/yr.) + setback to achieve a slope stability Factor of Safety of at least 1.5 (minimum factor of safety). The retreat rate (or long-term annual average erosion rate) shall be determined by a professional geotechnical investigation which shall to the extent feasible include an analysis of the risk of continued and accelerated sea level rise.

This procedure should also be reflected in Section 22.64.060(B) of the development code.

C-EH-6 Proper Drainage on Bluff top Parcels

"Bluff top" setback should be changed to "bluff edge" setback. This should also be reflected in development code section 22.64.060(B)(1).

C-EH-7 Structures on Bluff Faces

This policy should include consideration of removing existing bluff face structures over time as they reach their economic life, or if they are de facto proposed to be replaced (i.e. more than 50% of the structure has been cumulatively repaired and maintained). This is consistent with the Commission's repair and maintenance regulations and development code section 22.68.050(B).

C-EH-8 and C-EH-9 Bluff Erosion Zone Along the Bolinas Bay Side and Pacific Ocean

It is difficult to review these policies without a strike out and underline version showing how it is proposed to be changed from the original certified policy. The bluff erosion zone should be clearly mapped in the LCP.

It is unclear how the policies from Bolinas Gridded Mesa Plan interface with the other requirements for bluff top development and whether these requirements are more or less strict than C-EH-5. We would like to discuss this with you in order to come up with a solution that best protects coastal resources, consistent with the Coastal Act.

For example, we note that the policy as originally drafted and certified is confusing. The certified policy states "no new construction" and then concludes with "on a one time basis." You have proposed to resolve this confusion by deleting the word: "no," as follows:

...No New construction and ~~no~~ residential additions amounting to greater than 10 percent of the existing total floor area or 120 square feet (whichever is greater) shall be permitted in this zone on a one-time basis."

We are concerned that this may not have been the intent of the original policy, and we would like to know what your draft amended language is based on. There are other hazards policies in the Bolinas Gridded Mesa Plan that have not been brought forward, such as **Policy LU-1**:

There shall be no residential development or substantial construction near the bluffs.

Whatever the policy solution ends up being for the updated LCP, we believe that the revised policy language should reflect the requirements of C-EH-5, including a stability analysis for 1.5 safety factor.

Other policies in the Bolinas Gridded Mesa Plan that have not been brought forward appear to be Policy LU-2, 2.1, 2.2; Policy LU-3, 3.1, 3.2, 3.3 and others outside of the hazards category. As mentioned above, we would like to see a chart documenting exactly what is proposed to happen with each of these policies (i.e. proposed for deletion, inclusion, or amendment).

C-EH-10 Limited Waivers Based on Appropriate Engineering

We reserve our comments on this until the above issues have been resolved.

C-EH-10a. Study Bluff Retreat

This language should be combined with C-EH-22 Sea Level Rise and Marin's Coast. Change potential sea level rise to "continued and potential accelerated sea level rise."

C-EH-11 Minimum Floor Elevations in the Flood Velocity Zone at Seadrift and C-EH-12 Floor elevation requirements for existing buildings in flood hazard zones

We would like to discuss these policies with you, including all the alternatives for dealing with sea level rise in these areas. We would like a better understanding of the potential impacts of these policies, and the magnitude of their implementation. Also, areas area should be mapped in the LCP

C-EH-12.a Address Tsunami Potential

The review of tsunami wave run up and inundation maps and other applicable materials should be reflected in the implementation plan, in Section 22.64.060.

C-EH-13 Shoreline Protective Devices

We recommend that you add additional criteria specifying that shoreline protective devices are allowed if it is the minimum necessary to address the identified erosion problem and it can be removed at the end of the time over which it is needed.

The Commission, in its review of SPD permit applications, has been approving them for a 20-year period only, subject to re-authorization. We can provide you with examples of such actions. Consistent with this direction, we request that the County add the criteria that permits should be for only 20 years, i.e. "The permit shall be valid for a period of 20 years commencing with the date of CDP approval."

In addition, policy language should be added requiring the structure to be visually treated to blend with the natural shoreline and it will, if necessary be combined with efforts to control erosion from surface and groundwater flows.

Lastly, we suggest the following language change:

2. No other non-structural alternative, such as sand replenishment, beach nourishment, or managed retreat, is ~~practicable or preferable~~ feasible.

Program C-EH-13a Require Proper Engineering for Shoreline Protective Devices

This should include an evaluation of accelerated sea level rise due to climate change, and increase in storm or El Niño events in the shoreline protective device engineering report. Also, we request the following language change to ensure consistency with the Coastal Act:

Amend the development code to require that before approval is given for the construction or reconstruction of any shoreline protective device, the applicant for the project must submit a

report from a professional civil engineer or certified engineering geologist verifying that the device is necessary ~~for coastal erosion control~~ to protect an existing structure in danger from erosion (consistent with Policy CH-13(1)) and explaining how it will perform its intended function.

Section 22.64.060(A)(4) should implement C-EH-13a, and should match its requirements or be more specific.

Program C-EH-14 Design Standards for the Construction of Shoreline Protective Devices

We suggest the following language addition, to ensure consistency with the Coastal Act:

...

4. Minimize and mitigate for the impairment and interference with the natural movement of sand supply and the circulation of coastal waters

C-EH-19 Maintenance Needs for the Shoreline Protective Device at Seadrift

Since the Commission issued this conditional CDP, it is in the Commission's jurisdiction and Commission Staff is responsible for condition compliance. Hence, the Applicants must inquire with Commission Staff in regards to their repair and maintenance needs. This reality should be reflected in this policy to avoid future confusion.

C-EH-21 Emergency Shoreline Protective Devices

We request that a provision be added to this policy (and the development code) requiring coordination with the Coastal Commission if time allows. This will ensure that issues regarding jurisdiction and potential appeals are resolved as early as possible.

C-EH-22 Sea Level Rise and Marin's Coast

We suggest that you expand the scientific studies to include sea level rise impacts in Marin on both the open coast and the bay shorelines. Also, an evaluation of rolling easements and a sea level rise hazard zone should be added to the list of appropriate responses to explore.

C-EH-24 Permit Waiver Exemption for Replacement of Structures Destroyed by Disaster

This is an explicit exemption under the Coastal Act, and should not be processed as a waiver.

Development Code

22.64.060.A.2. Geotechnical investigation for blufftop development

This investigation should consider slope stability in addition to bluff retreat. See suggested changes for the LCP; C-EH-2.

22.64.060.A.3. Drainage plan for blufftop development.

The drainage plan should show how rainwater and irrigation runoff will be directed away from the top of the bluff and bluff face or handled in a manner which prevents damage to the bluff surface and percolating water.

22.64.060.A.4. Engineer report for shoreline protective devices.

We suggest the following language changes:

...

(d) Total lineal feet of shoreline protective devices within the littoral zone and the Marin County reach where the device is proposed;

(e) The cumulative impact of added shoreline protective devices from the littoral cell and the Marin County reach within which the proposed device will be located; and

(f) Provision for future maintenance of the shoreline protective device, for future removal of the shoreline protective device if and when it reaches the end of its economic or functional life or when the development for which the device was installed is removed or relocated, and for changes in the shoreline protective device if needed to adapt to sea level rise or respond to alterations in the development for which the device was installed. (Program C-EH-13.a)

22.64.060.B.1. Blufftop setbacks.

As noted in the comment for 22.64.060.A1 and C-EH-2, blufftop setback should consider both slope stability and bluff retreat.

22.64.060.B.2. Determination of bluff setbacks

See previous comments and suggested changes for C-EH-5

22.64.060.B.3. Shoreline access facilities on blufftop parcels.

See comments and suggested changes for C-EH-7.

22.64.060.B.4. Bolinas Bluff Erosion Zone setback exceptions and waivers.

See comments and suggested changes for C-EH-8.

Mariculture

C-MAR-3 Apply General Standards to Mariculture Operations.

Please consider removing the specific reference to Tomales Bay from this policy and correcting the misspelling of "Regulations." Section 30.10, Title 14, California Code of Regulations does not apply only to the eelgrass found within Tomales Bay.

The coastal permitting agency (Coastal Commission and/or Marin County) shall apply the following standards and procedures to all mariculture operations:

1. Protection of eelgrass beds. The siting of oyster allotments, mariculture leases, and mariculture structures should avoid interference or damage to eelgrass beds in Tomales Bay, in conformance with Section 30.10, Title 14, California Code of Regulations.

Water Resources

Overall Comments

As you know, an LCP is made up of a LUP and an Implementation Plan. Implementation plans list the detailed technical requirements and regulatory triggers to apply the policies. The proposed LUP includes many excellent water quality policies, including requirements for

Drainage Plans (C-WR-3a), BMPs (C-WR-2a), Grading and Vegetation Removal (C-WR-4), Grading Plans (C-WR-4), and Soil Exposure (C-WR-6). However, the proposed Development Code provisions do not contain adequate detail to carry out these policies. The implementation of these and other related policies are integral to achieving water quality goals.

Recent LCP amendments certified by the Commission have included requirements for three distinct water quality plans. The first two separate the construction and post-construction phases of development projects since the BMPs used, types of pollutants encountered and maintenance strategies are different. A third plan is for projects that are expected to require treatment control BMPs to protect coastal water quality e.g., developments that use potential contaminants in their daily operation or where structures will be located adjacent to environmentally sensitive areas, and typically requires the signature of a California licensed water quality professional to ensure that the design and implementation of the BMPs are adequate to protect coastal water quality.

Staff recommends that the County group the water quality requirements into three required water quality plans that would be required of applicants. Currently proposed plans (e.g., erosion and sediment control plans and grading plans), plus additional information described below, should be grouped into a **construction** water quality pollution prevention plan. That document should be required for any project that meets the area threshold for the statewide construction permit (greater than one acre of disturbed area), or projects that may impact environmentally sensitive habitat¹, County-defined high-impact projects or other projects that the county staff finds to be a threat to coastal water quality.

A second plan for **post-construction** water quality protection should incorporate what the County called a Storm Water Pollution Prevention Plan and a drainage plan showing site drainage after construction. A third plan (or additional requirements for the post-construction plan) should be developed for projects that are identified by the County as **high-impact** projects. This plan should include treatment control BMPs to protect water quality, document that the BMPs are properly designed and located on the development site and be prepared by a California licensed water quality professional. The plan names used below are only suggestions, but we would highly recommend that the County not use term "Storm Water Pollution Prevention Plan" unless it is made consistent with the use of the term in the statewide Construction Stormwater permit² in addressing the construction phase of projects.

C-WR-1 Water Quality Protection

We suggest the following language addition, reflecting the requirements of Section 30231 of the Coastal Act. This keystone policy speaks to the essence of the need for water quality protection and should be reflected in the LCP.

Monitor, protect, and enhance the quality of coastal waters for the benefit of natural communities, human health, recreational users, and the local economy.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means,

¹ Several stormwater permits in California consider projects that are "within, directly adjacent to or discharging directly to an environmentally sensitive area" to be a threat to water quality

²http://www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml

minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

C-WR-2 Water Quality Impacts of Development Projects

Low Impact Development (LID) techniques have long been promoted by water quality advocates as a simple and straight forward means of improving water quality. LID technology appears across the board in current and proposed stormwater permits and regulatory language. A direct statement that LID is a preferred technology that should be incorporated in development, where feasible, should be included in the LCP. Also, a clarifying statement should be added that permanent Best Management Practices are applicable to development projects after construction is completed; and these BMPs may extend to operational practices. We suggest the following language additions:

Site and design public and private development and changes in use or intensity of use to prevent, reduce, or remove pollutant discharges to the maximum extent practicable. Development shall be designed and managed to minimize increases in stormwater runoff volume and rate, to prevent adverse impacts to coastal waters. All coastal permits, for both new development and modifications to existing development, and including but not limited to those for developments covered by the current National Pollutant Discharge Elimination System (NPDES) Phase II permit, shall be subject to this review.

Long-term post-construction Best Management Practices (BMPs) that protect water quality and minimize increases in runoff volume and rate shall be incorporated in the project design of developments. Site design and source control measures shall be given high priority as the preferred means of controlling pollutant discharges. Typical measures shall include:

1. Minimizing effective impervious area;
2. Limiting disturbance of natural drainage features and vegetation;
3. Protecting areas that are particularly susceptible to erosion and sediment loss, and ensuring that water runoff beyond natural levels is retained on-site whenever possible.
4. Low Impact Development (LID) techniques.
5. Methods that reduce potential pollutants at their sources and/or avoid entrainment of pollutants in runoff, including schedules of activities, prohibitions of practices, maintenance procedures, managerial practices, or operational practices. Examples are covering outdoor storage areas, use of efficient irrigation, and minimizing the use of landscaping chemicals.

Program C-WR-3.a Require Drainage Plans.

We suggest the following language change to reflect that site drainage plans should rely on existing detention facilities and watercourses only if negative impacts to those features can be mitigated:

Coastal permit applications for development that would alter the land or drainage patterns shall be accompanied by a preliminary drainage plan ~~where appropriate as determined by the Department~~

of Public Works that shows existing and proposed drainage for the site, structures, driveway, and other improvements. The plan must indicate the direction, path, and method of water dispersal for existing and proposed drainage channels or facilities. The drainage plan must also indicate existing and proposed areas of impervious surfaces. The use of existing watercourses and detention basins may be authorized to convey stormwater only if negative impacts to biological resources, water quality, channel stability or flooding of surrounding properties can be avoided. Hydrologic calculations may be required to determine whether there would be any additional surface run-off resulting from the development.

This change should also be reflected in 22.64.080(A)(1). In addition, we are concerned about the lack of criteria presented for the Department of Public Works to determine if such a plan is appropriate. The code should include a list of criteria that will be used by the County to determine when a drainage plan will be required.

NEW POLICY SUGGESTION: C-WR-xxx Construction Non-sediment Pollution

We suggest the following additional policy to deal with pollutants from construction non-sediment sources (e.g., trash, construction materials, chemicals, paints, fuel and lubricants):

Minimize runoff of chemicals from construction sites (e.g., solvents, adhesives, preservatives, soluble building materials, vehicle lubricant and hydraulic fluids, concrete truck wash-out slurry, and litter).

C-WR-11 Detention or Infiltration Basins and Other Post-construction BMPs

Modification of this section is needed to ensure that Site Design and Source Control Best Management Practices are considered first for all development and that Treatment Control BMPs are considered where the other two types of BMPs are inadequate to protect coastal water quality:

Where site design and source control measures are not adequate to protect coastal resources from adverse impacts of polluted runoff, treatment control BMPs are needed to remove pollutants from stormwater. Treatment Control BMPs operate by gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or any other physical, biological, or chemical process. Examples are vegetated swales, detention basins, and storm drain inlet filters.

Where post-construction treatment of stormwater runoff is required, treatment control BMPs if detention or infiltration basins or any other post-construction structural Best Management Practices or suites of BMPs are incorporated in a project, design such BMPs to treat, infiltrate, or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event (for volume-based BMPs) and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e., 2 or greater) for flow-based BMPs.

NEW SUGGESTED POLICY C-WR-xx Erosion and Flood Control Facilities

A section to address the role of sediment in beach nourishment and its management should be added to the LCP.

Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by stormwater runoff into coastal waters. Where these sediments will not cause adverse impacts to coastal resources, they should be considered for placement at appropriate points on the shoreline in accordance with other applicable provisions of this division. Considerations before issuing a coastal development permit for these purposes are the physical, chemical and biological qualities of the sediment, method of placement, time of year of placement, and sensitivity of the placement area.

C-WR-13 Storm Water Pollution Prevention Plans

We advise that this term, which applies to post-construction runoff requirements in the LCP, be replaced with "Water Quality Management Plan". This would eliminate confusion with the SWPPP required by the State Water Board for construction permits and that is not typically used to describe post-construction BMPs. A description of the elements in a Water Quality Management Plan should be detailed in the LCP.

Also, please see above comment (Program C-WR-3.a) regarding the use of discretion by the Department of Public Works on the application of these policies.

Lastly, this policy language is broad and requires implementation measures in the code. We suggest the following language should be added to 22.64.080(A)(3)

The following runoff reduction and pollution control requirements shall apply to the Water Quality Management Plan:

1. Prioritization of BMPs. The Water Quality Management Plans shall specify site design, source control, and if necessary, treatment control BMPs that will be implemented to minimize stormwater pollution and increases in runoff volume and rate from development after construction. All development shall incorporate effective site design and long-term post-construction source control BMPs to minimize adverse impacts to water quality and coastal waters resulting from the development. BMPs shall be incorporated in developments in the following order of priority:

a. Site design BMPs: Project design features that reduce the creation or severity of potential pollutant sources, or reduce the alteration of the project site's natural stormwater flow regime. Examples are minimizing impervious surfaces, preserving native vegetation, and minimizing grading.

b. Source control BMPs: Methods that reduce potential pollutants at their sources and/or avoid entrainment of pollutants in runoff, including schedules of activities, prohibitions of practices, maintenance procedures, managerial practices, or operational practices. Examples are covering outdoor storage areas, use of efficient irrigation, and minimizing the use of landscaping chemicals.

c. Treatment control BMPs: Systems designed to remove pollutants from stormwater, by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or any other physical, biological, or chemical process. Examples are vegetated swales, detention basins, and storm drain inlet filters.

2. 85th percentile sizing standard for treatment control BMPs. Where post-construction treatment of stormwater runoff is required, treatment control BMPs (or suites of BMPs) shall be sized and designed to treat, infiltrate, or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, or the 85th percentile, 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs.
3. Selection of effective BMPs for pollutants of concern. Where BMPs are required, BMPs shall be selected that have been shown to be effective in reducing the pollutants typically generated by the proposed land use.
4. Site design using Low-Impact Development techniques. The Post-Construction Runoff Mitigation Plan shall demonstrate the preferential consideration of Low-Impact Development (LID) techniques in order to minimize stormwater quality and quantity impacts from development.
5. Water Quality Management Plan content. The plan shall include, at a minimum, the following components:
 - a. A description of proposed permanent BMPs (including site design, source control, low impact development and treatment control BMPs, if any) that will be implemented to minimize post-construction polluted runoff
 - b. A site plan showing locations of BMPs.
 - c. A description of the changes of impervious surfaces on the project property (area and percent changes).
 - d. A schedule for installation or implementation of all BMPs.
 - e. An Operations and Maintenance Plan for any structural BMPs.

NEW SUGGESTED POLICY C-WR-XX Construction Pollution Prevention Plan

To ensure consistency with Coastal Act Section 30231, a requirement for a Construction Pollution Prevention Plan should be added for any project that meets the area threshold for the statewide construction permit (greater than one acre of disturbed area), projects that may impact environmentally sensitive habitat³, county-defined high-impact projects or other projects that the county staff finds to be a threat to coastal water quality. Construction activities would trigger a requirement for preparing Grading and Vegetation Removal Plans (C-WR-4), Drainage Plans (C-WR-3-a) and Grading Plans (C-WR-4-a), as proposed. Construction activities also would activate proposed policies for Cut and Fill Slopes (C-WR-5), Soil Exposure (C-WR-6), Wintertime Clearing and Grading (C-WR-7), Disturbed Soils (C-WR-8) and Topsoil (C-WR-9) management. In addition, we propose a policy be added to address construction runoff contaminated with fuel, lubricant, cleaning agents and/or other potential pollutants. For example:

C-WR-xx Construction site runoff shall be managed to prevent contact with chemicals, fuel and lubricants, cleansers and other potentially harmful materials.

³ Several stormwater permits in California consider projects that are "within, directly adjacent to or discharging directly to an environmentally sensitive area" to be a threat to water quality

Implementing language for the above could be included in 22.64.080, for example:

Construction Pollution Prevention Plan (CPPP). All projects that meet the area threshold for the statewide construction permit (greater than one acre of disturbed area), projects that may impact environmentally sensitive habitat (i.e., projects within, directly adjacent to or discharging directly to an environmentally sensitive area), county-defined high-impact projects or other projects that the county staff finds to be a threat to coastal water quality, shall require a "Construction Pollution Prevention Plan to specify interim Best Management Practices (BMPs) that will be implemented to minimize erosion and sedimentation during construction, and address construction runoff contaminated with fuels, lubricants, cleaning agents and/or other potential construction-related pollutants.

2. Construction Pollution Prevention Plan content. In the application and initial planning process, the applicant shall submit for approval a preliminary CPPP, and prior to issuance of a construction permit the applicant shall submit a final CPPP for approval by the City. The plan shall include, at a minimum, a narrative report describing all interim erosion, sedimentation, and polluted runoff control BMPs to be implemented during construction, including the following where applicable:

- a. Controls to be implemented on the amount and timing of grading.
- b. BMPs to be implemented for staging, storage, and disposal of excavated materials.
- c. Design specifications for treatment control BMPs, such as sedimentation basins.
- d. Re-vegetation or landscaping plans for graded or disturbed areas.
- e. Methods to manage affected onsite soils.
- f. Other soil stabilization BMPs to be implemented.
- g. Methods to infiltrate or treat stormwater prior to conveyance off-site during construction.
- h. Methods to eliminate or reduce the discharge of other stormwater pollutants resulting from construction activities (e.g., paints, solvents, vehicle fluids, asphalt and cement compounds, and debris) into stormwater runoff.
- i. Plans for the clean-up of spills and leaks.
- j. BMPs to be implemented for staging, storage, and disposal of construction chemicals and materials.
- k. Proposed methods for minimizing land disturbance activities, soil compaction, and disturbance of natural vegetation.
- l. A site plan showing the location of all temporary erosion control measures.
- m. A schedule for installation and removal of the temporary erosion control measures.

C-WR-14 Design Standards for High-Impact Projects

This section should be modified to add several classes of projects that would trigger a more rigorous water quality review and permit conditions, including a requirement for preparation of a plan documenting the adequacy of the treatment control BMPs, the required contents of that plan and a requirement for preparation of the plan by a California licensed water quality professional.

For developments that have a high potential for generating pollutants (High-Impact Projects), incorporate treatment control Best Management Practices (BMPs) or ensure that the requirements of a revised NPDES Phase II permit are met, whichever is stricter, and submit a Water Quality and Hydrology Plan, signed by a California licensed water quality professional, to address the particular pollutants of concern. Developments to be considered as High-Impact Projects and BMPs required for those types of developments shall include, but are not limited to, the following:

1. Automotive repair shops and retail motor vehicle fuel outlets shall incorporate BMPs to minimize oil, grease, solvents, car battery acid, coolant, petroleum products, and other pollutants from entering the storm water conveyance system from any part of the property including fueling areas, repair and maintenance areas, loading/unloading areas, and vehicle/equipment wash areas.
2. Commercial facilities shall incorporate BMPs to minimize polluted runoff from structures, landscaping, parking areas, repair and maintenance areas, loading/unloading areas, vehicle/equipment wash areas, and other components of the project.
3. Restaurants and other food service establishments shall incorporate BMPs to minimize runoff of oil, grease, solvents, phosphates, suspended solids, and other pollutants.
4. Outdoor storage areas for materials that contain toxic compounds, oil and grease, heavy metals, nutrients, suspended solids, or other pollutants shall be designed with a roof or awning cover to minimize runoff.
5. Parking lots shall incorporate BMPs to minimize runoff of oil, grease, car battery acid, coolant, petroleum products, sediments, trash, and other pollutants.
6. All development that will occur within 125 feet of the ocean or coastal waters (including estuaries, wetlands, rivers, streams, and lakes), or that will discharge runoff directly to the ocean or coastal waters, if such development results in the creation, addition, or replacement of 2,500 square feet or more of impervious surface area. "Discharge directly" is defined as runoff that flows from the development to the ocean or to coastal waters that is not first combined with flows from any other adjacent areas.
7. Any development that results in the creation, addition, or replacement of 10,000 square feet or more of impervious surface area.
8. Any other development determined by the County to have a high potential for generating pollutants.

The applicant for a High-Impact Project shall be required to submit a Water Quality and Hydrology Plan (WOHP), prepared by a California licensed water quality professional. In the application and initial planning process, the applicant shall submit for approval a preliminary WOHP, and prior to issuance of a permit the applicant shall submit a final WOHP for approval by the County. The plan shall include, at a minimum all of the information required for the Water Quality Management Plan and the following where applicable:

1. Pre-development and post-project stormwater runoff hydrograph (i.e., volume, flow rate, and duration of flow) calculations for the project, for a 25-year return frequency storm.

2. A description of how the treatment control BMPs (or suites of BMPs) have been sized and designed to treat, infiltrate, or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, or the 85th percentile, 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs.
3. If the applicant asserts that treatment control BMPs⁴ are not feasible for the proposed project, the plan shall document why those BMPs are not feasible and provide a description of alternative management practices to protect water quality.
4. A long-term plan and schedule for the operation and maintenance of all treatment control BMPs specifying that treatment control BMPs shall be inspected, cleaned, and repaired as necessary to ensure their effective operation for the life of the development. In addition:
 - a. Owners of these devices shall be responsible for ensuring that they continue to function properly, and additional inspections should occur after storms as needed throughout the wet season.
 - b. Repairs, modifications, or installation of additional BMPs, as needed, shall be carried out prior to the next wet season.

Suggested Addition to Development Code Section 22.140.030 Definitions

Low Impact Development (LID): LID is a development site design strategy with a goal of maintaining or reproducing the site's pre-development hydrologic functions of storage, infiltration, and groundwater recharge, as well as maintaining the volume and rate of stormwater discharges. LID strategies use small-scale integrated and distributed management practices, including minimizing impervious surfaces, infiltrating stormwater close to its source, and preservation of permeable soils and native vegetation.

⁴ As specified in the current edition of the California Stormwater Quality Association BMP Handbooks

Exhibit 6

CALIFORNIA COASTAL COMMISSION

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**MEMORANDUM**

DATE: November 30, 2011

TO: Marin County Planning Commission
Jack Liebster, Marin County Community Development Agency

FROM: Ruby Pap, North Central Coast District Supervisor *RP*

RE: Preliminary staff comments on the Staff Report and revised policies for the Natural Systems chapter of the proposed LCP Update Biological Resources, Environmental Hazards, and Water Resources chapters

Commission staff has been working diligently with Marin County Staff on the draft LCP Natural Systems components, and we are pleased to see that many of our comments/suggests from our October 4, 2011 memo have been addressed in the revised policies (Attachment 2 to the Staff Report dated December 1, 2011). We would like to thank County staff for its efforts in including us in this process.

There are still some areas of disagreement, and the purpose of this memo is to summarize these issues. As in all our other letters/memos, please treat these comments as preliminary, to be refined through the Commission's LCP certification process.

Biological Resources**C-BIO-3**

We do not agree with the deletion of C-BIO-3, because it is a policy that deals specifically with non-water ESHAs, such as habitats of rare and endangered species, unique plant communities, and dunes. There needs to be a policy governing development in these types of ESHAs, in addition to the policies on wetlands and streams.

Development Code section 22.64.050.B.3 should also reference the relevant code provision (e.g. 22.64.050.A). The provision would benefit from a clarification of when ecological restoration will be required as mitigation for damage to ESHA. While the wetland mitigation ratio is very clear in C-BIO-21, it is still unclear for all other ESHA. Consider a specific ratio that exceeds 1:1. If you don't want to specify the ratio, the process for determining appropriate mitigation should be clearly laid out in this implementation plan provision.

C-BIO-9:

We will need more history provided on the lots west of Mira Vista, including the legality of those lots, in order to opine as to whether the Commission would approve the proposed amendment to the policy.

Section 22.130.030 – Definitions – Wetland

We suggest the following change (shown highlighted):

3. the drainage ditch is a narrow (usually less than 5-feet wide), manmade constructed nontidal ditch excavated from dry land, which is not a replacement for a natural drainage feature.

C-BIO-20 and C-BIO-25:

We have had numerous discussions with County staff regarding criteria for reducing buffer widths, but we are still concerned about the language currently proposed. Criteria #1 should specify an absolute minimum buffer width. We suggest that the following language changes in strike out and underline (from the public review draft version June 2011):

C-BIO-20 Wetland Buffer Adjustments and Exceptions. Consider granting adjustments and exceptions to the wetland buffer width standard identified in policy C-BIO-19 in certain limited circumstances for projects that are implemented in the least environmentally damaging manner. An adjustment or exception may be granted in any of the following circumstances:

1. The applicant demonstrates The County determines that the applicant has demonstrated that that a 100-foot buffer is unnecessary to protect the resource because any significant disruption of the habitat values of the resource is avoided by
consistent with the criterion established in policy C-BIO-2(e), measures that will prevent significant degradation of the resource are incorporated into the project and specific proposed protective measures are incorporated into the project. In this case the buffer shall be no less than 50-feet in width, measured from the edge of the wetland.
2. The wetland is part of a sewage treatment pond. The wetland was artificially created for the treatment and or storage of wastewater, or domestic water
3. The wetland was created as a flood control facility, or as an element of a stormwater control plan, or as a requirement of a National Pollutant Discharge Elimination System (NPDES) Permit, and the Coastal Permit for the development incorporates an ongoing repair and maintenance plan to assure the continuing effectiveness of the facility or stormwater control plan.
4. The wet area wetland is a drainage ditch, defined as a narrow, human-made, non-tidal ditch excavated from dry land, as defined by the LCP
5. The particular agricultural pond or reservoir that is not defined as a wetland by the LCP.
6. The project conforms to one of the purposes identified in policy C-BIO-14 or C-BIO-16.
7. xxx insert additional logical exceptions based on Marin County's permitting experience XXX

We have similar suggestions for the stream buffer widths, shown in #1 below. We are also concerned about the legality of criteria 2, 3, and 4, but we do not have suggested changes at this

time. This has been referred to our legal staff for review. The County should only deviate from the requirements of 30236 (stream policy) 30240 (ESHA policy), if required to do so to provide the landowner with a viable economic use, and because there is no other feasible less environmentally damaging alternative. We can provide sample language on how to devise a process which allows for such deviations consistent with 30236 and 30240 and the takings principles of the constitution.

C-BIO-25 Stream Buffer Adjustments and Exceptions.

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

1. The County determines that the applicant has demonstrated that a 100/50-foot buffer the stream buffer required under policy C-BIO-24(3) is unnecessary to protect the resource because any significant disruption of the habitat values of the resource is avoided by the project, consistent with the criteria established in policy C-BIO-2(3), measures that will prevent significant degradation of the resource are incorporated into the project. In this case the buffer shall be no less than 50 feet in width, on each side of the stream, as measured from the top of the stream banks.
2. Where a finding based upon factual evidence is made that development outside a stream buffer area either is infeasible or would be more environmentally damaging to the riparian habitat than development within the riparian protection or stream buffer area, , development of principal permitted uses may occur within such area subject to appropriate mitigation measures to protect water quality, riparian vegetation, and the rate and volume of stream flows.
3. Exceptions to the stream buffer policy may be granted for access and utility crossings when it has been demonstrated that developing alternative routes that provide a stream buffer would be infeasible or more environmentally damaging. Wherever possible, shared bridges or other crossings shall be used to provide access and utilities to groups of lots covered by this policy. Access and utility crossings shall be accomplished by bridging, , unless other methods are determined to be less damaging, and bridge columns shall be located outside stream channels where feasible.
4. When a legal lot of record is located entirely within a stream buffer area, development may be permitted but the Coastal Permit shall identify and implement the mitigation measures necessary to protect water quality, riparian vegetation and the rate and volume of stream flows. Only those projects that entail the least environmentally damaging alternative that is feasible may be approved. The Coastal Permit shall also address the impacts of erosion and runoff, and provide for restoration of disturbed areas by replacement landscaping with plant species naturally found on the site.

The project conforms to the purposes and standards identified in policy C-BIO-24(1)

Environmental hazards

Bolinas Gridded Mesa:
Dev Code Section 22.64.060.B.4.

We disagree with the language as proposed, and don't think this is consistent with the Bolinas Gridded Mesa Plan. While we recognize that the certified language is quite confusing in the Bolinas Gridded Mesa Plan, we don't believe the intent of Gridded Mesa Plan policies were to allow new construction in the bluff erosion zone 'on a one-time basis.' It wouldn't make sense to allow new construction on a one time basis, when the life of a structure is 75 – 100 years. Policy LU-1 of the Gridded Mesa Plan states:

There shall be no residential development or substantial construction near the bluffs.

It can be inferred from all the policies put together that if there is an existing house, you can add an addition on a one-time basis; but it can't be inferred that new construction would be allowed on a one time basis.

Therefore, we suggest the following changes:

Dev. Code Sec. 22.64.060 – Environmental Hazards

...

B. Environmental Hazard standards.

4. Bolinas Bluff Erosion Zone setback exceptions and waivers. Within established Bluff Erosion

Zones on the Bolinas Mesa, no new construction shall be permitted. Residential additions greater than 10 percent of the existing floor area or 120 square feet (whichever is greater) may be permitted on a one time basis. in this zone. new and replacement construction and residential additions amounting to no greater than 10 percent of the internal floor area of an existing structure or 120 square feet, whichever is greater, may be permitted on a one-time basis per Land Use Policy C-EH-8 and C-EH-9.

C-EH-13

Commission staff is still suggesting that language be added to authorize shoreline protective devices for 20 years only. This is consistent with the Commission's recent practice.

Fuel Modification

In regards to public comments about tree removal for fuel modification, we would like to emphasize that certain trees may be considered major vegetation, especially if they are located in ESHA or are ESHA themselves. Their removal would require a coastal development permit. We would like to work with County staff on a systematic policy response to the fuel modification

issue, rather than receiving a proposal from the County that simply exempts this type of vegetation removal from CDP requirements.

Water Resources

We are pleased to see the majority of our suggested revisions folded into the Policy and Implementation Plan submitted to the Planning Commission. We feel fortunate that County staff is inclined to make these revisions and carry them through the process. There are, however, limited elements that depart from our original recommendations. These are discussed below.

- Program C-WR-14 establishes High Risk project categories where more stringent water quality protection would be applied. The high risk development categories were developed to identify all projects that contribute substantially to hydromodification or non-point source pollution, both of which may impact water quality. However, the final language proposed by the County would provide specific exemptions for roof replacements or for routine pavement resurfacing if completed within the existing footprint.

These exemptions miss an opportunity to retrofit existing projects. The exempted projects would, if not exempted, be considered High Risk if they: 1) exceed size thresholds because they result in creation, addition, or replacement of 10,000 square feet or more impervious surface area or creation, addition, or replacement of 5,000 square feet or greater impervious surface areas within 125 feet of coastal waters or the ocean, or 2) would develop any type of uncovered parking lot. These high risk categories were created, in part, because runoff from roofs may increase the intensity or duration of site runoff and result in hydromodification. Parking lots may do the same, plus they may contribute pollutants to runoff such as hydrocarbons, heavy metals and trash.

Staff recommends that the exemptions be deleted. A blanket exemption for any development that is known to threaten water quality is inappropriate. Sensible compliance with prevailing procedures can be accomplished for existing sites by judicious use of the 'maximum extent practicable' principle. For example, curb cuts could be required when resurfacing a parking lot to accomplish some degree of on site infiltration and treatment of runoff. Similarly, re-roofing may incorporate rerouting downspouts to on-site infiltration basins, to the extent that providing the basins is "practicable".

- Development Code Section 22.64.080, Application Requirements for Drainage plans, states that modified hydrographs shall match "...20% of the pre-project 2-year peak flow up to the pre-project 10-year peak flow..." Policy C-WR-3 also addresses runoff by proposing limits to changes in development runoff characteristics. However, Policy C-WR-3 requires a comparison of the hydrographs for the 2-year return interval event (2 year intensity storm) up to a 5-year return interval event (5-year intensity storm) to determine changes in runoff characteristics. Finally, Program C-WR-14, which requires certain information be discussed in a plan to address post construction requirements for

high impact developments, requires comparison of the 25-year return frequency storm before and after development.

We recommend that all sections of the LCP Amendment compare pre and post-project runoff characteristics for the same design storm(s), e.g. those specified in Development Code Section 22.64.080.

- Policy C-WR-2 states that Permanent BMPs "...shall include Low Impact Development (LID) techniques." Although WQ strongly agrees that LID should be prioritized, we do not believe that LID techniques are applicable in every situation. Our original language proposed that "...typical measures...shall include" LID techniques. We recommend that the proposed language be modified so as not to require LID without exception.

Exhibit 7

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**MEMORANDUM**

DATE: January 22, 2012

TO: Marin County Planning Commission
Jack Liebster, Marin County Community Development Agency

FROM: Ruby Pap, Senior Coastal Planner

RE: Marin County Local Coastal Program (LCP) Update: Staff preliminary comments on the carry-over policies for the January 23, 2012 Planning Commission hearing.

The following comments relate to the draft procedures and standards for removal of "major vegetation" in the Staff Report for the January 23, 2012 hearing. We note that in regards to the other topics for this hearing (biological resources, water resources, and environmental hazards), we have provided feedback and comments in the past, and we have not had sufficient time to review whether all of our issues have been addressed. We will continue to work with County staff to maximize areas of agreement, as much as possible, prior to the LCP's adoption and submission to the Coastal Commission for certification.

Major Vegetation

The County Staff's proposed techniques for regulating the removal of vegetation involve various aspects of methodologies that the Coastal Commission has endorsed in the past. There is no "one size fits all" approach, and LCPs deal with major vegetation differently, depending on the types of vegetation present in the geographic area, the risks of fire and disease, the level of development (e.g. rural vs. urban), etc. The following comments raise a few questions to consider based on the staff report. We look forward to continuing to work with County staff to ensure that the policies are clear and consistent with Coastal Act requirements.

RE: Major Vegetation (coastal). *Any vegetation on a beach sand dune, within 50 feet of the edge of a coastal bluff, in an environmentally sensitive habitat area (ESHA) or its buffer, or heritage trees and vegetation that is aesthetically important. Agricultural croplands and pastures are not considered to be major vegetation. The pruning and maintenance of understory vegetation within 100 feet of a building or structure, the maintenance of trees and removal of trees less than 6 inches in DBH (diameter at breast height) within 100 feet of a building or structure, and the removal of vegetation within 10 feet of a power pole and/or transmission line by a public service agency or their representative do not constitute removal or harvesting of major vegetation.*

There is some awkward construction in the above definition of "major vegetation." Does this mean heritage trees and heritage vegetation? Or does it mean heritage trees or vegetation that is aesthetically important? Are aesthetically important trees defined? Or does it refer only to heritage trees

and heritage vegetation that is aesthetically important as opposed to heritage trees & vegetation that is not aesthetically important?

There are also some potential policy issues with the definition, and certain aspects of it may be too broad. Leaving out of the definition of major vegetation most trees that are not heritage trees may be of concern. This depends on which trees are not defined as ESHA or heritage, how plentiful the non-heritage and non-ESHA trees are in the County, and how significant they are (e.g., visually, habitat functions).

Leaving out of the definition of major vegetation any understory vegetation or any thin trees within 100 feet of a building or structure (by virtue of allowing it to be removed) may be of concern if the vegetation is, or is in, ESHA. We assume this is for fuel modification/defensible space purposes, but it is not stated.

Leaving out of the definition of major vegetation all vegetation under power lines may be of concern if it is ESHA or has not been maintained for years. The result could be a cleared swath 20 feet wide stretching for miles. While this might have to be allowed under State fire rules, exempting all the vegetation from the definition of major (and hence not subjecting it to permit review) seems excessive.

Lastly, we suggest that you add to the definition vegetation that is part of significant views/viewsheds.

RE: C-BIO-4 Protect Major Vegetation. *Require a Coastal Permit for the removal or harvesting of major vegetation. Coastal Permits shall allow the management of major vegetation where necessary to minimize risks to life and property while avoiding adverse impacts to an ESHA or its buffer, coastal waters, and public views, and shall not conflict with prior conditions of approval, consistent with Policy C-EH-24 (shown below under New Environmental Hazard Policy).*

Policy C-EH-(to become 24): Vegetation Management in an ESHA. Minimize risks to life and property life, and property in environmentally sensitive habitat areas, from uncontrolled fire and disease by allowing for the maintenance of major vegetation.

There is also some awkward construction with these policies. The policies require a CDP for removal of major vegetation, but then provide criteria to allow for the "management" and "maintenance" of vegetation. Management is not defined. Some consistent wording would be helpful. Policy C-EH-24 is weaker than C-BIO-4, and this could cause some confusion in application. When exactly would vegetation removal be allowed in ESHA? What are the criteria for allowing removal? Would mitigation be required?

RE: PRD Development Code Amendment, Chapter 22.64.060.B.10: *Coastal Permit applications for the maintenance of major vegetation must meet at least one of criteria 1 through 10, and number 11 for removal:*

- 1. The general health of the tree is so poor due to disease, damage, or age that efforts to ensure its long-term health and survival are unlikely to be successful;*
- 2. The tree is infected by a pathogen or attacked by insects that threaten surrounding trees as determined by an arborist report or other qualified professional;*
- 3. The tree is a potential public health and safety hazard due to the risk of it falling and its structural instability cannot be remedied;*
- 4. The tree is a public nuisance by causing damage to improvements, such as building foundations, retaining walls, roadways/driveways, patios, sidewalks and decks, or interfering with the operation, repair or maintenance of public utilities;*
- 5. The tree has been identified by a Fire Inspector as a fire hazard, and requires removal;*

- 6. The tree was planted for a commercial enterprise, such as Christmas tree farms or orchards;*
- 7. Prohibiting the removal of the tree will conflict with CC&R's which existed at the time this Chapter was adopted;*
- 8. The tree is located on land which is zoned for agriculture (C-ARP or C-APZ) and is being used for commercial agricultural purposes;*
- 9. The tree removal is by a public agency to provide for the routine management and maintenance of public land or to construct a fuel break;*
- 10. The tree is non-native and is not defined as a "protected and heritage tree" in Article VIII (Definitions)*
- 11. The tree removal does not: a) adversely affect any environmentally sensitive habitat areas; b) adversely impact coastal waters; c) adversely impact public views; and c) conflict with prior conditions of approval.*

The above development code provision is somewhat unclear as written. Again, the "removal" vs. "maintenance" term confusion is here. All of these criteria relate only to trees, and they do not address low-growing vegetation. The proposed definition of "major vegetation" includes some non-tree vegetation, such as any vegetation, native or not, on or near a bluff. Not all criteria could apply to non-tree vegetation, but some could, such as #10. It would make sense to allow for non-ESHA vegetation removal, especially if it were replaced by native vegetation or ESHA. However, it may help to have a separate provision to address non-tree major vegetation.

Apparently this is written to mean a coastal permit would be approved if it met one of these criteria plus #11, but literally, it could be taken to mean one could only apply if the application was for one of these reasons. Please clarify.

There are also some policy problems associated with this code provision. The three possible outcomes of removal are: being replaced by a structure (which would generally need a permit itself), being replaced with other vegetation or left bare. If the proposal were to leave the land bare, some standards would be necessary to address the latter, such as requiring replacement with other vegetation (non-flammable if fire is a concern) to prevent erosion and non-point source pollution. Assuming this policy is revised to apply to non-tree vegetation as well or there is comparable provision to address it, there may be different standards for tree vs. non-tree vegetation replacement (e.g., when replacement is required, how much?).

Lastly, the provision may be drafted too broadly. Some of the criteria could mean that the vegetation in question is not major and thus does not even need a coastal permit for removal (see comments on definition of "major"). Does this cover cases of applications for structures or other development where tree removal is necessary? The county-wide tree removal permit requirements have an exception for removal of a certain number of trees per year on a property, but if the tree were major vegetation it would still need a coastal permit for removal and would have to meet one of these criteria. How does this provision track with the heritage tree ordinance?

Exhibit 8

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**MEMORANDUM**

DATE: August 10, 2011

TO: Jack Liebster, Marin County Community Development Agency

FROM: Ruby Pap, North Central Coast District Supervisor

RE: Preliminary staff comments on LCP development code structure and process

This memo provides preliminary staff comments on the draft proposed Marin County Implementation Plan (i.e. LCP development code amendments [hereafter referred to as "development code"]) in regards to structure and process. I would appreciate it if you would share these comments with the members of the Planning Commission. Staff reviewed the outline and scope of the document, as well the following specific sections:

- Chapter 22.68 Coastal Permit Requirements
- Chapter 22.70 Coastal Permit Administration

We have not reviewed the other substantive chapters, as it is our understanding that future Planning Commission meetings will discuss the LCP issue by issue, addressing the LUP and IP side by side. Also, the above sections and our preliminary comments have not undergone legal review.

1. General Comments on Overall Structure and Content of Development Code**a. Zoning Maps:**

You have indicated that the County will not be submitting the updated zoning maps to the Coastal Commission for certification because the County is not proposing any zoning changes. While this may be the case, Commission Staff suggests that the maps should be submitted for the following reasons.

1. The certified maps that the Commission has on file are from 1981. While there have been several amendments to the maps over the years, new sets of maps were not printed and certified with each amendment. While the County may have updated its maps to incorporate each individual change, it does not appear that Commission staff has been afforded the opportunity to review the maps to concur that what they reflect as zoning districts are certified. If the new maps are not submitted as part of the package to the Commission, staff would have to transmit the 1981 certified maps to the Commission (with the amendments penciled in) when it considers the LCP Update, which does not seem appropriate. If the Updated reformatted maps are submitted (even if there are no

zoning changes) for review, we can all be working off of the same map, and this will avoid unnecessary confusion.

2. Please confirm that there are no zone map changes being proposed, including changes made that may not have been previously submitted, as well as name changes to the zoning districts. If there are any such changes, the maps must be submitted for certification.
3. As we discussed at our recent meeting in San Francisco, it would be nice to work with the County on the status and maintenance of the zoning maps into the future, especially if they are digital, so we both have the same set and agree on what is certified and will be able to maintain certified copies into the future.

b. Other Sections of the Development Code

Please note that any section of the broader development code that effect the kinds, densities, or intensities of land uses in the Coastal Zone must be certified by the Commission as part of the IP. For example, there is a list of sections from Chapter 22.32 on page 1 of the Marin County LCP Proposed Development Code amendments. If these are intended to apply in the coastal zone, they need to be submitted. In the meantime, in order for Commission Staff to provide meaningful input early in the process, it would be a helpful to get a comprehensive list of IP sections that you intend to incorporate so that we can flag any major issues that may be raised.

c. Scope and Detail of Development Code

Some areas of the development code appear to lack necessary details. For example, in Chapter 22.64 CZ Development and Resource Management Standards, the first half provides some actual procedures for implementation, but the second half, Community Design through Public Coastal Access essentially repeats LUP policies. The standard of review for certification of an implementation plan is that it must conform to and adequately carry out the LUP. As part of the Commission's review process, we will need to go through the LUP and IP provisions in detail to determine if the IP policies are adequate to carry out the LUP. Staff does not have the resources to undergo this exercise in detail in this stage of the process, but we suggest questions the County should ask itself while drafting and redrafting IP policies is: (1) Whether a planner will be able to easily apply the policies to a proposed development project; (2) whether there will be consistency over time in such application; or (3) whether they are too vague for them to be functional regulatory provisions. Commission staff is available to answer any questions about this as they come up.

As we previously discussed, we would also like to note that the Commission's guidance document, "Updating LCP Implementation Plan (IP) Procedures" is online: <http://www.coastal.ca.gov/la/landx.html>. This document explains required implementation plan components, as well as suggestions for additional components that help to avoid confusion/problems in future implementation. I have attached a chart showing, of all the suggested components, the parts that Marin County has so far chosen to include. This may be helpful in future County deliberations and discussions.

d. Format for Review

We note that the zoning district format district has changed significantly from the currently certified zoning. For example, the certified zoning lists each zoning district separately in its own chapter, with its own lists of PPUs and other uses; the proposed document groups zoning districts together. It will be difficult to substantively review the proposed changes between these two formats. Instead of the "roadmap" that was previously provided, for these sections, we would request that the County provide a better representation of the changed, deleted, and added uses in each zoning district (including which are proposed to change from principally-permitted to conditional).

2. Comments on Chapter 22.68

The code provision is shown in *italics*. Comments are shown below.

RE: 22.68.030 – *Coastal Permit Required Coastal development... is interpreted to include water or sewage disposal systems,*

This provision needs a verb, such as installation, any work associated with, etc. Is there a reason this particular type of development is singled out for special interpretation?

RE: 22.68.030 – *Coastal Permit Required Coastal development... is interpreted to include agricultural processing facilities,*

This provision needs a verb, such as construction, intensification of use, etc. Is there a reason this particular type of development is singled out for special interpretation?

RE: 22.68.030 – *Coastal Permit Required ... Coastal development... is interpreted to include ... the significant alteration of landforms. Significant alteration of land forms entails the removal or placement of vegetation on a beach, wetland, or sand dune, or within 100 feet of the edge of a coastal bluff, stream, or in areas of natural vegetation designated as environmentally sensitive habitat areas.*

Why not put the second sentence in the definition chapter, especially since the term is also used in §22.68.060 (see comment on that section to determine if that is what is really meant)?

Alteration is already in the definition chapter with a different meaning, so perhaps a different word is warranted. What this really appears to be is an attempt to interpret what "removal of major vegetation" means. Is there a reason this particular type of development is singled out for special interpretation?

RE: 22.68.030 – *Coastal Permit Required ...Agricultural crop management and grazing are not considered to be a significant alteration of land forms [and hence would not be defined as development needing a coastal permit]*

This provision could be interpreted to mean any activity associated with these two uses is not development, and we have concerns that this may be too broad. Some activities associated with preparing land for intensive agricultural uses would be development, such as extensive grading to create crop lands where they didn't exist before. "Grading" is not defined in the development code. Does the County intend to incorporate grading provisions into the code?

RE: 22.68.030 – *Coastal Permit Required Coastal development is defined in Article VIII of this Development Code and is interpreted to include...(add "but is not limited to")*

Consistent with prior Commission actions, we suggest you add "changes in public access to the water," including but not limited to adding parking meters, substantially raising parking fees, eliminating existing parking, restricting hours the public is allowed to park, or changing parking completely available to the public to preferential parking.

RE: 22.68.040 – *Categorically Excluded Projects A.* *A project specifically designated as categorically excluded from the requirement for a Coastal Permit by Public Resources Code Section 30610(d) and (f) and implementing regulations is not subject to Coastal Permit requirements.*

Typo -- (d) – but really should be (e) instead of (d) and (f)

According to the text, categorical exclusions are subject to provisions in Ch 22.68 "Coastal permit requirements." They are not subject to the requirement to be authorized by a coastal permit. They are also subject to provisions in Ch 22.70. How will planners and the public have access to the existing categorical exclusion orders? We recommend that all approved orders be included in the LCP, perhaps as an appendix.

RE: 22.68.040 – *Categorically Excluded Projects B.* *The Director shall maintain a list of projects determined to be categorically excluded from the requirements of this Chapter for a Coastal Permit.*

Consistent with current practice (e.g. E-81-6 amendment) Staff suggests that you add a sentence about transmitting categorically excluded project decisions to the Coastal Commission.

RE: 22.68.050 – *Exempt Projects* *The following projects shall be exempt from the requirements of Section 22.68.030 – Coastal Permit Required.*

Section 22.68.060 provisions qualify these provisions, so to avoid misunderstandings, §22.68.060 should be referenced here or incorporated into this section. In addition, public works facilities are not exempt from permit requirements pursuant to Coastal Act Section 30610 and Title 14 CCR Section 13253 and this should be stated somewhere in this section.

Who makes the determination stated in this section? Pursuant to §22.70.030, the Planning Director decides if a project needs a coastal permit, so the implication is if the Director decides it doesn't need a coastal permit (and it's not a waiver or de minimis), the Director is deciding it is exempt. Thus, can an exemption decision be challenged pursuant to §22.70.040? Lastly, Staff requests that the Commission be noticed on exemption decisions. Would the County consider adding a procedure for this, similar to the categorical exclusion decisions?

RE: 22.68.050 – *Exempt Projects ...B...Repair and maintenance*

This section should be revised to include all the provisions of Title 14 CCR Section 13252. If there are any sections that County staff believes don't apply in the County (e.g. jurisdiction), let's discuss them. For example, certain maintenance dredging [e.g., over 100,000 cy/yr] is not exempt under Reg §13252. Most dredging will occur in the Coastal Commission's retained jurisdiction, but dredging could occur in inland wetlands that would be under County jurisdiction. Is this at all likely in Marin? If so, then some additions to § 22.68.060 will be necessary.

RE: 22.68.050 – *Exempt Projects ...B...No coastal permit shall be required for ordinary maintenance of the Seadrift Revetment, which is defined to include removal from the beach of*

any rocks or other material which become dislodged from the revetment or moved seaward from the identified footprint, replacement of such materials on the revetment, minor placement of sand over the revetment from a source other than the Bolinas Sandspit Beach, planting of dune grass on the revetment, and similar activities.

The Commission granted the CDP for the Seadrift revetment and handles the maintenance requests, consistent with the permit provisions. Is there a reason why the County wishes to include this in the LCP? This same comment applies to other provisions involving lands in the Commission's jurisdiction.

RE: 22.68.050 – Exempt Projects C 4 . *The following projects shall be exempt from the requirements of Section 22.68.030 – Coastal Permit Required. Replacement after disaster. The replacement of any legal structure, other than a public works facility, destroyed by a disaster. The replacement structure shall: Be sited in the same location on the site as the destroyed structure, unless the Director determines that a relocation is warranted because of proximity to coastal resources.*

This is not consistent with the Coastal Act Section 30610(g) and should be revised accordingly.

RE: 22.68.050 – Exempt Projects ...Temporary event. *A temporary event which: 1. Would not occupy a sandy beach, or would occupy a sandy beach only in areas outside of Muir Beach, Stinson Beach, Bolinas, and Dillon Beach; and...*

Coastal Act §30610(i)(1) gives the Executive Director the authority to determine if a temporary event is exempt. Implicit in the Act and referenced guidelines is that local governments can similarly include in their LCP what categories of temporary events are exempt. The test is no "significant adverse impact upon coastal resources within the meaning of the guidelines adopted." Under the guidelines an exempt temporary event on a sandy beach would be one that occurs between Labor Day and Memorial Day (non-summer), or is free, or is on a remote part of the beach, or is less than one day in length, and does not impact natural resources, and does not impede the general public for a significant amount of time. Why were all temporary events on beaches outside of Muir, Stinson, Bolinas and Dillon chosen to always be exempt from permit requirements? This section should be revised to reflect the Commission's guidelines.

RE: 22.68.060 – Non-Exempt Projects *Notwithstanding the provisions of Section 22.68.050 – Exempt Projects, a Coastal Permit shall be required for all of the following projects unless the development is categorically excluded or qualifies for a De Minimis Waiver:*

Another category of non-exempt improvements (not included in this draft) are those to structures originally approved through a coastal permit that provides that any improvements require a new or amended coastal permit per Reg §§13250(b)(6) and 13253(b)(6).

RE: 22.68.060 – Non-Exempt Projects...A. Improvements to existing structures. *Improvements to a structure if the structure is located on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, or within 50 feet of the edge of a coastal bluff.* This section would also apply to repair and maintenance activities involving solid or construction materials or use of mechanized equipment pursuant to Reg §13252(a)(3). These types of maintenance activities would also not be exempt within 20 feet of coastal waters or streams. Solid materials, construction materials and mechanized equipment can be defined.

RE: 22.68.060 – Non-Exempt Projects B. Alterations within appealable areas.

It might help to qualify this title to read within “geographically defined appealable areas” in order to distinguish it from appeals due to not being the principally permitted use.

RE: 22.68.060 – Non-Exempt Projects I. Landform alterations. Any significant alteration of land forms.

Section 22.68.030 contains a definition of significant alteration of land form, which, as noted, really appears to be a definition of major vegetation removal for purposes of whether such activity is defined as development. Is that same definition meant to apply here; i.e., that any such vegetation removal associated with a doing a project means that even if a project could otherwise be exempt under 22.68.050, it wouldn't be?

RE: 22.68.070 – De Minimis Waiver of Coastal Permit *The Director may waive the requirement for a Coastal Permit in compliance with this Section upon a written determination that the project meets all of the following criteria:*

As we discussed in our meeting on 7/25/11, Staff is considering and reviewing with our legal division that question of whether a de minimis waiver process may be included in the LCP, and hope to conclude our analysis soon. If we conclude that the County can legally issue de minimis waivers, the proposed implementation procedure needs to be more explicit than currently drafted; for example, it should include noticing requirements to the public, the CCC, procedures to provide comment and objections, and reporting and final decision procedures.

RE: 22.68.080 – Projects Requiring a Coastal Commission Permit A. Coastal Commission approval required.

Other categories of projects that are also under the Coastal Commission's jurisdiction, not the County's, are: amendments/extensions to permits issued by the Coastal Commission; thermal power plants of 50 megawatts or greater along with the transmission lines, fuel supply lines, and related facilities to serve them; state university or college projects; and non-federal projects on federal land. It could also be noted somewhere that Marin County would not issue a coastal development permit for public works projects subject to an approved public works plan.

RE: 22.68.080 – Projects Requiring a Coastal Commission Permit B. Determination of jurisdiction.

It would be helpful to mention that the ultimate decision as to jurisdictional boundaries is made by the Coastal Commission pursuant to its statutory authority.

RE: 22.68.080 – Projects Requiring a Coastal Commission Permit C. Referral. *Before issuing a Coastal Permit, the Coastal Commission will refer the application to the State Lands Commission for a determination whether a State Lands Commission permit or lease is required for the proposed development, and whether the State Lands Commission finds it appropriate to exercise the easement over that property. The Coastal Commission shall also refer the application to the County for review and comment.*

The wording of this section is not really ordinance language in that it states what the Coastal Commission does. And, its characterization is not quite accurate or complete. The Coastal Commission always makes an effort to coordinate with State Lands when necessary, as well as with many other agencies. And while it would be nice to have a formal referral process to local

governments, the Coastal Commission unfortunately does not have this and this ordinance can not make that happen. It would probably make more sense to instead have ordinance provisions which (1) inform applicants that they may be subject to State Lands Commission and other agency approvals in conjunction with a coastal permit issued by the Coastal Commission and (2) to establish a County process to provide input to the Coastal Commission on any items in its jurisdiction that the County does not get to review. (see next comment). Of course, we remain committed to working with the County to assure that our usual coastal development permit noticing process includes the County and provides an opportunity for coordination and comment.

RE: 22.68.080 – *Projects Requiring a Coastal Commission Permit D. County land use designations and zoning districts. County land use designations and zoning districts on public trust lands and federal lands shall be advisory only*

The County may want to qualify this with, "...for purposes of the Coastal Commission issuing a coastal permit" in case there are other instances where the local regulations would have some standing. In terms of being advisory, the County could establish a process to advise the Coastal Commission. That would be placed somewhere else in the Code. We can discuss such procedures if the County is interested.

RE: 22.68.090 – *Consolidated Coastal Permit Consolidated County–Coastal Commission Coastal Permit. If a proposed development requires a Coastal Permit from both the County and the Coastal Commission, ...*

Implicit in this statement is that some projects may require two coastal permits (since consolidation is optional). This could be explicitly stated along with some procedures to address this situation, including coordinating the County's decision on their part of the project with the Coastal Commission's decision on its part of the project.

If either the applicant or the Commission wants to request consolidation, what is the process to do this? This section implies that the Director initiates the consolidation request.

3. Comments on Chapter 22.70

RE: 22.70.030 – *Coastal Permit Filing, Initial Processing A. Application and filing. Coastal Permit application submittals shall include all information and other materials required by the Coastal Permit application forms, provided by the Agency.*

This section is sparse, leaving all the details to unspecified application forms that the County creates. The County may want to consider providing some minimum filing requirements, such as evidence that the applicant must have some legal interest in the property. Is there to be one application for each potential type of processing (e.g., exemption, waiver, permit)?

RE: 22.70.030 *Coastal Permit Filing, Initial Processing C. Initial Processing A Coastal Permit shall be processed concurrently with other permit applications required for the project, and shall be evaluated as provided by Chapter 22.40*

Chapter 22.40 will need to be submitted for certification as part of the LCP, if it is referenced here. We will need to review it to ensure that it does not have any provisions that would somehow negate or supersede the coastal permit.

RE: 22.70.030 Coastal Permit Filing, Initial Processing 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.*

Is there a procedure whereby the Planning Director can refer such matters for hearing?

RE: 22.70.030 Coastal Permit Filing, Initial Processing B.5 Public hearing waiver

Although no one may request a public hearing, some parties may provide written input which needs to be considered (see comment on §22.70.050 – Public Notice C. 9).

RE: 22.70.040 – Appeal of Permit Category Determination

“C” could be confused with coastal permit appeals to the Coastal Commission. Perhaps you should consider renaming to something other than “Coastal Commission Appeal Procedure.” Is there a general section that allows appeals of other discretionary planning director decisions through to the Board of Supervisors?

RE: 22.70.050 – Public Notice A. *Permit applications shall be noticed... by mailing notice to... all property owners and residents with 100 feet of the perimeter of the parcel on which the development is proposed.*

Although implicit, it would be helpful to explicitly state that notice also goes to any residents within the parcel on which development is proposed (e.g., an apartment tenants need notice if there is a proposed project at the apartment) and that the notice requirement applies to all parcels on which the development is proposed, if the proposal spans multiple parcels.

RE: 22.70.050 – Public Notice B 9. *If no public hearing is held, a statement that a public comment period of sufficient time will be held to allow for the submission of comments by mail prior to the local decision.*

This needs more than the statement; the notice needs to tell the time period for that particular application. Also, this section needs integration or cross-reference with §22.70.030 5 public hearing waiver. If it is possible that the hearing will be waived, that information should be in the public notice. And, even if no one requests a public hearing, there needs to be a process to consider comments that they might send in.

RE: 22.70.060 – Decision on Coastal Permit 1. *The Director shall take action on a non-hearing Coastal Permit application.*

See comments on §§22.70.030 B.5 Public hearing waiver and 22.70.050 notice when no public hearing. There should be some language indicating that --and how -- the Director considers public input in the absence of a public hearing.

RE: 22.70.060 – Decision on Coastal Permit 5. *For appealable projects or other public hearing coastal projects for which the County permit requirements do not identify a review authority;*
Does this mean projects appealable to the Coastal Commission?

RE: 22.70.080 – Appeal of Coastal Permit Decision B.1.(c) *Development approved that is not designated as the Principal Permitted Use (PP) by Tables 5-1, 5-2, or 5-3 in Chapter 22.62 – Coastal Zoning Districts and Allowable Land Uses; and...*

As we've mentioned previously, each zone should designate one principally permitted use for purposes of appeal to the Coastal Commission. It is still okay to have multiple PPUs for other zoning reasons, but one use should be specifically designated for purposes of appeal.

RE: 22.70.080 – Appeal of Coastal Permit Decision B 3. Appeal by Coastal Commissioners. *When two Coastal Commissioners bring an appeal ... Notice and hearing on these appeals by the Board of Supervisors shall comply with Chapter 22.114 – Appeals.*

A final sentence should be added stating that after action by the Board (or failure or refusal to act) notice of final action shall be provided to the Commission pursuant to Section 22.70.090. Chapter 22.114 will need to be submitted for certification as part of the LCP, if it is referenced here.

RE: 22.70.090 – Notice of Final Action *Within 10 calendar days of a final County decision on an application for a Coastal Permit, the Director shall provide notice of the action by First Class mail to the Coastal Commission, ...*

Title 14 CCR §13571 states 7 calendar days.

RE: 22.70.110 – Effective Date of Final Action... *Where any of the above circumstances occur, the Coastal Commission shall, within five days of receiving notice of that circumstance, notify the County and the applicant that the effective date of the County action has been suspended.* This seems okay, but again, the County ordinance can't direct the Coastal Commission to do something. But since this will occur, it would seem helpful to have some language about the response the County would take.

RE: 22.70.120 – Expiration Date and Time Extensions A. Time limits, vesting, extensions. *Coastal Permit time limits, vesting requirements, and extension provisions shall comply with Section 22.56.050 – Time Limits and Extensions.*

It's not clear whether 22.56.050 is the correct reference here. This is part of the currently certified LCP, but will be superseded by the code, once certified. Noticing is required for extensions.

RE: 22.70.150 – Coastal Zone Variances A. Filing. *An application for a Coastal Zone Variance shall be submitted, filed, and processed in compliance with and in the manner described in Chapter 22.68 (Application Filing and Processing, Fees).*

This implies that the variance application is made at the time of the coastal permit application and, hence, is considered as part of the Coastal Permit, which it should be. There should not be the possibility that an applicant can return for a variance that changes a coastal permit without a coastal permit amendment.

RE: 22.70.150 – Coastal Zone Variances A. Filing. *...It is the responsibility of the applicant to establish evidence in support of the findings required by Section 22.70.070 – Required Findings.* This section should ensure that consistency with the LUP is a required finding. Although it says the applicant has to provide the evidence, it does not explicitly say what the decision-maker's determination is based on. What is a "yard variance"? Would it apply to resource or hazard setbacks?

RE: 22.70.150 – Coastal Zone Variances A. E. Notice of action and/or hearing date.

Administrative decisions and public hearings on a proposed Coastal Zone Variance application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and administrative Actions).

This should reference the coastal permit noticing procedures in 22.70.050 instead. Otherwise, Chapter 22.118 would have to be submitted for the Commission's review and certification.

RE: 22.70.160 – Coastal Zone Variance Exemptions *In situations where development is proposed within the footprint of an existing structure the Director may ministerially find a project exempt from Coastal Zone Variance requirement subject to the following:*

This section is confusing --is it addressing non-conforming situations? If development is proposed within a building footprint, why does it potentially need a variance; is that because the structure itself is non-conforming? If the structure is not non-conforming, then should this section apply at all because the way it is written suggests it applies to any development within the footprint of an existing structure? Is there a separate non-conforming section that will be incorporated into the LCP? If so, the Commission will need to review and certify it.

RE: 22.70.160 – Coastal Zone Variance Exemptions A. *The cubical contents of the structure shall not be increased with the exception of minor dormers and bay windows which provide headroom or circulation or projects that are addressed below in section 22.54.040.C, but do not add to the bulk and mass of the structure.*

B. *The floor area ratio may increase, not to exceed 0.35 maximum, or 300 square feet, whichever is more restrictive, except that such area limitations do not apply to circumstances in flood zones that are addressed below in section 22.54.040.C.*

It's not clear whether 22.54.040.C is the correct reference here. This is part of the currently certified LCP, but will be superseded by the code, once certified.

4. Definitions

We have not reviewed all of the code definitions, and plan to do so in the context of the substantive review of each topic area. However, we do flag the following:

RE: Definitions, "M" Major Energy Facility (coastal). *Any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy that costs more than one hundred thousand dollars (\$100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Section 30610, 30610.5, 30611 or 30624.*

Major Public Works Project (coastal). *This land use consists of: (1) Publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by creating or decreasing public recreational opportunities or facilities; and (2) Facilities that cost more than one hundred thousand dollars (\$100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Section 30610, 30610.5, 30611 or 30624 and that fall within one of the following categories:*

Calculation from \$100,000 base is since January 1983.

Jack Liebster
August 10, 2011
Page 11 of 11

Enclosures (1)

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
 45 FREMONT ST, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE (415) 904-5260
 FAX (415) 904-5400
 TDD (415) 597-5885

**Memorandum****May 13, 2014**

To: Commissioners and Interested Parties

FROM: Dan Carl, North Central Coast District Deputy Director
 North Central Coast District

Re: **Additional Information for Commission Meeting**
Thursday, May 15, 2014

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>
Th12a	Marin County LC P Amendment Number LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update)	Ex Parte Communication, Amy Trainer, EAC of West Marin Ex Parte Communication, Jack Liebster, Brian Crawford, County of Marin Ex Parte Communication, Amy Trainer Correspondence, Pacific Legal Foundation Correspondence, John A. Becker Correspondence, Linda Emme Correspondence, Richard and Brenda Kohn Email, Jules Evens Email, Amy Trainer Email, John Kelly Email, Tim Stanton Email, Michael Sewell Correspondence, Christian C. Scheuring Email, Susan Burrows

Note: 990 email comments substantially identical to this email comment were received. This email comment is provided as a representative sample of the 990 email comments. All of the 990 email comments substantially identical to this email comment are available for review at the Coastal Commission's North Central Coast Office in San Francisco.

Correspondence, Jon Elam
 Correspondence, West Marin
 Environmental Action Committee

Correspondence, Kirk Wilbur
Correspondence, Megan Isadore
Email, Ione Conlan
Email, Carol Smith
Email, Thomas Baty
Correspondence, Carol K Longstreth
Correspondence, Catherine Caufield
Correspondence, Bridger Mitchell
Correspondence, Kirk Wilbur
Correspondence, Louise Gregg
Correspondence, David Lewis

Th14a

A-2-HMB-12-005 (Stoloski, Half Moon Bay)

Ex Parte Communication, Stanley Lamport
Ex Parte Communication, Marc Gradstein
Ex Parte Communication, Stan Lamport
for applicant Stoloski
Correspondence, Lennie Roberts
Correspondence, John F. Lynch
Correspondence, Donald Torre
Correspondence, James Benjamin
Correspondence, Kenneth Rosales
Correspondence, Lennie Roberts
Correspondence, Charise Hale McHugh
Correspondence, Ralph Faust
Correspondence, Stanley W. Lamport
Correspondence, Paul Stewart
Correspondence, Stuart Schillinger

Th14b

A-2-MAR-11-025 (Caltrans, Marin County)

Correspondence, Frank Dean
Correspondence, Andy Peri
Ex Parte Communication, Stefan Galves
Correspondence, Danita Rodriguez

Th 12a

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Marin County LUP - EAC/ Trainer -Marin County LCP
Amendment No. LCP-2-MAR-13-0224-1 Part A (Marin LUP Update).

Date and time of receipt of communication: May 12, 2014 10:00-10:30 a.m.

Location of communication: Santa Barbara

Type of communication (letter, facsimile, etc.): telecon

Person(s) initiating communication: Amy Trainer, EAC of West Marin 415 663 9392

EAC believes that Marin County's submittal is a complete rewrite of the certified LCP. So the Commission should look at both the chapter 3 policies as well as the certified land use plan.

The impacts of changing the definition of "parcel" to "legal lot", based on the County's own buildout analysis will result in additional development potential of 1,000,000 square feet. They have been trying to get the County to realize that this would open the door to development pressure that is antithetical to long term continuation of ag operations.

Right now the County is required to consider all contiguous parcels, under the new definition, that is they could consider. e.g. 1 400 acre dairy operation would be allowed 1 new farmhouse. Right now there is no provision for the intergenerational housing, so there is a new development category.

Under the rewrite, they could allow 129 houses x 7000 square feet per legal lot. When you add in the additional permitted principal use of up to 5000 square feet of commercial agriculture, its huge. They are not saying it shouldn't be allowed, but allowing as a principal use without appeal is an enormous amount of new development; no impact analysis has been done. This has the potential to change the character of Marin's agricultural production lands.

EAC fully supports young family farmers. Some new housing will be supported. This is a far reaching drastic change in how development is permitted in the ag production zone.

There are no findings to support what they are proposing. In April 2009, the Coastal Commission wrote a letter saying there have to be findings and analysis.

Also object to the change in the definition of agriculture. Right now is defined as agricultural production, pasturing, food and fiber. That zoning district is 2/3 of the Marin coastal zone. Farmhouse plus intergenerational housing and farmworker housing. In few or no cases would there be a right to appeal. For now, what is proposed is a limit of 27 units. They were not requiring the occupant to have anything to do with the farming operation. The staff report says they can allow whoever they want, they want to be very clear with the purpose of the housing. It may not have anything to do with the operation, violating 30241, 30242 and 30250, not minimizing conflicts between ag uses and urban. She believes that the current average size of farmhouses is 2000-3000 square feet.

She also stated that Marin commissioned an agricultural economic analysis in 2003, and its conclusions do not support what the rewrite would allow. They are concerned that there is another 500 square feet added to the 7000 square feet, concerned about high value estate development driving up land ownership costs. The report gives specific examples; on a 400 acre parcel, if you add a 7000 square ft residence, it adds a \$73.00 cost per acre. The point is that after the proposed improvements, all of the parcels have costs exceeding agricultural income. The higher level concern that these new definitions by right will open wide the door to new non agricultural development pressure; land costs will go up, and MALT is not going to have the capacity to keep up.

This is premature, inadequate environmental analysis, should be rejected and sent back to work out policies that actually achieve their intended purpose. Not salvageable unless the definitions of agriculture and parcel are retained as in the certified LCP.

May 12, 2014

/s/ Jana Zimmer

Th/2g

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Marin County LUP Marin County LCP
Amendment No. LCP-2-MAR-13-0224-1 Part A (Marin LUP Update)

Date and time of receipt of communication: May 8, 2014 10:00 a.m. - 10:40 a.m.

Location of communication: Santa Barbara

Type of communication (letter, facsimile, etc.): telecon

Person(s) initiating communication: Jack Liebster, Brian Crawford, County of Marin

Their approaches to preserving agriculture have been four fold: strong land use protections in the LUP; strong relations with the Marin Agricultural Land Trust, saving over 40% of all ag lands in conservation easements; Williamson Act; and support of multigenerational housing on ag land.

They are mostly in agreement with the staff modifications, they need to clarify CAG 7. There has been a shift to organic, speciality crops, with the proximity to San Francisco, people are willing to pay more for these foods. He thinks most individual farm operators are willing to accept the LUP, he feels the plan represents compromise at the highest level, recognizing both the needs of farmers and high standards for environmental protection.

They see the shift to recognizing development potential on a per legal lot basis is legally required, would result in one farmhouse and intergenerational housing per legal lot; they cant force merger. However, he stated that their legal lots mostly are in excess of the 60 Acre minimum lots size under zoning.

They have a definition of farmhouse in their IP, which assures that the 'residential' use on a lot will be subordinate to the agricultural operation. They do require ACE as a condition of residential development, and have other standards to protect from conversion to estate residential, i.e. the 7000 square foot aggregate limit on development

Regarding coastal hazards, they have a concern with the specificity of definition of the 50% redevelopment criteria on coastal bluffs. They think Marin is very different from Solana; they don't have so much a bluff erosion issue as a sea level rise issue; they have grants to address and want to work out the specifics of their definition in the IP.

Jana Zimmer

Th12a

DISCLOSURE OF EX PARTE COMMUNICATIONS

Date and time of receipt of communication:

May 12, 2014 at 11:00 a.m.

Location of communication:

Redwood City

Type of communication:

Teleconference

Person(s) in attendance at time of communication:

Amy Trainer

Person(s) receiving communication:

Carole Groom

Name or description of project:

Item Th12a – Marin County LCP Amendment No. LCP-2-MAR-13-0224-1 Part A (Marin LUP Update)

Detailed substantive description of the content of communication:

Ms. Trainer expressed concern about the proposed update to the Marin County Local Coastal Program (LCP)'s Land Use Plan (LUP). Ms. Trainer maintained that the proposed modifications amount to a fundamental change in the balance between agricultural lands and development of the region and that the update violates Sections 30241, 30242, 30250, and 30006 of the California Coastal Act.

The representative indicated that a core facet of her concern was changing the language in the LUP from "parcel" (contiguous lots under common ownership) to "legal lot of record." The representative also indicated that changing the permitting on farm houses and other structures from conditional to by-right uses would reduce or eliminate the possibility of oversight and public participation in the process. Ms. Trainer stated that the by-right uses would no longer be appealable to the Coastal Commission and that public meetings would not happen as before. The representative said she agreed that there should be narrowly tailored policy that allows for the expansion of intergenerational housing, but that the proposed LUP changes are too far-reaching.

Date: May 12, 2014

Signature of Commissioner:

Carole Groom



PACIFIC LEGAL FOUNDATION

Th/2a

July 29, 2013

President Judy Arnold and
The Marin County Board of Supervisors
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

VIA EMAIL: c/o Kristin Drumm
kdrumm@marincounty.org

Re: Comments for July 30, 2013, Public Hearing on Local Coastal Program Amendments

Dear Supervisors:

Pacific Legal Foundation, the nation's oldest public interest property rights foundation, has followed Marin County's Local Coastal Amendment process with great interest. Foundation attorneys have regularly filed comment letters highlighting particular concerns,¹ and Principal Attorney Paul Beard recently addressed some of these concerns in person at your February 26th hearing. While we very much appreciate some of the changes that your Board, the Marin County Planning Commission, and the staff of the Community Development Agency have adopted to address property owners' concerns, we remain alarmed about a number of issues.

Primarily, we believe that the LCPA, as drafted, does not sufficiently advise permitting authorities, the public, or Marin County property owners of the limits on the County's ability to demand dedications of private property in exchange for building permits. Throughout the LCPA, there are requirements that property owners dedicate public access easements, conservation easements, or open space easements in order to put their property to particular uses.² We fully agree with the Marin County Farm Bureau's Attachment #1 to its letter of 2/19/2013, that the LCPA should contain more detailed, clear and consistent language setting forth the circumstances under which the County may require such dedications.

¹ See, e.g., Pacific Legal Foundation's Letters to the Planning Commission: 11/3/2008, 6/19/2009, 6/22/2009, 7/22/2009, and 11/19/2009; and those to the Board of Supervisors: 10/1/2012, and 3/18/2013.

² See, e.g., Development Code Sections: 22.64.180 *Public Coastal Access Standards*, 22.65.040 *C-APZ Zoning District Standards*, 22.64.180 *Public Coastal Access*, and Policies: C-AG-7 *Development Standards for the Agricultural Production Zone (C-APZ)*, C-AG-7.B.3 *Conservation Easements*, C-PA-2 *Public Coastal Access in New Development*.

President Judy Arnold and
The Marin County Board of Supervisors
July 31, 2013
Page 2

Incorporating the following “constitutionality clause” into the LCPA, both in the Land Use Plan and Development Code, and including brief references to the clause in applicable policy and code sections, would solve this problem. To date, we have not seen your board specifically address this issue, even though it has been raised numerous times by the Farm Bureau, and Pacific Legal Foundation. We again request that you consider incorporating the following language into C-INT-1, Consistency with Other Law:

Proposed Constitutionality Clause

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

It is settled law that the County may only require property owners to dedicate easements—whether for public access, open space, or conservation—as a condition of obtaining a development permit, where there is a close connection between the easement and the mitigation of harm that will be caused by the proposed development. As we have explained before, under the United States Supreme Court’s decision in *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987), the burden falls on the government to demonstrate that close connection or “essential nexus” between the impact of the development and harm mitigation. The Court’s subsequent decision in *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), further requires government to undertake an “individualized determination” to show that there is “rough proportionality” between the condition and the harm. Where those connections are missing, dedication requirements are illegal.

Last month, the Court reaffirmed the continuing importance of these limitations on government permitting conditions in *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013). In that case, the Court reiterated the holdings of *Nollan* and *Dolan*, noting, that “government may not condition the approval of a land-use permit on the owner’s relinquishment of a portion of his property unless there is a ‘nexus’ and ‘rough proportionality’ between the government’s demand and the effects of the proposed land use.” *Koontz*, 133 S. Ct. at 2591. The Court also described these cases as a special application of the unconstitutional conditions doctrine which “protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits.” *Id.* at 2594. It noted that:

[Given the] realities of the permitting process, . . . land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than the property it would like to take. By conditioning a building permit on the owner's deeding over a public right-of-way, for example, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation.

Id. The Marin County Draft LCPA does not go far enough to counter this dynamic or to incorporate the federal Constitution's limit on government permitting power. The following examples are particularly troubling and we urge you to address them:

Section 22.64.180.B.1 Public Coastal Access Standards

Section 22.64.180.B.1 provides:

New development located between the shoreline and the first public road shall be evaluated for impacts on public access to the coast per Land Use Plan Policy C-PA-2. Where a nexus exists, the dedication of a lateral, vertical and/or bluff top accessway shall be required . . .

While we appreciate that this code section is premised on "impacts" to public access—and the reference to "a nexus" seems to imply that the County will fulfill its constitutional obligations, the reference to Land Use Plan Policy C-PA-2 is troubling. That policy provides in relevant part:

Impacts of public access include, but are not limited to, intensification of land use resulting in overuse of existing public accessways, creation of physical obstructions or perceived deterrence to public access, and creation of conflicts between private land uses and public access.

These conditions setting forth what may constitute "impacts," say nothing about their proportionality. Neither is it clear how a "perceived deterrence to public access" could possibly be a cognizable harmful impact for which mitigation could legally be required. This language gives the distinct impression that the County will always be able to come up with "evidence of impacts" to satisfy the LCP, anytime property owners along the coast apply for permits.

Of course, that is not what the Constitution, as interpreted by *Nollan*, *Dolan*, and *Koontz* requires. Adding the constitutionality clause, as proposed above, would ensure that the County acts within the scope of its lawful authority when demanding easement dedications.

Section C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands

In addition, we are concerned that other provisions of the LCPA unlawfully restrict the right of property owners to make productive use of their land and hence leave the County vulnerable to legal challenge. Section C-AG-7 is particularly egregious. Its requirement that property owners with land zoned C-APZ must place 95% of their property into a permanent agricultural conservation easement in order to use 5% of the land for non-agricultural uses, is precisely the type of “one-size fits all” provision that *Nollan*, *Dolan*, and now *Koontz* disallow.

Even more troubling, however, is the fact that by its own terms, this section only allows proposed development for non-agricultural uses if “the development is necessary because agricultural use of the property would no longer be feasible” and “the proposed development will not conflict with the continuation or initiation of agricultural uses on that portion of the property that is not proposed for development.” C-AG-7(B)(4)(a)-(b). If both of these conditions are met—agricultural uses are no longer feasible on that particular 5% of the property and the proposed development will not inhibit agricultural production on the remaining 95% of the property—the County will never be able to satisfy the individualized assessment required by *Nollan*. How could the County ever demonstrate that there is an essential nexus between the impact of the proposed development of 5% of the property, and the condition that 95% of the property be put into an agricultural easement when the County will only allow non-agricultural development *if it does not impact agricultural uses*?

Since the LCPA concedes that the County will only approve development if there is no adverse impact on agricultural uses, this requirement fails both the “essential nexus” and “rough proportionality” standards. A property owner may only be required to dedicate land for an agricultural easement where such an easement mitigates—both in nature and extent—specific harmful impacts of proposed development.

In addition, the requirement in Policy C-AG-7.B.3, that a property owner execute an unconditional covenant not to divide his or her property in exchange for a permit to use land for non-agricultural uses has takings implications. Unless the County meets its burden of establishing that the proposed use will create harmful impacts that are proportional—both in nature and extent—to the surrender of the owner’s right to divide his or her property, the requirement fails the constitutional standard. Reference to the constitutionality clause should be included as a part of this policy and in the corresponding Development Code section 22.65.040.C.2.a.

CDA staff has opined that a single constitutionality clause and references to it were unnecessary and would render the document cumbersome. We disagree. Eliminating the unclear and sometimes internally-inconsistent language and replacing it with a simple reference to the clause wherever it is applicable, would result in a more transparent, clear, and consistent document.

Some additional examples of where existing language is unclear, internally inconsistent, or does not go far enough to ensure that the LCPA complies with the “essential nexus” and “rough proportionality” constitutional standards, include:

Conservation Easement Requirement

22.65.040 - C-APZ Zoning District Standards: “*Where consistent with state and federal laws . . .* Preservation shall be accomplished by permanent conservation easements or other encumbrances acceptable to the County . . .” (emphasis ours).

Policy C-AG-7.B.3. Conservation easements: “*Where consistent with state and federal laws, a permanent agricultural conservation easement . . . shall be required . . .*” (emphasis ours).

Prescriptive Rights

Policy C-PA-6.4. Protection of prescriptive rights. New development shall be evaluated to ensure that it does not interfere with the public’s right of access to the sea where acquired through historic use per Land Use Plan Policy C-PA-7.

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

A. Application requirements.

1. Site Plan. Coastal permit applications for development on property located between the shoreline and the first public road shall include a site plan showing the location of the property and proposed development in relation to the shoreline, tidelands, submerged lands or public trust lands. Any evidence of historic public use should also be indicated.

Notably, the LCPA Appendices, Appendix 1 - List of Recommended Public Coastal Accessways, recommend that on APN #100-040-33 and -57 “Public pedestrian access shall be maintained to Estero day San Antonio on dirt road north of Oceana Marin . . .” and that “Lateral and/or blufftop access shall be required on all parcels north of 100-100-46/north of Oceana Marin . . .”

While the County may consider evidence of historic public use, it is improper to ask a permit applicant to produce that evidence. The burden falls on the County to establish a prescriptive right; it may not coerce a permit applicant into assisting in that process. Moreover, only a court may declare prescriptive rights in favor of the public. It is unacceptable to base permitting decisions on potential public prescriptive rights that have not been adjudicated and confirmed by a court of law.

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July 31, 2013
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See LT-WR, LLC v. Cal. Coastal Comm'n, 152 Cal. App. 4th 770 (2007). To burden a landowner with a public access easement condition because of "any evidence of historic public use" impermissibly usurps the role of the judiciary in adjudicating interests in real property. Only courts are competent to declare prescriptive rights. They are bound by procedural safeguards that are designed to assess the credibility of evidence and to ensure fairness. Those same safeguards are absent from County proceedings which therefore do not adequately protect property owners. Please see Attachment #1 of MCFB's 2/19/2013 letter for additional Policies and Codes where reference to a constitutionality clause would satisfy existing law.

We also support the positions set forth in the 7/26/2013 letter submitted jointly by the California Cattlemen's Association and the Marin County Farm Bureau dealing with CDA's July 2, 2013, Staff Report, in particular the issues with constitutional Fifth Amendment takings implications including:

- the proposed aggregate cap on residential square footage;
- the proposed allowance of one farmhouse per "farm" rather than per "legal lot;"
- the proposed 5% clustering provision;
- the proposed expansion of ESHA and ESHA buffers; and
- the proposed building limitations for the "protection of Ridgeline views."

Further, we concur with CCA's and MCFB's assertion that the Coastal Act gives you, the local government, the authority over and autonomy from the Coastal Commission when determining the precise content of your Local Coastal Program. *See* Pub. Res. Code §§ 30500, 30512.2.

In closing, we urge you to carefully consider these highlighted concerns. Bringing the LCPA into closer conformity with constitutional norms for land use will help to insulate the County from future litigation. It will put applicants and County employees alike on notice of their respective rights and obligations, and it will ensure respect for the constitutional rights of Marin County property owners.

Sincerely,



PAUL J. BEARD II
JENNIFER F. THOMPSON
PACIFIC LEGAL FOUNDATION

Attorneys

President Judy Arnold and
The Marin County Board of Supervisors
July 31, 2013
Page 7

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Tito Sasaki, Sonoma County Farm Bureau tito@att.net
Sandra Schubert, Undersecretary of Agriculture Sandra.Schubert@cdfa.ca.gov
Nancy Gates, Coastal Landowners for Agricultural Sustainability and Security ndgates@pacbell.net



PACIFIC LEGAL FOUNDATION

Th/2a

July 29, 2013

President Judy Arnold and
The Marin County Board of Supervisors
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

VIA EMAIL: c/o Kristin Drumm
kdrumm@marincounty.org

Re: "Categorical Exclusions" for Agricultural Lands Along the Coast

Dear Supervisors:

We wanted to draw your attention to an issue that has been discussed via email between Jack Liebster and others. Namely, the extent to which the Coastal Act authorizes you to extend categorical exclusions for agriculture in the Coastal Zone. Mr. Liebster has argued that the Board cannot adopt geographical exclusions for agricultural lots located directly on the coast. That is because Section 30610.5(b) states in relevant part:

Tide and submerged lands, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610.

Section 30610(e) provides:

Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

Hence, Mr. Liebster maintains that under the Coastal Act, the Commission may only have authority to grant categorical exclusion orders for agricultural lands that are not tide or submerged lands, beaches, or lots immediately along the coast.

Headquarters: 930 G Street, Sacramento, CA 95814 (916) 419-7111 Fax: (916) 419-7747
Alaska: 121 West Fireweed Lane, Suite 250, Anchorage, AK 99503 (907) 278-1731 Fax: (907) 276-3887 • Oregon: (503) 241-8179
Atlantic: 8645 N. Military Trail, Suite 511, Palm Beach Gardens, FL 33410 (561) 691-5000 Fax: (561) 691-5006
Hawaii: P.O. Box 3619, Honolulu, HI 96811 (808) 733-3373 Fax: (808) 733-3374
Washington: 10940 NE 33rd Place, Suite 210, Bellevue, WA 98004 (425) 576-0484 Fax: (425) 576-9565
E-mail: plf@pacificlegal.org • Web Site: <http://www.pacificlegal.org>

President Judy Arnold and
The Marin County Board of Supervisors
July 29, 2013
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Whether or not an exclusion based on *geography* may be prohibited, an exclusion based on the *nature of a project*—like agriculture-related development—is not. That is because Section 30610.5(b)'s limitation does not apply to Section 30610(e)'s provision allowing the exclusion of "[a]ny category of development." Thus, the County has a legal way of obtaining an important goal for its agricultural constituents by requesting, by way of an LCP amendment, that the Coastal Commission exclude agriculture-based projects (including all those projects listed in the existing Agricultural Exclusions in the Categorical Exclusion Orders) from the costly and burdensome CDP process. We would note that the County's LCP (C-AG-2.a) already contemplates the possibility of using this legal strategy of obtaining relief for the agricultural community. That section provides for "review [of] aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that do not cause adverse environmental impacts and, hence, could be eligible additions to the categorical exclusion."

In addition, the County could consider other amendments to its LCP to accommodate the pressing needs of the agricultural community. One such proposed amendment that would be consistent with the Coastal Act, for example, could specifically define the term "lot" in the last sentence of Section 30610.5(b)—a term that is undefined in the Coastal Act. The term "lot" in this context could be defined to mean a "a buffer that runs inland from the beach/mean high tide line (MHTL) by X feet." This would substantially alleviate the present inequity of designating certain inland lots that are not adjacent to the beach/MHTL as Excludable Areas, while *not* excluding large portions of agricultural lots that happen to be adjacent to the beach/MHTL, but that may run inland to the same extent as those excluded lots.

We hope that you will seriously consider these options as tools to support sustainable agriculture in Marin County.

Sincerely,



PAUL J. BEARD II
JENNIFER F. THOMPSON
PACIFIC LEGAL FOUNDATION

Attorneys

President Judy Arnold and
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July 29, 2013
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Nancy Gates, Coastal Landowners for Agricultural Sustainability and Security ndgates@pacbell.net



PACIFIC LEGAL FOUNDATION

Th/2a

May 12, 2014

Mr. Kevin Kahn
District Supervisor, LCP Planning
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

VIA EMAIL: kevin.kahn@coastal.ca.gov

Re: Agenda Item No. Th 12a--May 15, 2014 Meeting
Marin County LCP Amendment No. LCP-2-MAR-13-0224-1 Part A
Marin LUP Update

Honorable Commissioners,

Pacific Legal Foundation attorneys submit for the record the attached letters addressing specific concerns with provisions of Marin County's Local Coastal Plan Amendment. While the policy numbers referenced in these letters may have changed in the document currently before the Commission, the issues have not. And the arguments remain relevant. As the letters explain, the Foundation's attorneys are very concerned that the LCPA, as drafted and with the Commission's staff's suggested modifications, does not adequately protect Marin County property owners' right to the beneficial use and enjoyment of their property. Clarifying the LCPA, as the letters suggest, will ensure that the document incorporates state and federal constitutional property rights' protections, which may help to insulate the Commission, and the County, from future legal challenges.

Thank you for your careful consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Beard".

PAUL J. BEARD
JONATHAN WOOD
JENNIFER F. THOMPSON
Attorneys for Pacific Legal Foundation

Enclosures

Th/2a

John Becker

PO BOX 1102

Inverness CA 94937

May 6, 2014

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

RECEIVED

MAY 08 2014

CALIFORNIA
COASTAL COMMISSION

Dear Commission:

My name is John Becker, and I am a full time resident of Inverness, CA, 94937. I moved to Inverness because of coastal protections preserving the nature of West Marin.

I generally support the "talking points" of the Environmental Action Committee of West Marin.

The California Coastal Commission is meeting at the Inverness Yacht Club on May 15, 2014. One proposed agenda item significantly reduces weakened coastal regulations proposed by Marin County for West Marin Coastal zone.

Please **advocate for strong coastal protection** and not for reduced and/or weakened coastal protection. Please do not unravel effective coastal protection. Please ensure compliance with a strong Local Coastal Plan which maintains local coastal protection for generations as the Commission hears arguments relevant to North Coast development and protection.

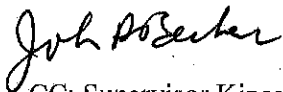
My view is **STRONG** coastal protection and enforcement is necessary for the preservation of West Marin values.

Please:

- Advocate strong coastal protection without significant development
- Please **do not** support Marin County proposals for weakened coastal protection
- Require well defined MC Permits with implementation oversight

Sincerely,

John A. Becker



CC: Supervisor Kinsey, Marin County

Executive Director, EAC of West Marin

JAngusBecker@gmail.com

Phone: 415-669-7524

Fax: 206-376-1920

Th/2a

Linda Emme

lindaemme708@gmail.com
415.663.8633
lindaemme.com

California Coastal Commission
c/o Charles Lester, Executive Director
45 Fremont Street #2000
San Francisco, CA 94105-2219

clester@coastal.ca.gov
cc: jstaben@coastal.ca.gov

May 8, 2014

RE: Vote against the LCP changes proposed by Marin County.

1. Do not allow Marin County to remove the right of appeal to the CA Coastal Commission. This is a give away to developers at the cost of protecting the coast.

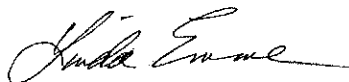
Is Marin County always right? NO! The people presently in power back development at the cost of the environment as seen in the County's failure to adequately protect coho salmon in San Geronimo Valley.

Please do not allow Marin County to take away the citizen's right to question a development project through appeal to the CCC. That is putting all of the decision making power in just a very few hands that can be influenced by campaign donations rather than the public good. In my experience, the CCC is a reasonable government body that is charged with protecting the coast and has done a remarkable job.

2. Viticulture should be categorized as a "conditional use" rather than a "principally permitted use". Viticulture is unsuited to West Marin's climate. Water is in short supply. Vining plants can not grow in salt winds. Grapes can not ripen in fog. To tear up the grasslands of West Marin - with many native grasses and wild flowers - to plant grapes, which will not grow here, is unwise and should be monitored by the CCC.

Thank you for considering my views.

Sincerely,



Linda Emme
44 year resident of West Marin

Th12a

May 9, 2014

5 Ahab Drive
Muir Beach, CA 94965

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

Re: Comments on Marin County LUPA No. LCP-2-MAR-13-0224-1 Part A.

Dear Commissioners,

Thank you for the opportunity to comment on the proposed draft of the LUPA. We hope that these suggestions will assist the Commission as it considers the LUPA in order to promote the Coastal Act's objective of protecting the coastline and its resources. *Landgate, Inc. v. California Coastal Commission* (1998) 17 Cal.4th 1006, 1011.

Visual Resources C-DES-2.

As stated in our letter dated September 1, 2013 p.3, we believe this provision should use the statutory language "to and along the ocean and scenic coastal areas" instead of "to and along the coast." There appears to be no good reason not to track the language in Public Resources Code Sec. 30251, which is more comprehensive.

We urge you to delete as unnecessary the language "rather than coastal views from private residential areas." The preceding sentence and the sentence in which this phrase appears make perfectly clear that protected views are from public viewing areas as defined. See our letter dated September 1, 2013 p.4; letter to Jack Liebster dated July 10, 2013 p.2. Adding surplusage, particularly the phrase "private residential areas", is superfluous and muddies what is perfectly clear.

This is not a quibble over semantics. The phrase is too vague to carry out the intent of the Coastal Act. Because the LUP has the force and effect of a statute, it should be as specific as possible in order to avoid unforeseen applications in the future.

If such language must be included, the following history should be considered. At one time the California Coastal Commission had adopted the following statement:

"The primary concern under this section of the Act is the protection of ocean and coastal views from public areas such as highways, roads, beaches, parks, coastal trails and accessways, vista points, coastal streams and waters used for recreational purposes, and other public preserves *rather than coastal views from private residences where no public vistas are involved.*"

Schneider v. California Coastal Commission (2006) 140 Cal.App.4th 1339, 1346-47.
(italics added)

The version of C-DES-2 adopted by the Planning Commission contained the final sentence regarding private residences. When it got to the BOS the CDA staff changed the phrase "private residences" to "private residential areas" and eliminated the phrase "where no public vistas are involved." See our letter dated July 10, 2013 p.2 (Liebster). This change was approved, introducing uncertainty by use of the phrase "residential areas" and omitting the key phrase "where no public vistas are involved."

All we are asking is that the Commission return to the *status quo ante* and use its own language that was cited in the *Schneider* case. That language is crystal clear and, in contrast to the proposed language, carries out the intent of the Coastal Act.

Community Plans C-INT-3

The statement that only the community plans in Dillon Beach and Bolinas Gridded Mesa have been certified by the Coastal Commission ignores the fact that in *Hyman v. California Coastal Commission*, the Marin County Superior Court held that the Muir Beach Community Plan was incorporated into the certified LCP for Unit 1. Rulings on Petitioners' Request for Judicial Notice, Petitioners' Motion to Deem Facts Admitted, Request to Strike Verified Crosby Answer and Augment the Record, and the Petition for Writ of Mandate, pp. 4, 17-18, 33-34) In our opinion the California Coastal Commission, as a party to that litigation, will be bound by this ruling in any future litigation involving the certification issue by principles of *res judicata* and collateral estoppel.

Even if that were not the case, the Staff Report does not address the substance of the Court's reasoning which was based on the undisputable fact that the Muir Beach Community Plan was extensively discussed in the LCP and approved with two specified exceptions. Absent a persuasive explanation refuting the Court's reasoning, the Muir Beach Community Plan should be accorded the same status as the Dillon Beach and Bolinas Gridded Mesa community plans.

Please see our letter dated June 10, 2013 and others incorporated by reference.

Any reference in the LUPA to a de minimis waiver procedure should be limited to the Coastal Commission

The Introduction at page 3 contains the following sentence: "Any activity meeting the definition of development within the Coastal Zone requires a Coastal Permit unless the development is categorically excluded, exempt, or *qualifies for a de minimis waiver*, consistent with Chapter 22.68." (italics added) As we have pointed out in prior correspondence, the statute invests exclusive authority regarding *de minimis* waivers in

the Coastal Commission. See our letters dated June 10, 2013, June 21, 2013, July 10, 2013 p.3 (Liebster).

The Development Code is not before the Commission at this time. If this phrase is included in the LUPA, it should make clear that only the Coastal Commission has the authority to grant a *de minimis* waiver.

Change the term "new development" to "development"

The term "new development" is a defined term in the Public Resources Code and is limited to public access issues. To avoid confusion, all references to "new development" should be changed to "development" unless reference is being made to access issues. For example, Sec. C-DES-3, relating to protection of ridgeline views, refers to "new development" in the opening sentence. See our letter dated June 10, 2013 p.4 and others incorporated by reference.

Thank you for your consideration.

Richard and Brenda Kohn

Marquez, Maria Elena@Coastal

Th/29

From: jevens <avocetra@gmail.com>
Sent: Friday, May 09, 2014 2:28 PM
To: CoastalMarinLCP
Subject: Marin Local Coastal Plan Amendment

Dear Commissioners:

The amendments proposed to the Marin LCP would undermine nearly a half-century of hard won coastal protections by promoting the build-out of "legal lots" on agricultural lands.

This amendment is in direct conflict to protections ratified in 1972 under the Coastal Act (##s 30241, 30242, and 30250) and works at cross purposes with the Williamson Act.

Please require that this proposal is subjected to full public scrutiny and appropriate analysis under CEQA, otherwise the credibility and ultimate viability of the Coastal Commission will be placed in jeopardy.

These brief comments are submitted in honor of the late Peter Douglas.

Respectfully,

Jules Evens

Jules Evens, Principal
Avocet Research Associates, LLC
P.O. Box 839
Point Reyes, CA 94956

avocetra@gmail.com
415/706-3318 (mobile)
415/663-8032 (office)

Introduction to California Birdlife - Jules Evens - Paperback - University of California Press

Natural History of the Point Reyes Peninsula, Fully Revised and Expanded Edition - Jules Evens - Paperback - University of California Press

Field Guide to Birds of the Northern California Coast - Rich Stallcup, Jules Evens - Paperback - University of California Press

Th12a

From: Amy Trainer <amy@eacmarin.org>

Date: May 9, 2014, 10:53:52 AM PDT

To: "Mary (mkshallenberger@gmail.com)" <mkshallenberger@gmail.com>, Jana Zimmer <zimmerccc@gmail.com>

Subject: additional analysis on Marin LCP

Dear Mary and Jana,

Yesterday afternoon I talked with Charles and Dan Carl about our serious concerns about the Marin LCP Amendment allowing huge amounts of new residential and commercial development by right.

Their response was that it wasn't much of a change, that Marin's Certified Land Use Plan already allowed a residence on each legal lot.

We put together the attached analysis and excerpts from the Marin Certified LUP that clearly show that for the past 30+ years agricultural production lands have only been allowed 1 residence per "parcel" which is all contiguous lots under common ownership, and that this residence was not the PPU for appeal purposes.

I hope you find this helpful. This and the prior analysis will form the basis of our comment letter which I hope to complete and submit Monday afternoon.

Thanks,
Amy

Amy Trainer
Executive Director
Environmental Action Committee of West Marin
Box 609 Point Reyes, CA 94956
amy@eacmarin.org
(415) 663-9312 office
(415) 306-6052 cell

Protecting West Marin Since 1971!

www.eacmarin.org

www.savepointreyeswilderness.org

www.pointreyesbirdingfestival.org

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*Those who contemplate the beauty of the Earth
find reserves of strength that will endure
as long as life lasts. ~ Rachel Carson*

Marin County's Wholesale Policy Shift For Development on Agriculture Production Lands Is Not Supported By Any Findings or the Applicable Coastal Act Policies

Under the Marin Certified LCP a residential development on a Coastal-Agriculture Production Zone parcel is appealable to the Commission. A parcel is defined as "all contiguous assessor's parcels under common ownership." Little residential development has occurred in over thirty years, thereby achieving Chapter 3 policies to protect the maximum amount of agricultural land in production. The Commission's guidance document¹ for updating LCPs, the plain language of Marin's Certified LCP, and our analysis of appeals in agricultural districts support continuation of these essential concepts.

Conversely, Marin County's submitted LCP Amendment is a fundamental and wholesale change from Marin's existing LCP policy that does not follow the Commission's guidance or the Coastal Act. The excerpts below make clear that this is the case because the Marin LCP Amendment would change policy on agriculture production lands so that:

- 1) A residence could be built on every legal lot, rather than one for all contiguous parcels under common ownership,
- 2) All residential development is considered a "Principal Permitted Use" and thus not subject to appeal to the Commission, whereas such appeal has been allowed for over 30 years,
- 3) A significant amount of new residential housing could be built for and occupied by persons having nothing to do with the agricultural operation, and
- 4) The potential build-out that the Marin LCP Amendment would permit directly conflicts with Coastal Act policies 30241, 30242, and 30250.

The consequence of this wholesale policy shift, according to Marin County's build-out analysis, would be to allow an enormous amount of new residential and commercial development by right – over 1 million square feet. Neither Marin County nor the Commission staff report have directly addressed this potential and its clear conflicts with the Coastal Act. This reversal of policy should not be supported if we are to have meaningful protection of our agricultural production zone lands in West Marin.

The Marin Certified LCP

- In agricultural references the Marin County certified Land Use Plan (LUP) consistently regards a "parcel" as "all contiguous assessor's parcels under common ownership."

¹ CCC: LCP Update Guide: Examples and Citations for Some Recommendations and Suggestions. (Published April 2007; revised July 31, 2013.)

- In analyzing potential build-out for agriculturally-zoned land, the LUP uses the same definition – a parcel is defined as “all contiguous assessor's parcels under common ownership.”
- The LUP requires that a master plan for planned districts (including C-APZ) ... “shall include at least all contiguous properties under the same ownership.”
- The LUP enumerates Principal Permitted Uses (PPUs) that are permitted in all C-APZ districts subject to an approved master plan.
- For the C-APZ district, the LUP allowance for a single-family dwelling is one dwelling for “all contiguous parcels under common ownership.”
- The certified IP defines “parcel” as “all contiguous assessor's parcels under common ownership (unless legally divided as per Title 20, Marin County Code).”

Coastal Commission Documents

The Commission’s LCP Update Guide states that an LCP Update should include standards for agricultural areas that require that:

- **residential use is a conditional use, (not PPU)**
- **is restricted to one home per parcel**
- is only for an agricultural owner or operator

On two appeals of Marin agricultural Coastal Development Permits the Commission staff has consistently found that on a C-APZ parcel:

- development of a **residence is not the PPU**
- development of a **residence is therefore appealable** to the Commission

In certifying LCP Amendments, the Commission has required modifications that:

- identify the single PPU for purpose of appeal
- designate residential use as a non-appealable use in a timberland production district (Mendocino County)

The Proposed Marin LCP Amendment

Marin County’s LCP Amendment submission (LCPA) states incorrectly that the Certified LCP’s definition of “parcel” as “all contiguous assessor’s parcels under common ownership” has not been deleted, but maintained and relocated in the LCPA:

Marin LCPA Cross-out/Underline Comparison to Unit I and II:
AGRICULTURE Policies. In the table, yellow in the LCP column indicates relocated text:

b. "Parcel" is defined as all contiguous assessor's parcels under common ownership. See LUPA Ex4 p10; (pdf. p1518)

In fact, the LCPA 22.130 defines:

"Parcel" (coastal). See "Legal Lot of Record"

"Legal Lot of Record" is defined as a parcel created in conformance with either
a) a recorded subdivision, b) individual lot legally created by deed, or c) government conveyance.

LCPA policy C-AG-2 states that:

In the C-APZ zone, the principal permitted use shall be agriculture as follows:

...

6. Accessory structures or uses appurtenant and necessary to the operation of agricultural uses, including **one farmhouse per legal lot**, one intergenerational home, agricultural worker housing, limited agricultural product sales and processing, educational tours, agricultural homestay facilities with three or fewer guest rooms, barns, fences, stables, corrals, coops and pens, and utility facilities (not including wind energy conversion systems and wind testing facilities).

Excerpts from supporting documents

Marin County Certified LCP LUP - Unit II

p. 79

LAND ACREAGES

Parcel and farm sizes. The 37,000 acres of agricultural land in Unit II are divided into approximately 155 parcels, (One **"Parcel" is defined as all contiguous assessor's parcels owned by one individual or group.** Although there is some question about the effect of recent state legislation on merged parcels, the County of Marin does have a merger ordinance which, in the opinion of County Counsel, most likely merges these agricultural parcels. The specific effect of the legislation would have to be determined on a case-by-case basis.)

p. 87

EXISTING AGRICULTURAL POLICIES IN MARIN COUNTY – PLANNING ISSUES

The build-out potential under the Countywide Plan for agricultural lands in the Unit II coastal zone can be calculated by applying existing zoning densities. Build-out figures for lands zoned A-60 or ARP-60 are given in Table 12. One **"parcel" is defined as all contiguous assessor's parcels under common ownership,**

p. 88

Sections 30241, 30242, and 30250(a) of the Act support the preservation of agriculture

by strictly limiting conversion of agricultural lands to other uses. Any potential land use regulation must be evaluated, to a large degree, for its effectiveness in achieving this goal.

p. 89

Studies of agriculture estimate that approximately 400 to 1200 acres are needed to operate a dairy in Marin County while beef grazing operations need 500 acres or more.

Given the requirements of dairy and grazing operations in Marin County, it is apparent that units of land larger than 60 acres are needed to maintain agriculture. **Over the long term, this relatively small parcel zoning serves as a subdivision plan which slowly erodes the agricultural land base and permanently reduces the amount of land necessary to maintain agricultural uses.** . . . the LCP has, however, made major changes in the pattern of potential parcel configuration by requiring clustering and has added numerous conditions which must be met before development can be permitted. (Emphasis ours)

p.89

BUILDOUT POTENTIAL/CONCENTRATION OF DEVELOPMENT

The build-out potential of lands in Unit II zoned A-6 is 442 units total, 28 on parcels 60 acres or less in size and 417 on parcels greater than 60 acres. . . . ***Build-out at this scale raises several conflicts with the Coastal Act.*** One of the major conflicts is with the Act's policies requiring that new development be located within or close to existing developed areas or in other suitable areas where it can be concentrated (Section 30250(a)). ***The purpose of these policies is to avoid sprawl and its associated environmental and economic costs.***

Buildout under A-60 zoning would spread evenly at low density over 37,000 acres of agricultural land in the Unit II coastal zone, **inefficiently utilizing the land, requiring large investments for public services, and pushing out agricultural uses.** A more desirable alternative would be to cluster development in a few selected locations and to direct new construction to existing communities where it could be accommodated. LCP policies are written to achieve these purposes. (Emphasis ours)

p. 100

6. Definitions and uses. The **definition of agricultural uses in the APZ** is given below,

...

- h. One single-family dwelling per parcel. **"Parcel" is defined as all contiguous assessor's parcels under common ownership.**

Marin County Certified LCP LUP - Unit I

p. 35

Of these two general levels of agricultural land use, the first, consisting of **the larger**

agricultural holdings on Bolinas Mesa, is presently zoned as minimum 60-acre lot size zoning. These lands, however, share the same issues and potential responses as many of the agricultural lands in Unit II. ... it is more appropriate and expeditious to delay consideration of this issue in Unit I and combine its consideration with Unit II's agricultural land use policy formation. ... This approach seems particularly appropriate given the very small proportion of such agricultural lands in Unit I.

Marin County Certified LCP Implementation Plan

22.57.030I C-APZ--Coastal agricultural production zone districts.

...

22.57.032I Principal Permitted Uses. The following uses are permitted in all C-APZ districts subject to an approved master plan:

2. One single-family dwelling per parcel. **Parcel is defined as all contiguous assessor's parcels under common ownership (unless legally divided as per Title 20, Marin County Code).**

Chapter 22.45I

PD-DISTRICTS--PLANNED DISTRICTS

22.45.030I Plan area.

The area of the **master plan and development plan shall include at least all contiguous properties under the same ownership.** The area may also include multiple ownerships.

CCC: LCP Update Guide: Examples and Citations for Some Recommendations and Suggestions²

Part I - Updating LCP Land Use Plan (LUP) Policies

(Published April 2007; revised July 31, 2013.)

Residential Use

One of the more recent trends that threatens agricultural land viability is the development of residential uses not in direct support of agriculture, especially large "statement" homes. Non-agricultural residential development can change the real estate values in agricultural areas so as to negatively affect the viability of continuing agriculture. It also introduces residential use that may conflict with on-going surrounding agriculture,

² <http://www.coastal.ca.gov/la/lcp.html>

potentially placing pressure on agriculture to be reduced.

To resist a trend to change the character of an agricultural area to a more residential setting, **an LCP update should consider revising criteria for residential approval to ensure that it supports agriculture. For example, standards can require that any residential use:**

- **is a conditional (not principally permitted) use,**
- **is only for an agricultural owner or operator,**
- is allowed only upon an analytic conclusion that it will not diminish the productivity or viability of agricultural land or the ability to keep agricultural land in production (see following section: "Agricultural Land Conversion Criteria"),
- is governed by size limits, placement on a parcel, and design criteria,
- **is restricted to one home per parcel,**
- does not lead to subdivision,
- **is on a parcel protected for continued agricultural use (see following section: "Affirmative Agricultural Easements").**

Part II: Updating LCP Implementation Plan (IP) Procedures

(Published 2010.) Last updated: January 6, 2011

http://www.coastal.ca.gov/la/lcpguide/lcp_ip_guide.pdf

Appendix B: Examples and Citations for Some Recommendations and Suggestions

Pp.99-101

For the context of this example, please see the Commission staff reports for Del Norte County's LCP Amendment

For counties, update the IP to show only one principal permitted use in each zoning district.

EXAMPLE: Commission suggested modifications to excerpt from county's agricultural zoning district [see especially text in bold]:

21.08.020 The principal permitted use.

The principal permitted agriculture exclusive use entails all agricultural uses including horticulture, crop and tree farming, livestock farming and animal husbandry, including dairies, public and private stables, but excepting feed lots and accessory buildings and uses including barns, stables, greenhouses constructed without a slab or perimeter foundation, and other agricultural buildings. These respective uses are not appealable to the California Coastal Commission pursuant to Section 21.52.020(A) (3) and Public Resources Code (PRC) Section 30603(a)(4), but may be so appealed pursuant to other provisions of Section of PRC Section 30603.

21.08.025 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:

A. A farm dwelling with appurtenant uses including home occupations, and appurtenant accessory structures. A manufactured farm dwelling may be placed in lieu of a conventional farm dwelling; and

B. Farm quarters for up to five farm laborers employed full-time on the premises. Manufactured farm quarters may be placed in lieu of conventional farm dwelling units. (Ord. 2009-___ § _ (part))

Commission analysis of appeals in agricultural districts

In two appeals of Marin County coastal permits the staff found that residential development is not a principal permitted use in the agricultural production zone.³

For Mendocino County's LCP amendments the Commission found that only forest production uses are the principally permitted use in the timberland production district and rejected that county's inclusion of residential uses for purposes of appeal.⁴

Brader-Magee staff report

W10a, 9/2/2010

Appeal No. A-2-MAR-10-022 (Tony Magee and Dillon Vision LLC, CP-09-39),
17990 Shoreline Highway, Marshall, Marin County. Filed: June 1, 2010.

p2. Pursuant to Coastal Act Section 30603(a)(4), this [Marin County] approval is appealable to the Commission because the approved **project involves development approved by a coastal county (i.e., the proposed single family residence) that is not designated as the principal permitted use in the Coastal, Agricultural Production Zone (C-APZ-60)** in the certified zoning ordinance. (Emphasis ours)

A-2-MAR-10-022 (Magee and Brader)

W9a, 3/6/2013

p. 25

D. APPEAL HISTORY

Pursuant to Coastal Act Section 30603(a)(4), the County's approval was appealable to the Commission because the approved **project involves development approved by a coastal county (i.e., the proposed farmhouse) that is not designated as the principal permitted use in the Coastal, Agricultural Production Zone (C-APZ-60)** in the certified zoning ordinance. (Emphasis ours)

³ Hansen-Brubaker (2/14/03), Brader-Magee (9/2/10).

⁴ Mendocino County LCP Amendment No. MEN-MAJ-1-08 (4/28/11).

... on September 15, 2010, the Commission conducted a public hearing on the six substantial issue questions raised in the appeal ... the Commission determined that the appeal of the Marin County-approved coastal permit CP-09-39 raised a substantial issue with respect to the policies of the certified Unit II Local Coastal Program (in particular, potential project impacts on ESHA and public views, and the County's waiver of the agricultural master plan requirement), that the County's approval of CP-09-39 no longer governed, and that the Commission would consider the consistency of the proposed project with the certified LCP *de novo*

Hansen Brubaker

A-2-MAR-02-234

Hearing 3/6/2002

Appellants: Commissioners Wan and Desser, EAC

p. 6 Under Coastal Act Section 30603 only one use can be designated "principally permitted use" for purposes of appeal. Since [Marin] Zoning Code Section 22.57.032 allows for the designation of more than one principally permitted use, **the approved residential development cannot be considered as the principally permitted use of the agriculturally zoned site.** Moreover, even if, residential development may be considered a principally permitted use if it is the subject of an approved master plan, **no master plan was prepared for the approved development. Thus, the approved residential development cannot be considered a principally permitted use. Therefore, the approved development is appealable under Section 30603(a)(4) of the Coastal Act.**

MEMO May 3, 2004

TO: Commissioners and Interested Persons

FROM: Peter Douglas, Executive Director

RE: Protecting Views from the Ocean Under the Coastal Act

CDP Appeal: A-2-Mar-02-024 (Hansen and Brubaker). Although the project was withdrawn after the Commission's staff report was published and the Commission never had the opportunity to act on this appeal, a major issue in the staff report dealt with the adverse visual impacts the project would have on views both from nearby public parklands as well as from the waters of Tomales Bay. Public opposition also focused on these impacts, as did that of the National Park Service and State Parks.

The proposed project was for a one story, 23-foot high, 3,113-square-foot single family residence, 336-square-foot detached guest house, 937-square-foot detached garage and a garden storage building and 26.5-foot high, 1,920-square-foot detached barn/equipment storage building on a 207 acre parcel. The Commission received two appeals of the County's approval of the proposed development contending, among other issues, that the approved development is inconsistent with local coastal plan visual resource protection policies because it is sited in a visually prominent location on the parcel, is not compatible with the character of the surrounding natural environment, and obstructs significant views as seen from public viewing places, including the waters of Tomales Bay. The staff recommended denial because of the project's adverse impacts on scenic resources and recommended that the project be redesigned and the structures resited in a less visually prominent location of the property. After the staff report was published, the applicant dropped the project.

Marquez, Maria Elena@Coastal

Th/29

From: John Kelly <kellyjp@egret.org>
Sent: Saturday, May 10, 2014 11:11 AM
To: CoastalMarinLCP
Subject: Comments on the Marin County LCP amendment proposal
Attachments: Kelly and Evens to CCC re Marin LCP.pdf

Greetings,

Please consider the attached comments on the Marin County LCP amendment proposal. Thank you.

Sincerely,

John Kelly and Jules Evens



John P. Kelly, PhD
Director, Conservation Science
Audubon Canyon Ranch
Cypress Grove Research Center
415/663-8203
kellyjp@egret.org

www.egret.org

Audubon Canyon Ranch protects nature through land preservation,
nature education and conservation science.

Tomales Bay Supports 80,000-100,000 Water Birds Annually

By Jules G. Evens¹ and John P. Kelly PhD²

¹ Jules G. Evens, Principal, Avocet Research Associates, Point Reyes Station, CA; email: avocetra@gmail.com. Author, *Natural History of the Point Reyes Peninsula*, University of California Press (2008)

² John P. Kelly, Director of Conservation Science, Audubon Canyon Ranch, Stinson Beach, CA; email: kellyjp@egret.org

May 11, 2014

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

Re: Marin County LCP amendment proposal

Dear Dr. Lester,

We are writing to correct an error in the Marin County Local Coastal Plan amendment proposal (LCPA) regarding the number of waterbirds that migrate through and utilize Tomales Bay for critical forage and resting. The "Biological Resources" section of the LCPA states that approximately 20,000 birds utilize Tomales Bay. However, the actual number as documented by more than 20 years of scientific research and monthly bird counts is 80,000-100,000 birds.

In addition, we are concerned that any of the LCPA may allow an increase or expansion of mariculture operations, and we strongly oppose any such expansion. Mariculture operations in Tomales Bay are serviced by motorized boats which have measurable impacts to waterbirds.

The peer-reviewed literature documenting the effects of disturbance to waterbirds by motorcraft in estuarine environments is robust (e.g., Kaiser and Fritzell 1984, Kahl 1991, Burger 1991, Dahlgren and Korshgwn 1992, Davidson & Rothwell 1993, Galicia and Baldasserre 1997, Madsen 1994, York 1994, Avocet Research Associates 2009, Takekawa 2008). Available scientific evidence, (including sources referenced below) strongly supports the conclusion that the cumulative impacts of daily intrusion by watercraft cause flight responses in loafing and foraging waterbirds that impose energetic costs and challenge their daily energy balance. Allowing such costs is at odds with the enabling legislation of the Estero for the "maximum protection, restoration, and preservation of the natural environment within the area."¹

¹ www.nps.gov/pore/parkmgmt/upload/lawsandpolicies_publiclaw94_544.pdf

"Disturbance" describes any interruption in the normal behavioral or ecological needs of waterbirds. Normal behaviors primarily involve foraging or roosting, although social interaction and community dynamics may be affected as well. "Flushing" is the most observable response to disturbance and involves moving away or fleeing from the source. In waterbirds, a flushing response includes swimming, diving, or flying and is usually preceded by an alert response (e.g., "head alert"). Subtle behavioral or physiological responses to disturbance, such as increased heart rate or the production of stress hormones, are likely to precede flushing (Tarlow and Blumstein 2007). Many studies have demonstrated that shorebirds and other waterbirds concentrate where there is the best opportunity to maximize energy gain (Cayford 1993, Davidson & Rothwell 1993).

Flushing may reduce the time waterbirds spend feeding, or resting, and cause them to move to suboptimal feeding or resting areas. Studies have documented displacement of wintering waterfowl to less productive foraging areas (Tuite et al. 1983, Knapton et al. 2000) or complete abandonment of foraging habitat under increased levels of disturbance (Tuite et al. 1983). Repeated flushing increases energy costs to waterbirds, and may have cumulative effects on migratory energy budget and, ultimately, reproductive success (Ward and Andrews 1993, Galicia and Baldassarre 1997, Cywinski 2004).

Waterbirds almost invariably rely on energetically expensive flight as a response to disturbance. To compensate for increased levels of disturbance, they must either increase their food intake to balance additional flight costs, or fly to other less profitable but less disturbed areas to feed. Waterbirds must also accumulate fat and protein reserves to override winter periods of low food availability, prepare for migration, and to store energy for breeding. If feeding opportunities are already restricted, or birds cannot balance their energy needs, increased disturbance could lead to abandonment of the area, reduced fitness, reduced reproductive success, or starvation (DavidsonEvens and Kelly, Comments on Drakes Estero DEIS Page 4 of 14 and Rothwell 1993, Baldassarre and Bolen 1994). Movement patterns and foraging behavior of waterfowl represent a balance between costs and benefits of wintering in a human-influenced environment (Reed and Flint 2007).

Waterfowl raft in dense flocks as an anti-predator, "safety in numbers" strategy. The energetic costs are equivalent whether flocks are flushed by predators or by boats, but the additional costs imposed by boat disturbance increases their overall costs relative to undisturbed conditions. Many studies have documented loss of feeding time due to disturbance by watercraft (op. cit.). In general, approaches from the water disturb birds more than from the land; e.g., in one study, curlews flew from a sail board at 400 m away compared with about 100 m from a walker (Smit & Visser, *in* Rothwell & Davidson 1993). Mathews (1982) studied water-based recreation in Britain and ranked power-boating as the greatest disturbance to wintering waterfowl, followed by sailing, wind-surfing, rowing, and canoeing.

Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of the feeding cycle. Fox et al. (1993) showed that American Wigeon (an abundant species in Drakes Estero) flushed from eelgrass feeding areas will abandon the area until the next tidal cycle unless the disturbance occurs early in the feeding cycle. Brant, which also feed tidally in eelgrass in Tomales Bay, display similar distributional responses (Henry 1984, Stock 1993).

It is difficult to determine or predict when and what level of disturbance will threaten the energy balance in waterbirds. Even before birds begin to operate on an energy deficit, disturbance behaviors may compromise their foraging efficiency, avoidance of predation risk, and selection of particular habitat areas. During certain conditions and times of year, waterbirds are close to their energy balance thresholds and are, therefore, more vulnerable to increased energy demands imposed by disturbance.

For example, waterbirds are likely to be particularly vulnerable to disturbance during

- periods of prolonged storm events, when foraging is more difficult and the energy demand for thermoregulation is higher (Kelly et al. 2002)
- periods of feather molting, which involve significant increases in energy demand
- migratory and pre-migratory periods, which exact heavy energy costs and require waterbirds to build up stores of fat in preparation for their long-distance migration from Tomales Bay to their nesting northern grounds in the spring.

Indeed, available evidence indicates that, prior to spring migration, birds are feeding at or near their maximum intake (Ens et al. 1990). Rodgers and Schweikert (2003) recommended that buffer zones for mixed-species flocks should be based on the largest flush distance or the species most sensitive to human disturbance. They developed a formula for determining waterbird sensitivity to disturbance, based on disturbance response distances that account for at least 95 percent of the expected disturbance responses.

In estimating these distances, they included an additional 40 m to their probability estimates to account for unmeasured responses not observable in the field (e.g., increased heart rate and other physiological responses). The addition of 40 m to the buffer zones was considered to be an important safety margin, to minimize adverse (undetectable) impacts to birds before they actually flush, and to account for the increased sensitivity of larger flocks and mixed species assemblages to human distance (Thompson and Thompson 1985).

In a waterbird disturbance study conducted in San Francisco Bay (Avocet Research Associates 2004, 2009), scaups (*Aythya* spp.) showed the greatest sensitivity to disturbance and were one of the most abundant waterbird species studied; scaup species are also abundant in Tomales Bay.

"Black" Brant is a California Bird Species of Special Concern (Davis and Deuel 2008) that relies heavily on Tomales Bay as a "refueling" site during its annual migrations from winter estuarine habitat in Mexico to nesting areas in the low Arctic (Shuford et al.

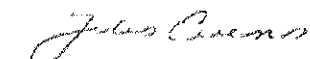
1989). Numbers of Brant can be very high in the Tomales Bay, ranging upward to 5000 individuals during migratory peaks (Davis and Deuel 2008). Brant are obligate eelgrass (*Zostera maritima*) foragers and their fitness is determined by the availability of this primary forage plant (Reed et al. 1998). Brant are expected to exhibit an enhanced sensitivity to disturbance (taking flight at greater distances from oyster boats) when they are feeding in eelgrass areas than when they are resting (Mori et al. 2001).

The dramatic, historic decline and shift in Brant abundances from primary wintering areas in California in the 1950s, southward into Mexico, are thought to have been a response to disturbance from hunting and other human activities and a reduction in the abundance of eelgrass (Derksen and Ward 1993, Unitt 2004, Harris 2005, Moore and Black 2006). Conversely, recent increases in numbers of wintering Brant (Davis and Deuel 2008) have been attributed to a long-term reduction in disturbance (Moore and Black 2006) and the more recent recovery of eelgrass habitats along the California Coast (Unitt 2004).

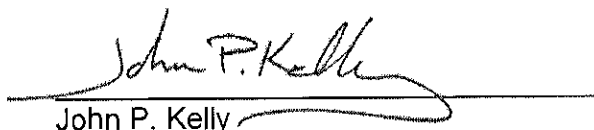
Kramer (1976) and Owens (1977) found that Brant were highly sensitive to human disturbance during the fall and winter months. Disturbance during winter and staging is of particular concern because it can negatively affect the ability of Brant to build energy reserves for migration and breeding and thus lower reproductive success (Henry 1980, Derksen and Ward 1993, Reed et al. 1998, Ward et al. 2005).

Thank you for your consideration.

Sincerely yours,



Jules Evens



References cited above are provided in the following publication:

[www.eget.org/sites/default/files/scientific contributions/kelly evens waterbird disturbance tech rpt 2013pdf.pdf](http://www.eget.org/sites/default/files/scientific%20contributions/kelly_evens_waterbird_disturbance_tech_rpt_2013pdf.pdf)

Marquez, Maria Elena@Coastal

Th/2a

From: Tim Stanton <tkeelst@aol.com>
Sent: Sunday, May 11, 2014 4:34 AM
To: CoastalMarinLCP
Subject: Marin County LCP Amendment Proposal

To the California Coastal Commission:

I am deeply concerned by Marin County's proposed Local Coastal Plan Amendments that will be voted on by the Commission on May 15th. Marin County's LCP Amendment would allow over one million square feet of new residential and commercial development by right on agricultural production lands almost entirely without public hearings or right of appeal to the Coastal Commission.

Conversely, Marin's Certified Local Coastal Plan intentionally limited residential development with support from the agricultural community in order to limit development pressure and maintain the maximum amount of agricultural land in active production. The switch from using the definition of "parcel" to "legal lot" is the significant change that is absolutely critical here, as is the entitlement by right to additional residential development. The proposed LCP Amendment results in a substantial increase in the entitlement by right of residential development on C-Agricultural Production Zone lands for each lot, rather than each farm.

Based on the County's build-out analysis, 129 new residential units could currently be built by right. Each legal lot can have up to 7,540 square feet of residential development on it. Within ten years, if all Williamson Act contracts expired, the number of new residential units, including "farmhouses" and "inter-generational housing" by right, would increase to 210. Additionally, Marin County proposes up to 5,000 square feet of commercial processing space by right on each C-APZ zoned lot.

This is a drastic, wholesale change in coastal zone policy that is not supported by any County studies or findings. No cumulative impact analysis has been performed pursuant to CEQA; it violates applicable Chapter 3 policies of the Coastal Act; and it serves as a disincentive to continue Williamson Act contracts. Marin's LCP Amendment proposal would undermine the Coastal Act if passed, and would set a bad precedent statewide to allow substantial amounts of new development on needed agricultural production lands.

I support family farming and ranching in West Marin and throughout the California coastal zone, as well as the ability of families to create housing for their workers and processing facilities as needed for their farm products. However, I also know that we can meet these needs, protect irreplaceable natural resources, and protect local economies, if we plan carefully and use land efficiently. Careful planning depends on an open, transparent, and inclusive process that ensures all stakeholders and community members have the opportunity to share their perspective and aspirations, which Marin's LCP Amendment Proposal would severely limit. The Amendment undermines the Coastal Act and the community's right to participate in land use and development decisions in the coastal zone.

Thank you for your kind consideration of these comments.

Sincerely,

Timothy K Stanton

P.O. Box 344
Point Reyes Station, CA 94956
tkeelst@aol.com
415-663-1405

Marquez, Maria Elena@Coastal

From: Michael Sewell <michael@visualpursuit.com>
Sent: Monday, May 12, 2014 6:01 PM
To: CoastalMarinLCP
Subject: Coastal Changes

Th/29

Dear Coastal Commission Members and Staff,

I would like to go on record as opposing any increase in building and the rewriting of the coastal regulations. The traffic is at a standstill already and the infrastructure does not support additional traffic on the main arteries to West Marin. Your changes will impact the tourist business and general appeal of the Marin Coast. The traffic on weekends and weekday commuter traffic is already untenable.

Sincerely,

Michael Sewell
Forest Knolls, CA

Th/29



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

May 12, 2014

*Via U.S. Mail, Facsimile (415-904-5400),
and E-Mail (kevin.kahn@coastal.ca.gov)*

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

**Re: Agenda Item No. Th 12a – May 15, 2014 Meeting
Marin County LCP Amendment No. LCP-2-MAR-13-0224-1 Part A
Marin LUP Update**

Dear Commissioners:

The California Farm Bureau Federation ("Farm Bureau") appreciates the opportunity to comment upon the California Coastal Commission's noticed public hearing on May 15 regarding the Marin County LCP Amendment/LUP Update.

Farm Bureau is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing nearly 78,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources. On behalf of its membership, Farm Bureau has been consistently monitoring land use planning processes in the coastal zone which directly affect production agriculture.

We understand that the County of Marin has submitted to the Commission a comprehensive update of its Local Coastal Program's (LCP's) Land Use Plan (LUP), after a lengthy process in which Farm Bureau's county and state organizations provided substantial input. At this point, Commission staff has now proposed certain modifications to the LUP, which we believe are unduly restrictive of agriculture in light

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

of both the LUP's primary intent with respect to agriculture¹ and the policies set forth in the Coastal Act.² We offer several comments and requests in relation to your decisionmaking on this item on Thursday, both for Marin County's plan in particular, and as a matter of general precedent:

- **Policy C-AG-2. Coastal Agricultural Production Zone (C-APZ).** The strikeouts and language inserts in Policy C-AG-2 which were offered by staff should be rejected.
 - In particular, there is no principled reason under the Coastal Act for the Commission to modify the County's intent to preserve "privately-owned" agricultural land in striking the balance that it must between local desires and administration of the Coastal Act.
 - It is unduly restrictive and administratively workable to inject a standard of "and necessary for" into the policy language on development incidental to agricultural production. Farmers and ranchers must have some measure of operational discretion in determining what incidental ancillary development supports their operations.
 - The policy loses a measure of flexibility if staff's knockout of "substantially similar uses of an equivalent nature and intensity" is accepted with respect to principal permitted uses. The staff report indicates that this is term "not specific enough" to remain, yet it is no less specific than staff's own addition of the "and necessary for" language referenced in the bullet immediately above. Farming and ranching is an evolving line of work in California, if anywhere, and the language must remain to allow for Marin County's farmers and ranchers to adapt to changing conditions.
- **Policy C-AG-9. Agricultural Dwelling Unit Impacts and Agricultural Use.** We request that the Commission remove the staff report's suggested additional requirement of siting "agricultural dwelling units" to protect "significant public views".
 - The requirement is internally consistent, calling for clustering with existing structures and development on the farm at the same time it requires protection of "significant public views".

¹ Marin County LCP Policy C-AG-1.

² As the staff report notes, "Coastal Act policies require[e] the protection and maintenance of agricultural production and the agricultural economy." (Staff Report, p. 4.)

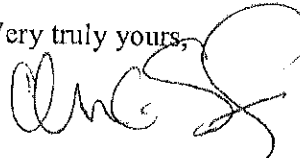
- For the same concern expressed by staff about language “not specific enough” in the context of principal permitted uses, the “significant public view” language is unduly vague and subject to administrative mischief.
- **Policy C-BIO-14. Wetlands.** Staff’s suggested strikeouts and additions in Policy C-BIO-14 should be rejected.
 - The term “ongoing agricultural activities” as a limitation on what may be excepted from the prohibition on agricultural or grazing activities in a wetland is too restrictive. The original language should be restored, as it reflects that many agricultural lands may lie fallow for a period of time, as may grazing lands.
 - The language exempting wetland features created by agricultural activities – tire ruts, for example – from the buffering requirements of C-BIO-19 is pretty sensible. Among other things, turning tire ruts into protected wetlands may have the unintended consequence of creating new tire ruts. Staff’s deletion of this sensible exemption should be rejected.
- **Policy C-PA-3. Exemptions to Public Coastal Access Requirements.** The staff report’s recommended strikeouts and additions in Policy C-PA-3 should be rejected.
 - The concerns about mitigation are adequately addressed in existing language.
 - Staff’s strikeouts completely eliminate any consideration of privacy from analyzing public access requirements, a legally questionable change.

We respectfully remind the Commission of the recent public workshop the Commission held on agriculture in the coastal zone. At that workshop, held on May 8, 2013 in Marin County, the Commission heard directly from a spectrum of farmers and ranchers who live and raise families in the coastal zone, as well as produce food and fiber on its working landscapes. We felt that the workshop, the first dedicated to comprehensively interface with agriculturalists in the coastal zone, was a valuable and productive exercise that would lead to an improved regulatory environment between the Commission and agriculture. We hope that it has, and hope that the Commission can bring some of the context developed at that workshop to bear in approaching the LUP in question here.

California Coastal Commission
Re: Agenda Item No. 12a – May 15, 2014 Meeting
May 12, 2014
Page 4

As an alternative to adoption of this particular LUP's policies on agriculture and Commission staff's proposed changes to these policies, Farm Bureau urges the Commission to defer action on this agenda item at this time, and to instruct Commission staff to work with agricultural stakeholders to develop language with greater flexibility to accommodate agriculture in Marin County in a manner that is consistent with other resource values. We would be available to directly participate in this process.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Scheuring', with a large, stylized flourish at the end.

Christian C. Scheuring
Managing Counsel

CCS/pkh

cc: Marin County Board of Supervisors (bos@co.marin.ca.us)
Marin County Farm Bureau

From: Sierra Club <information@sierraclub.org> on behalf of Susan Burrows
<susan.burrows@gmail.com>
Sent: Monday, May 12, 2014 9:52 AM
To: CoastalMarinLCP
Subject: Save West Marin from a million square feet of new development!

May 12, 2014

Coastal Commission

Marin County's proposed Local Coastal Plan Amendment contains many improvements, but the County's drastic proposal to allow over 1 million square feet of new development by right in West Marin's 60-acre minimum lot size coastal agriculture production zoning district goes way too far. Please do not support this terribly misguided proposal that would destroy West Marin's rural character and historic agricultural production lands.

Marin County's amendments would open almost 2/3 of the non-federal land in the coastal zone to residential, commercial, and industrial development without any public input or right of appeal to the Coastal Commission. Marin County performed no cumulative impact analysis of this radical change in policy as required by law, and so there are neither sufficient findings nor facts to support this Amendment. Please protect agricultural production and family farms without destroying the rural character of West Marin!

I absolutely support family farming and ranching in West Marin, and the ability of families to create housing for their new workers and processing facilities as needed for their farm products. However, Marin's proposal to allow a new residential house on every legal lot as an entitlement, plus adding "bonus" (intergenerational) housing by right, will drastically increase development pressure that is antithetical to meaningful agricultural preservation under the Coastal Act.

Marin County has a poor track record of following its own plans and policies. The California Court of Appeals recently invalidated the Marin Countywide Plan due to the County's failure to adequately consider cumulative or individual impacts for the federally endangered Central Coast coho salmon. In recent years, the public has filed numerous appeals to the Coastal Commission due to the County's incorrect interpretation and misapplication of its coastal zone policies. Without the public's right to participate in public hearings and to appeal permits for the siting, design, and location of over 1 million square feet of new development there is no chance that Marin's stunning coastal zone will be protected.

Please support the following changes to the staff report:

1. The definition of "agriculture" for the Coastal-Agriculture Production Zone should only allow the following "principal permitted uses": 1) agricultural production like breeding and grazing livestock, 2) agricultural accessory structures like barns and fencing, 3) one farmhouse for all contiguous lots under common ownership based upon a finding of need, 4) agricultural worker housing based on a finding of need, 5) agricultural home-stays, and 6) not-for-profit educational tours. All other proposed uses on the C-APZ zoning district should be "permitted" or "conditional" uses -- subject to a public hearing and the right to appeal to the Coastal Commission.

2. Viticulture should be categorized as a "conditional use" rather than a "principally permitted use" due to the lack of groundwater and surface water supplies in West Marin and significant impacts to habitat such development would cause.

3. The "inter-generational" housing should be categorized as a "conditional use" and not allowed as a "principally permitted use."

4. All new development on C-APZ lands should be clustered on no more than 3% of agricultural lands to maintain the maximum amount of land in agricultural production. Under absolutely no circumstances should development be allowed on greater than 5% of agricultural lands. [For a 500 acre parcel, this would allow 15 acres of developed area at 3%, and 25 acres at 5%]. All existing and new roads should be included in the calculation of development.

5. Language should be added to policies for adjustments to Wetland Buffers (C-BIO-20) and Stream Buffers (C-BIO-25) so that the proposed exceptions to the 100-foot buffer requirement are only allowed: 1) for rare and exceptional circumstances, and only for the Principally Permitted Uses in that zoning district, or 2) only for a public purpose, or 3) to avoid a taking of private property. A public hearing should be required for any proposed buffer adjustment.

6. Qualify the last sentence in C-MAR-1 such that "support for onshore facilities necessary to support mariculture operations in coastal waters" is limited to shellfish grown in Tomales Bay. That is, expansion of existing onshore facilities should not be driven by increased importation ["ship and dip"] of shellfish from other locations.

7. Require professional engineering or other studies for coastal permit applications for new or expanded groundwater wells or other sources serving two (2) or more lots, rather than five (5) or more, and require such studies for any application for viticulture or row crops under policy C-PFS-13.

8. Require a showing that any new or expanded groundwater well will not exacerbate saltwater intrusion under policy C-PFS-16.

Thank you for protecting the priceless coastal zone of West Marin!

Sincerely,

Susan Burrows
5 Morning Sun Ave
Mill Valley, CA 94941-4432



Protecting Marin Since 1934

May 12, 2014

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

Th/2a

SUBJECT: **Item 12A, May 15, 2014: Marin County LCP Amendment No. LCP-2-MAR-13-0224-1 Part A (Marin LUP Update)**

Dear Mr. Kahn:

This letter submitted by Marin Conservation League (MCL) addresses several outstanding issues in the proposed Marin County LCP Amendment (Land Use Plan Amendment, or LUPA). The Coastal Commission Staff-modified version of the LUPA has resolved some of our concerns, but several ambiguities remain unresolved. Clarification is needed to reassure the public that agricultural and biological resources in the Marin County Coastal Zone will be adequately protected throughout the approximate 20-year life of the Amendment. As they now stand, ambiguities have prompted "worst case" speculation over potential future development (build-out) in the Marin Coastal Zone.

Marin Conservation League actively participated throughout the LCP Amendment process in Marin. Our public comments during that time, however, were subsumed under the name of *Community Marin*, a consensus document that presents recommendations of Marin County's major environmental organizations to provide an environmentally responsible foundation for land use planning in Marin County. Initially written in 1991 and updated several times since then, the document was most recently approved by MCL's Board and collaborating environmental organizations in 2013. Although *Community Marin's* recommendations are intended to apply generally throughout the County, a number of them are applicable to Coastal Resources.

Based on MCL Board of Directors' approval of *Community Marin* recommendations, and on our interpretation of proposed policies in the LCP Amendment, we are submitting these comments and questions as "Marin Conservation League," independent of other signatories to *Community Marin*.

1. Intergenerational homes in C-APZ district.

- a. Number of homes (farm dwellings). While the current LUP only allows one single family

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Marin Conservation League was founded in 1934 to preserve, protect and enhance the natural assets of Marin County.

residence per parcel (emphasis added), the proposed LUPA would allow one intergenerational home (in addition to a farmhouse) per lot for members of the farm operator's or owner's immediate family as a principally permitted agricultural use. A second intergenerational home could be built as a conditional use (i.e., subject to appeal by the CCC). However, as proposed, the homes cannot be divided from the rest of the agricultural legal lot, and must maintain the C-APZ district's required 60 acre density, meaning that a first intergenerational home would only be allowed when a parcel is at least 120 acres, and a second only when the parcel is at least 180 acres.

The LUPA needs to clarify the distinction between "per parcel" and "per lot" as used in this context. Because *Community Marin* recommends that "...any residential development is secondary and subordinate to the primary agricultural use of sites," and an additional dwelling should be allowed only on legal lots larger than 120 acres, MCL has objected to the concept of first intergenerational homes without public review. The Staff-modified LUPA recommends a practical cap of 27 for the total number of first intergenerational homes, but doesn't set any cap for 2nd intergenerational homes. MCL is concerned that the number of intergenerational homes that theoretically might be built is not clear except as a maximum, consistent with zoning.

- b. Occupancy of intergenerational homes by immediate family. The County added intergenerational housing to its proposed LUPA as an allowed use (second intergenerational residences were added as a conditional use) as a means of perpetuating the culture of family farms in Marin County by enabling either retiring or succeeding generations – or family members not directly engaged in farm operations – to live on the farm. Family occupancy of intergenerational homes would be enforced by a covenant restricting occupants to be "immediate family members."

Based on interpretation of *Community Marin* recommendations, MCL believes that such a covenant would be impossible to monitor and thus unenforceable. Therefore, we agree with the CCC Staff recommendation to remove from the County's proposed LUPA the "... requirement that occupants of intergenerational homes can only be family members and do not have to be actively or directly engaged in agricultural use, in that state and federal housing laws prohibit regulating housing based on familial status."

- c. Square footage of homes (farm dwellings). The LUPA limits the aggregate square feet of one (farmhouse) plus one or two intergenerational homes to 7,000 s.f., plus 1,040 s.f. for ancillary structures and/or office space, bringing the total per lot (?) to 8,040 s.f. Whether the total is per lot or per parcel should be clarified. Would the 1,040 s.f. of ancillary structures and office space be divided in a similar fashion?

The limitation of 3,500 s.f. per home (if there are two homes – less if there are three) roughly conforms to *Community Marin's* recommendation to keep residences in Marin at a reasonable size (3,500 plus 500 s.f. of ancillary structures). Therefore MCL supports this limitation.

- d. Clustering of development. In its proposed LUPA the County states that development must be clustered on no more than 5% of the gross acreage of the parcel. This echoes the limitation retained by the County in its certified LUPA that development be clustered on no more than 5% of the gross acreage of the parcel, to the extent feasible. MCL agrees with this limitation because it is consistent with a *Community Marin* recommendation.

2. Agricultural worker housing.

The proposed LUPA allows as a PPU agricultural worker housing providing accommodations consisting of no more than 36 beds in group living quarters per legal parcel or 12 units or spaces per legal parcel for agricultural workers and their households. Agricultural worker housing above 12 units per legal lot would be a conditional use.

Community Marin supports residential units for workers only where they are directly related to the primary agricultural use of the property, and meet health and safety standards. It does not otherwise address how much worker housing should be allowed. Once again, MCL requests that the distinction between per parcel, and per lot be clarified in this context.

3. Agricultural product sales and processing facilities

The proposed LUPA allows as a PPU agricultural product sales and processing of products grown on-site, provided that for sales, the building(s) or structure(s), or outdoor areas used for sales, do not exceed an aggregate floor area of 500 square feet, and for processing, the building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet. Product sales and processing of products not grown on-site would require a conditional use permit.

Community Marin recommends limiting product sales structures to 250 s.f., and product processing facilities to 2,500 s.f. Regardless of this difference in recommended size, neither the County's proposed LUPA nor the CCC Staff-modified LUPA specifies the unit of land on which the total square footage of sales and processing facilities would be based – per lot? Per parcel? Per "farm"? Furthermore, no size limit is provided for facilities selling or processing products not grown on site. These clarifications need to be added.

4. Additional issues for the record

- b. Viticulture. Viticulture is listed in the proposed LUPA as an agricultural operation that does not require a coastal permit. During hearings, the Planning Commission requested that viticulture be removed from the list and that conversion to, or installation of, viticulture require a conditional use permit. County staff disagreed, citing the County's Viticulture Ordinance as an adequate mechanism for "regulating" viticulture.

Community Marin has long held that changes in intensity of agricultural use involving significant grading or intensity in use of water, such as change from livestock grazing to viticulture, should be subject to conditional use review. Conversion of grazing land to viticulture would require grading, cultivation, and/or irrigation, any of which could affect surface and/or groundwater resources as well as alter sediment regimes in water courses. Therefore, MCL recommends that Viticulture should be removed as a principal permitted use.

- c. Grazing in wetlands. *Community Marin* contains numerous recommendations for protection and buffering of wetlands. Although none of them refers specifically to grazing in wetlands, MCL recommends prohibiting agricultural practices that would harm these resources and sensitive wildlife habitat. (E.g., *Community Marin* Recommendation 3.9 "There should be no agricultural activity or any development within 100 feet of a wetland or riparian habitat.")

- d. Wetland and stream buffers and buffer adjustments. Language in the proposed LUPA would allow a 100-foot wetland or stream buffer to be adjusted to a minimum of 50 feet, contingent on a biological assessment. A 100-foot buffer to protect wetlands and streams is listed among policies in the existing certified LCP. The additions to the proposed LUPA which allow a "fall-back" from the recommended 100-foot buffer to a minimum buffer of 50-foot minimum, while appearing to limit adjustments, and recommended by Coastal Commission Staff, would serve as an open invitation to those seeking minimum solutions.

Marin Conservation League appreciates the years of effort put into updating the LCP by Marin County CDA Staff, as well as the Coastal Commission Staff's painstaking review. We believe that some important gaps need to be closed – gaps that leave open the possibility of unwarranted doubts about the future protection of Marin's Coastal Resources.

Sincerely,



Jon Elam, President



Th12a

May 12, 2014

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

Dear Dr. Lester,

The Environmental Action Committee of West Marin (EAC) offers the following comments and analysis on Marin County's proposed comprehensive Land Use Plan rewrite to our Certified Local Coastal Program (Rewrite). Since 1971, EAC has been protecting the natural environment and rural character of West Marin.

We would like to thank you and your staff for your continued participation, transparency, and willingness to provide feedback throughout Marin County's LCP rewrite process. While we had hoped to be in agreement with the Commission's staff report based on your letters written over the past three years expressing many of the same concerns with Marin County's proposal as EAC has, unfortunately we are not. We do not agree that what Marin County submitted is an "amendment" or even a "comprehensive amendment." Rather, Marin County submitted a complete rewrite of the 1981 Certified LCP. For purposes of this letter, we refer to what you have labeled the proposed Marin County Local Coastal Plan Amendment as the "Rewrite."

The Rewrite proposes a drastic, far-reaching policy change in the way that residential and commercial development would be permitted on coastal agriculture production zone lands. The Rewrite redefines "agriculture," which is the Principal Permitted Use in the agriculture production zoning district, to include a host of residential dwellings, in conflict with the Countywide Plan's definition. The Rewrite redefines "parcel" as a "legal lot of record" while currently it is defined as "all contiguous parcels under common ownership." If a ranch is made up of five legal lots of record, under the Rewrite it would be entitled to have a residential dwelling unit on each lot up to 7,500 square feet in size.

The impact of these changes, according to the County's build-out analysis, is that 129 new residential units could be developed as "agriculture." Thus the Rewrite could permit over 1 million square feet of new residential development on agricultural production lands entirely outside of the Commission's review authority. This is a wholesale change in coastal zone policy that is not supported by any County studies or findings. No cumulative impact analysis has been performed pursuant to CEQA, it violates applicable Chapter 3 policies of the Coastal Act, and it could serve as a disincentive to continue Williamson Act contracts.

Environmental Action Committee of West Marin
PO Box 609 Point Reyes, California 94956
www.eacmarin.org 415.663.9312

EAC strongly supports family farming in West Marin, and the ability of farming families to create some new housing and processing facilities for their farm products. However, Marin County's Rewrite goes way too far and would open the floodgates of an unprecedented level of new residential development pressure, including high-value estate development, on coastal agricultural lands. The Rewrite is overly broad to achieve its stated purpose of allowing some new residential housing for the next generation of family farmers. There is an important difference between policies that support agricultural production and those that have the effect of increasing speculative land development pressure.

Truly, the public have made a significant investment in keeping the agricultural production lands in active production – public funds obtained through the Coastal Conservancy, Natural Resource Conservation Service (NRCS), and Marin Measure A [which EAC supported] have helped purchase conservation easements on agricultural lands in the coastal zone. Additionally, public funds support compliance with water quality regulations for family farms and dairies, including through UC Cooperative Extension, Marin's Resource Conservation District, and NRCS. EAC strongly supports the purchase of development rights and dedication of affirmative agricultural conservation easements on C-APZ parcels by the Marin Agricultural Land Trust.

EAC has participated at every stage in the County's Rewrite process. We have testified and submitted over a dozen comment letters. We have called attention to our concerns with the County, as the Coastal Commission staff has done, repeatedly yet without an adequate substantive response. EAC agrees with many of the modifications your staff report made to the Marin County submittal, and do believe that they strengthen and clarify portions of the submittal; however we cannot support its passage as a certified land use plan. We strongly believe that the Rewrite violates Coastal Act sections 30006, 30241, 30242, 30250, and 30251, and that it fails to provide the required environmental analysis that is mandated by the California Environmental Quality Act (CEQA).

It is Marin County's responsibility to make an affirmative showing that the Rewrite meets the Chapter 3 policies of the Act. That affirmative showing is supposed to include findings of fact and analysis which support any changes made, which EAC and the public have asked for multiple times yet never received. Nor have we seen any project alternatives, mitigation measures, or cumulative impact analysis of the potential 1 million square feet of new residential and commercial development on coastal agriculture production lands. Marin County has a history of not complying with CEQA.¹ Pursuant to CEQA, the public is entitled to this level of environmental review prior to Lead Agency certification.

¹ The California Court of Appeals ruled on March 5, 2014 that Marin County's policies and EIR for the 2007 Countywide Plan failed to comply with CEQA by 1) failing to adequately assess the cumulative impacts of development along the main watershed and stream conservation area of the endangered Central Coast Coho, 2) failing to define or adopt adequate mitigation measures to reduce impact of buildout on the fish, 3) and failing to adopt performance standards by which to evaluate mitigation measures recommended.
<http://www.courts.ca.gov/opinions/nonpub/A137062.PDF>

The California Supreme Court has stated that the CEQA process "protects not only the environment but also informed self-government. For "functionally equivalent" review documents, informed self-government is protected by the requirement that an agency respond in writing to significant environmental points raised during the project review process. That requirement "ensures that members of the [governmental decision-making body] will full consider the information necessary to render decisions that intelligently take into account the environmental consequences. It also promotes the policy of citizen input underlying CEQA."²

EAC and Commission staff have commented for over two years that the way the County changed the definitions of "agriculture" and "parcel" was not acceptable. In fact, the consequences of the substantial changes in the Rewrite are not supported by the Marin County Agricultural Economic Analysis that Strong Associates prepared in November 2003. That analysis makes clear that even a new 3,500 square foot residential development on agricultural lands greatly increases the property tax and insurance costs per acre that could tip the scale for an agricultural operator. EAC wants to preclude West Marin's coastal zone from being gentrified by high-value estate development that will push out real agriculture operations. We are committed to protecting the long-standing rural character of West Marin in a way that supports family farming. The County's proposal simply goes way too far and is overly broad to achieve this purpose.

For both these and other reasons addressed below, we continue to believe that Marin County's submittal of this Rewrite to the Commission was premature, as we testified to the Board of Supervisors at the July 30, 2013 public hearing. EAC stands ready to work collaboratively with Marin County and Commission staff to define policies that are agreeable to all parties and that meets the letter and spirit of the Coastal Act.

I. Marin's Coastal Zone Forms A Scenic Panorama of Unparalleled Beauty.

The Marin Coastal Zone is a place of singular beauty with magnificent visual character that is a major attraction to the 2.5 million tourists who visit Point Reyes National Seashore and the West Marin area annually. A significant part of the coastal zone is owned and manged by the National Park Service, including the Point Reyes National Seashore, Golden Gate National Recreation Area, and Muir Woods National Monument. The entire Marin coastal zone is surrounded by the waters of the Gulf of the Farallones National Marine Sanctuary. In 2002 Tomales Bay was internationally recognized as a "wetland of importance" under the Ramsar Convention. Approximately 100,000 water birds utilize Tomales Bay every year for feeding and resting during their long migratory journey.³

² See 2006 Guide to CEQA, 11th Edition by Remy et al. Page 2.

³http://www.egret.org/sites/default/files/scientific_contributions/kelly_evens_waterbird_disturbance_tech_rpt_2013pdf.pdf

Truly, there is no other place like the West Marin coastal zone in California, and its protection did not happen by accident. Residents fought off development proposals to turn scenic Highway 1 into a 4-lane freeway and repealed the 1967 West Marin General Plan that would have suburbanized the east shore of Tomales Bay⁴ with development for 150,000 people.⁵ The rolling hills and agricultural operations in the coastal zone have been protected by environmentalists and agriculture operators alike for over thirty years. Of the non-federal land in Marin's coastal zone, almost 2/3 of it is zoned as "agriculture production land."

II. Marin's 1981 Certified Local Coastal Plan Policies Protect Agriculture Production Lands and Comply With Coastal Act Policies.

Under the Marin Certified LCP one residential dwelling unit on a Coastal-Agriculture Production Zone (C-APZ) parcel is a "Permitted Use" that is appealable to the Commission. In agricultural references, the Marin County certified Land Use Plan (LUP) consistently regards a "parcel" as "all contiguous assessor's parcels under common ownership." Minimal residential development has occurred on these agriculture lands since certification of the LUP in 1981, thereby achieving Chapter 3 policies to maintain the maximum amount of agricultural land in production.

The Certified LUP requires that a master plan for planned districts (including C-APZ) ". . . shall include at least all contiguous properties under the same ownership." The LUP enumerates Principal Permitted Uses (PPUs) that are permitted in all C-APZ districts subject to an approved master plan. For the C-APZ district, the LUP allowance for a single-family dwelling is one dwelling for "all contiguous parcels under common ownership." The certified Implementation Plan defines "parcel" as "all contiguous assessor's parcels under common ownership (unless legally divided as per Title 20, Marin County Code)."

The Marin County Certified LCP LUP Unit II is replete with references to protecting the C-APZ zoning district from the 60-acre zoning density build-out. Preventing development at the one residence per 60-acre build-out prevents the de facto subdivision and conversion of agriculture production lands that would violate Coastal Act policies 30241, 30242, and 30250.

Consider the following excerpts from Marin's Certified LCP Land Use Plan Unit II:

p. 79

LAND ACREAGES

Parcel and farm sizes. The 37,000 acres of agricultural land in Unit II are divided into approximately 155 parcels, (One **"Parcel" is defined as all contiguous assessor's parcels owned by one individual or group.** Although there is some question about

⁴ The Tomales Bay watershed covers approximately 228 square miles, and the Bay itself is about 12 miles long, 1.5 miles wide and covers 9,000 acres.

⁵ See Dr. L. Martin Griffin's "Saving the Marin-Sonoma Coast," available at: <http://martingriffin.org/the-book/about/>

the effect of recent state legislation on merged parcels, the County of Marin does have a merger ordinance which, in the opinion of County Counsel, most likely merges these agricultural parcels. The specific effect of the legislation would have to be determined on a case-by-case basis.). (Emphasis ours).

p. 87

EXISTING AGRICULTURAL POLICIES IN MARIN COUNTY – PLANNING ISSUES

The build-out potential under the Countywide Plan for agricultural lands in the Unit II coastal zone can be calculated by applying existing zoning densities. Build-out figures for lands zoned A-60 or ARP-60 are given in Table 12. One **"parcel" is defined as all contiguous assessor's parcels under common ownership,**

p. 88

Sections 30241, 30242, and 30250(a) of the Act support the preservation of agriculture by strictly limiting conversion of agricultural lands to other uses. Any potential land use regulation must be evaluated, to a large degree, for its effectiveness in achieving this goal.

p. 89

Studies of agriculture estimate that approximately 400 to 1200 acres are needed to operate a dairy in Marin County while beef grazing operations need 500 acres or more.

Given the requirements of dairy and grazing operations in Marin County, it is apparent that units of land larger than 60 acres are needed to maintain agriculture. **Over the long term, this relatively small parcel zoning serves as a subdivision plan which slowly erodes the agricultural land base and permanently reduces the amount of land necessary to maintain agricultural uses.** . . . the LCP has, however, made major changes in the pattern of potential parcel configuration by requiring clustering and has added numerous conditions which must be met before development can be permitted. (Emphasis ours).

p.89

BUILDOUT POTENTIAL/CONCENTRATION OF DEVELOPMENT

The build-out potential of lands in Unit II zoned A-60 is 442 units total, 28 on parcels 60 acres or less in size and 417 on parcels greater than 60 acres. . . . **Build-out at this scale raises several conflicts with the Coastal Act.** One of the major conflicts is with the Act's policies requiring that new development be located within or close to existing developed areas or in other suitable areas where it can be concentrated (Section 30250(a)). The **purpose of these policies is to avoid sprawl and its associated environmental and economic costs.** (Emphasis ours).

Buildout under A-60 zoning would spread evenly at low density over 37,000 acres of agricultural land in the Unit II coastal zone, inefficiently utilizing the land, requiring large investments for public services, and pushing out agricultural uses. A more

desirable alternative would be to cluster development in a few selected locations and to direct new construction to existing communities where it could be accommodated. LCP policies are written to achieve these purposes. (Emphasis ours).

p. 100

6. Definitions and uses. The **definition of agricultural uses in the APZ** is given below, ... h. One single-family dwelling per parcel. **"Parcel" is defined as all contiguous assessor's parcels under common ownership.**

It is clear from this Certified LUP language that the writers of the 1981 LCP were cognizant of trying to protect family ranch and dairy operations from development pressure to convert agriculture production lands to sprawling development. The Certified LUP specifically limited future development on a ranch or dairy operation basis, knowing that likely many such coastal zone operations already had multiple houses for family members from pre-Coastal Act development. It is also clear that they believed that allowing build-out akin to the 60-acre zoning density would conflict with the Coastal Act policies aimed at protecting the conversion of such lands to non-agricultural production uses. The Rewrite's allowance of over 1 million square feet of new development is a major diversion from the Certified LUP's strong agriculture protections.

III. Changing the Definitions of "Parcel" and "Agriculture" Allows Substantially More Development on Agriculture Production Zone Lands In Violation of Coastal Act Section 30241, 30242, and 30250.

The Rewrite proposes a drastic, far-reaching policy change in the way that residential and commercial development would be permitted on coastal agriculture production zone lands. The Rewrite redefines "agriculture," which is the Principal Permitted Use in the agriculture production zoning district, to include a host of residential dwellings, in conflict with the Countywide Plan's definition. The Rewrite redefines "parcel" as a "legal lot of record" while currently it is defined as "all contiguous parcels under common ownership." If a ranch is made up of five legal lots of record, under the Rewrite it would be entitled to have a residential dwelling unit up to 7,500 square feet on each lot.

The impact of these changes, according to the County's build-out analysis, is that 129 new residential units could be developed as "agriculture." The Rewrite would allow each legal lot over 7,500 square feet, thus it could permit over 1 million square feet of new residential development on agricultural production lands entirely outside of the Commission review authority. Allowing a farmhouse as a Principal Permitted Use on every legal lot of record would open the door to substantial amounts of new residential development on agriculture production lands. The Rewrite would thus allow an entitlement by right to new residential development on the 37,000 acres of agriculture production land for each legal lot, rather than each farm as it has existed since 1981.

The Principal Permitted Use for the C-APZ zoning district is proposed to be the greatly expanded definition of "agriculture." The Rewrite changes the meaning of agriculture from the Certified LCP to add single-family residential uses to the definition, including a

farmhouse, inter-generational house, and farmworker housing.

The Marin County 2007 Countywide Plan defines "agriculture" as the "breeding, raising, pasturing, and grazing of livestock for the production of food and fiber; the breeding and raising of bees, fish, poultry, and other fowl; and the planting, raising, harvesting, and producing of agricultural, aquacultural, horticultural, and forestry crops."⁶ The 2007 Countywide Plan defines "agricultural production" as "the commercial production of agricultural crops." Thus, the Rewrite proposes a definition of "agriculture" that clearly conflicts with the Countywide Plan.

Based on the County's build-out analysis, 129 new residential units could be built by right in the C-APZ zoning district under the Rewrite policies. Each legal lot can have up to 7,540 square feet of residential development on it. Within ten years, if all Williamson Act contracts expired, the number of new residential units, including "farmhouses" and "inter-generational housing" by right, would increase to 210. Additionally, Marin County proposes authorizing up to 5,000 square feet of commercial processing space by right on each C-APZ zoned lot. Marin County's land use policies have discouraged the sale or subdivision of individual agricultural lots precisely to avoid this scale of development. Yet the Rewrite would allow all of this development could occur without the sale or subdivision of a single lot.

The consequence of this wholesale policy shift, based on Marin County's build-out analysis, would be to allow an enormous amount of new residential development by right – over 1 million square feet – on agriculture production lands. New development can be clustered on up to 5% of the gross acreage per C-AG-7 A.4., thus the overall amount of agricultural land that could be converted is undeniably significant.

Neither Marin County nor the Commission staff report have directly addressed the fact that this substantial amount of potential new development would amount to very significant changes in the character of West Marin's coastal zone, that it could have very significant impacts on visual resources, water quality, water quantity, wildlife habitat protection, and the ongoing viability of agriculture operations. Thus, the Rewrite proposal conflicts with the Coastal Act. Additionally, neither Marin County nor the Commission staff report has performed any level of meaningful cumulative impact analysis under CEQA on these multiple significant environmental impacts from the amount of potential new development.

To protect the agricultural economy, Sections 30241, 30242, and 30250 of the Act require conflicts between agricultural and urban uses to be minimized by establishing stable urban-rural boundaries, providing agricultural buffers, ensuring that non-agricultural development is directed first to lands not suitable for agriculture or to transitional lands on the urban-rural boundary, restricting land divisions, and controlling public service or facility expansions.

⁶ 2007 Marin Countywide Plan, Glossary section, page 5-22.

Consider the following comparison chart:

<u>Principal Permitted Use Development On Agriculture Production Lands</u>	<u>Certified LCP</u>	<u>Rewrite Proposal</u>
Density calculation based upon definition of "parcel"	A parcel is defined as all contiguous legal lots under common ownership.	A parcel is instead defined as a legal lot of record. A farm can consist of multiple legal lots.
Farmhouse	Entitled to 1 by right with public hearing - public appeal right to CCC.	Entitled to 1 per legal lot by right up to 7,540 sf - No public hearing generally ⁷ - no public appeal to CCC unless ESHA impacted or in geographic appeal zone
1 st Additional Private Residence (labeled 1 st Inter-generational Home)	Does not contain allowance for this type of residential development.	Entitled to 1 per legal lot by right if density [120 acre lot] allows - Occupant not required to be at all involved in agricultural operation - subject to 7,540 overall sf cap - no public hearing generally - no public appeal to CCC unless ESHA impacted or in geographic appeal zone
Farm Worker Housing	Conditionally permitted Use permit and Design Review required Public appeal to CCC allowed	Entitled to significant amount by right and based on showing of need - Not part of density calculation - Not subject to square foot limit - No public appeal to CCC unless ESHA impacted or in geographic appeal zone
2 nd Additional Private Residence (labeled 2 nd "Inter-generational Home")	Does not contain allowance for this type of residential development.	Conditionally permitted if density [180 acre lot] allows subject to 7,540 overall sf cap - public hearing is required - Use permit required - Public appeal to CCC allowed
Easement dedication requirement	Development of a parcel requires recording a covenant not to divide parcel, and that the parcel not be further subdivided.	Proposes that residential development labeled "Intergenerational homes" "shall not be subdivided or sold separately from the <i>primary</i> agricultural legal lot."

⁷ No public hearing in nearly all. Hearing on a PPU application would be required if (1) in geographic appeals zone, or (2) a hearing is required for another discretionary planning permit for that project. So if it's a farmhouse anywhere on a lot that touches Hwy One and is < 300' from the "shoreline", it's geographically appealable and thus would get a hearing. If a PPU project has a component that requires Design Review, the Design Review is a discretionary permit and triggers a public hearing. However, C-APZ is not a planned district, so Design Review doesn't apply.

The Commission staff report admits that “Since single-family dwellings are inherently not necessary for agricultural production, nor can they meet Coastal Act 30241’s requirements, they must be deleted as an allowable land use.”

To get around this statement, the staff report decrees, without any stated basis, that the 7500 square foot cap on allowable residential construction per legal lot under policy C-AG-9 and renamed the residences “agricultural dwelling units” thereby “insures consistency with 30241.” However, simply putting a cap on the size of residential development that would otherwise not be allowed on agricultural productive lands, and coming up with a new name for what the County’s submittal itself terms a single-family residence, when it is not consistent with Section 30241, 30242, or 30250 in the first place, violates the clear purpose of the Act. These Coastal Act sections require protecting agricultural production lands from precisely the kind of build-out proposed by Marin County’s Rewrite and unaccountably supported by the Commission staff report.

In addition to the current number of legal lots of record, numerous additional parcels may be uncovered through survey work to obtain “Certificates of Compliance” (COC). Development on legal, non-conforming parcels legitimized through the issuance of COCs, and adjusted by lot line adjustment has plagued communities statewide. The Coastal Commission has made significant efforts in the Santa Monica Mountains, San Luis Obispo County, and elsewhere to try to minimize damage from this pernicious land use practice. Under the Certified LUP, there is little incentive for agricultural operators to research and obtain COCs. But if the Commission allows the County’s new definition of “parcel,” a veritable land rush could ensue.

Based on the proposed changes, consider the following example comparing maximum build-out of a parcel in the C-APZ zone under the Certified LCP and as proposed in the LCP Rewrite. Assume a 540-acre farm, a parcel currently composed of three 180-acre legal lots under common ownership.

3 development scenarios include:

- 1) Certified LCP: Allows 1 farmhouse for all 540 acres.
- 2) Certified LCP, with sale of 2 lots: Allows each of the separate owners of the now 3 lots to build a farmhouse.
- 3) Proposed LCP Rewrite: Would allow development of 3 farmhouses, 3 Bonus Houses (“Inter-generational houses”) by right and 3 additional Bonus Houses (“2nd Inter-generational house”) with a conditional use permit for a total of 9 residences possible without engaging in subdivision of any lot.

Thus, the Rewrite policies could allow three times or more of the current residential development. Even accepting all of the Coastal Commission staff report’s recommended modifications, most of which are improvements to the Rewrite proposal, the County’s proposed significant wholesale shift in allowable development that it could

permit in the coastal zone is alarming. The staff report's added development standards for C-APZ land in policy AG-7 do not alter the Rewrite's overall effect or this conclusion.

We greatly appreciate Marin County's desire to make possible housing for the next generation of family farmers possible, and understand and agree that some new housing should be allowed. However, the Rewrite simply goes far beyond its purpose in allowing a farmhouse as a "Principal Permitted Use" on every legal lot in the agriculture production zone district.

In summary, Marin County's Rewrite as modified by the staff report and proposed for certification would fundamentally undo existing certified coastal protection policies and does not comply with the Coastal Act. Moreover, the Rewrite would change policy on agriculture production lands so that:

- 1) A residence could be built on every legal lot, rather than one for all contiguous parcels under common ownership, without any public right to seek review by the Coastal Commission,
- 2) A significant amount of new residential housing could be built for and occupied by persons having nothing to do with the agricultural operation, and
- 3) The potential build-out that the Marin LCP Rewrite would permit directly conflicts with Coastal Act policies 30241, 30242, and 30250.

The Rewrite should not be supported if we are to have meaningful protection of our agricultural production zone lands in West Marin. The additions made in the Commission staff report do not correct this fundamental problem.

IV. Coastal Commission Comment Letters and the Commission's LCP Update Guide Support EAC's Conclusions That the Rewrite Goes Too Far.

The Commission's guidance document⁸ for updating LCPs supports EAC's recommendations. It states:

To resist a trend to change the character of an agricultural area to a more residential setting, an LCP update should consider revising criteria for residential approval to ensure that it supports agriculture. For example, standards can require that any residential use:

- is a conditional (not principally permitted) use,
- is only for an agricultural owner or operator,
- is allowed only upon an analytic conclusion that it will not diminish the productivity or viability of agricultural land or the ability to keep agricultural land in production (see following section: "Agricultural Land Conversion

⁸ CCC: LCP Update Guide: Examples and Citations for Some Recommendations and Suggestions. (Published April 2007; revised July 31, 2013.)

Criteria”),

- is governed by size limits, placement on a parcel, and design criteria,
- is restricted to one home per parcel,
- does not lead to subdivision,
- is on a parcel protected for continued agricultural use (see following section: “Affirmative Agricultural Easements”).

For counties, update the IP to show only one principal permitted use in each zoning district.

EXAMPLE:⁹ Commission suggested modifications to excerpt from county’s agricultural zoning district [see especially text in bold]:

21.08.020 The principal permitted use.

The principal permitted agriculture exclusive use entails all agricultural uses including horticulture, crop and tree farming, livestock farming and animal husbandry, including dairies, public and private stables, but excepting feed lots and accessory buildings and uses including barns, stables, greenhouses constructed without a slab or perimeter foundation, and other agricultural buildings. These respective uses are not appealable to the California Coastal Commission pursuant to Section 21.52.020(A) (3) and Public Resources Code (PRC) Section 30603(a)(4), but may be so appealed pursuant to other provisions of Section of PRC Section 30603.

21.08.025 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:

A. A farm dwelling with appurtenant uses including home occupations, and appurtenant accessory structures. A manufactured farm dwelling may be placed in lieu of a conventional farm dwelling; and

B. **Farm quarters for up to five farm laborers employed full-time on the premises.** Manufactured farm quarters may be placed in lieu of conventional farm dwelling units. (Ord. 2009-___ § __ (part)).

As far back as January 7, 2012 the Commission staff who were engaged in Marin County’s LCP overhaul process made the following comments:

As we’ve stated in our previous comment letters and testimony at hearings, we have some fundamental concerns with the agricultural policy amendments. Although its not explicit in all the policies, it appears that the overall approach is to define agriculture in such a way as to include not only the

⁹ For the context of this example, please see the Commission staff reports for Del Norte County’s LCP Rewrite.

cultivation of crops and raising of animals; but also to include uses that have deemed to accessory structures or uses appurtenant and necessary to the operation of agricultural uses. Then, using this construct, the standards for development on agricultural lands (in C-AG-7) are divided between 'agricultural uses' and 'non-agricultural uses.' Some of these appurtenant structures include intergenerational homes for families that aren't required to be working the land, farm worker housing, and agricultural home stays. While these uses may be appropriate under certain circumstances, **we have serious concerns with this one-size fits all approach, because we do not believe that they should be defined as agriculture, and that there are insufficient standards for review of these uses. As currently drafted, the policies could open the door to abuse and conversion of agricultural lands to non-agricultural uses, inconsistent with Coastal Act Sections 30241 and 30242.** (Emphasis ours).

On July 30, 2013, the Commission staff wrote to Marin County:

In terms of agricultural protection, we continue to believe that the LCP needs to be structured around a more traditional definition of agriculture that is tied to working of the land (including crop production, cultivation, and grazing), **so that standards and criteria can be made clearer in terms of allowing, siting, and designing other uses and development that might be appropriate on agricultural lands** (e.g. farmhouses, farmworker housing, intergenerational housing, agricultural processing structures, etc.). There are many sub-issues related to agricultural protection, but many of our remaining concerns stem from the Update's proposed definition of agriculture. (Emphasis ours).

Thus, despite clear input from the Commission staff and the public throughout the Rewrite process that its proposed new treatment of agriculture production lands was troublesome, Marin County ignored those comments. Then, for reasons still unclear and without adequate support, the Commission staff report reversed course and abandoned its prior comments in support of Marin County's Rewrite proposal.

V. Defining "Agriculture" To Include Residential and Commercial Development As A "Principal Permitted Use" Substantially Excludes the Public from Participation in Violation of Coastal Act Section 30006.

Section 30006 of the Coastal Act states:

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

Of the non-federal lands in Marin's coastal zone, almost 2/3 are in the agricultural production zone. The Principal Permitted Use for the C-APZ zoning district is proposed to be the greatly expanded definition of "agriculture." The Rewrite changes the meaning of agriculture from the Certified LCP to add single-family residential uses to the definition, including a farmhouse, "inter-generational house," and farmworker housing.

If approved, the new residential development categorized as a Principal Permitted Use for every legal lot in the C-APZ zoning district would almost never be appealable by the public to the Commission whereas such appeal has been allowed for over 30 years. It also means that a public hearing would seldom occur. Public input and appeals have greatly contributed to ensuring that Marin County's Certified LCP is followed [see Appendix 2]. We strongly believe that the Rewrite proposes a major change that violates Section 30006 of the Coastal Act.

Additionally, if approved the Rewrite would remove the Commission's oversight of residential development on almost 2/3 of Marin's coastal zone. We think this is a terrible precedent and also violates the Coastal Act.

VI. Neither Marin County Nor the Commission Staff Report Has Presented Sufficient Findings or a Cumulative Impacts Analysis As Required By CEQA.

On April 22, 2009, the Commission staff sent a letter to Marin County stating that "Where you [county] proposed to alter or delete standards in the certified LCP it is important to provide data and analysis explaining the change so it can be evaluation for conformance with the Coastal Act." EAC and others have asked the County repeatedly for such data analysis but still have not been provided any.

Marin's Certified LCP contains substantial findings and has dozens of pages of background information that lay out the purpose and foundation of the adopted policies. Not only does the Rewrite eliminate entirely these findings, but also it has not provided new or revised substantive findings to support the proposed significant changes.

Pursuant to CEQA, the LCP Rewrite is supposed to be the "functional equivalent" of an EIR. CEQA Section 15091 lays out explicit and detailed requirements regarding Findings (that must be made with respect to each and every environmental impact) that appear in every EIR but are nowhere to be found in any of the County's or Commission's documents. The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

Neither Marin County nor the Commission staff report have directly addressed the fact that this substantial amount of potential new development would amount to very significant changes in the character of West Marin's coastal zone, that it could have very significant impacts on visual resources, water quality, water quantity, wildlife habitat, or the ongoing viability of agriculture operations.

For example, the conclusions in the "Marin County Agricultural Economic Analysis Final Report" (Report) prepared for the County's Community Development Agency in November 2003 by Strong Associates of Oakland do not support the Rewrite and have not been addressed by Marin County. The Report states that "high-value estate development on the County's agricultural lands drives up the land ownership costs for both property taxes and insurance. This can tip the scales so that the cost of land ownership exceeds (by orders of magnitude) what the agricultural income can cover."

The Report gave some pertinent examples. "On a 400-acre parcel that would net \$18.40 income per acre for agricultural use, adding a 7,000 sq. ft. residential development results in an \$73 per acre net cost." "For the 210-acre Hansen-Brubaker parcel, base land is valued at \$4,024 per acre, rising to \$9,362 per acre after improvements." "For the 446-acre Patrick Brennan parcel, the land is valued at \$432 per acre, rising to \$1,629 per acre with the recently completed development."

The Report concludes that, "Before improvements, the parcels range from small net incomes to significant net costs. **After proposed improvements, however, all of the parcels have costs exceeding potential agricultural income.**" "While these landowners may choose to sustain higher annual costs for the benefits of their rural estate lifestyle, landholding costs in the range of three to ten times the potential agricultural income will, in the long term, be a disincentive to continued agricultural operations." (Emphasis ours).

The Report concludes that, "**keeping land values (and thus costs) in balance with agricultural income is critical to maintaining long-term agricultural viability.**" EAC agrees. The Rewrite would open up the possibility of high-value estate development and compromise the long-term viability of agricultural operations. The agricultural economic analysis that the County supplied as a background document does not support its proposed Rewrite.

As another example of no cumulative impact analysis, EAC has repeatedly pointed out that Tomales Bay is an "impaired" water body under Section 303(d) of the Clean Water Act. The Regional Water Quality Control Board has established a Total Maximum Daily Load (TMDL) for the Bay to address nutrients, pathogens, and sediment pollution. EAC has repeatedly referenced the water quality testing reports prepared by the Tomales Bay Watershed Council for scientific data and conclusions showing that the water quality in the Bay is not improving.¹⁰ The 2012 report concludes that, "TBWC's water quality monitoring results suggest that the monitored tributaries are not complying with bacteria objectives proposed in the pathogen TMDL for Tomales Bay." The new stormwater Best Management Practice policies are a great improvement, but its uncertain that they would apply for the new residential construction since the threshold is 10,000 square feet. The County has provided no cumulative impact analysis of how the Rewrite might impact water quality.

¹⁰ See http://www.tomalesbaywatershed.org/assets/2011_12_tbwq_finalwqreport_complete_finalv4_sm.pdf

Finally, EAC has consistently commented that the County has not addressed the conclusion from the Certified LCP that "water supply is a serious constraint" to development on the east shore of Tomales Bay. No improvement district exists there, and it is beyond the jurisdiction of the North Marin Water District. Language is included in the Rewrite that a new residential dwelling would have to show that there is adequate water, but that does not excuse the County from performing meaningful analysis of a known public facility constraint on development and ongoing agricultural production.

In sum, the County has provided insufficient findings to support the proposed Rewrite.

VII. Proposed Changes to Marin County's LCP Rewrite.

Absent the appropriate level of environmental analysis of cumulative impacts, and to comply with previously cited sections of the Coastal Act, the Rewrite must retain existing Certified LCP policies, including:

1. "Parcel" should be defined as "all contiguous lots under common ownership."
2. For the C-APZ zoning district, "Principal Permitted Use" should remain under Marin's Certified LCP Land Use Plan, page 100, except that:
 - a. Viticulture should be categorized as a "conditional use" rather than a "principally permitted use" due to the lack of groundwater and surface water supplies in West Marin and significant impacts to habitat such development could cause.
 - b. Farmworker housing and processing facilities should become a "Permitted Use" with the possibility of streamlined approval where there is avoidance of ESHA and ESHA buffers and where scenic and visual resources are protected.
3. The 27 bonus homes called "inter-generational" housing should be categorized as a "conditional use" but development allowed where findings show that a long-standing family farm needs housing for its younger generation to come live on and work the land.
4. To ensure that exceptions to the buffer requirement do not become common practice, language should be added to policies for adjustments to Wetland Buffers (C-BIO-20) and Stream Buffers (C-BIO-25) so that the proposed exceptions to the 100-foot buffer requirement are only allowed:
 - 1) for rare and exceptional circumstances, and only for the Principally Permitted Uses in that zoning district, or
 - 2) only for a necessary public purpose, or
 - 3) to avoid a taking of private property.

Proposed exceptions should be evaluated taking into account all contiguous lots under common ownership. A public hearing should be required for any proposed

buffer adjustment.

5. Qualify the last sentence in C-MAR-1 so that "Support provision for onshore facilities necessary to support mariculture operations in coastal waters" is limited to supporting facilities for shellfish grown in Tomales Bay. That is, expansion of existing onshore facilities should not be driven by increased importation ["ship and dip"] of shellfish from other locations.
6. Require professional engineering or other studies for coastal permit applications for new or expanded groundwater wells or other sources serving two (2) or more lots, rather than currently proposed at five (5) or more. Require such engineering and studies for any application for viticulture or row crops under policy C-PFS-13.
7. Require a showing that any new or expanded groundwater well will not exacerbate saltwater intrusion under policy C-PFS-16.
8. Retain language from the Certified LCP, p. 194: "Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. The magnificent visual character of the Unit II lands is a major attraction to the many tourists who visit the area, as well as to the people who live there. New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed."
9. Retain language from the Certified LCP, Unit I, p.65: "new development shall not *impair or obstruct* an existing view of the ocean " and incorporate this language in policy C-DES-2.

EAC would like to propose an outside-the-box solution that may help all parties come to closer agreement about how to meet the needs of young family farmers while protecting all priority Coastal Act resources.

Consider creating a new, special LCP category called "multi-generation farms." These farms would put an irrevocable conservation easement (no subdivision, no use other than farming) on the property. In exchange, the LCP would allow flexibility in farm labor housing, barns, processing facilities while still requiring clustering and other standards be met. If ESHA and ESHA buffers were avoided in such development, a streamlined coastal permit process could be developed. The goal would be to truly keep family farm operations intact and remove development pressure or incentives to sell off lots that would, under the Rewrite, have the ability to develop new residential units.

On lots greater than 60 acres it would allow for a new residence not to exceed 3500 square feet to be built and occupied by the next generation farm family (or someone

engaged in working on the farm.) The conservation easement could be donated for tax credit, sold to a local land trust, or bought by the county. It allows farmers to take the cash out of their farms now.

With this proposal we could:

- 1) work with the farmers who want to pass on the farm and not sell it off by legal lots.
- 2) Tweak the proposal based on their feedback
- 3) Deter speculators who really are running a land-bank for future development
- 4) Set up a model for preserving agriculture on the entire coast of California
- 5) Reduce draconian paperwork requirements for those who just want to farm, and
- 6) Allow farmers to get cash now and preserve their farms.

VIII. Conclusion

Marin County's Rewrite of our Certified LCP violates the Coastal Act and does not comply with CEQA. By allowing residential development per legal lot as Principal Permitted Use on agriculture production lands, the conversion of such lands would be inevitable. Such conversion conflicts with Coastal Act Section 30241, 30242, and 30250. Removing the public's right of appeal, and Commission's review authority over, development on almost 2/3 of Marin's coastal zone violates the Coastal Act's declaration of the importance and right of public participation in all coastal development decisions under Section 30006. Finally, the Rewrite fails to comply with CEQA because no findings and no environmental or cumulative impact analysis of the over 1 million square feet of potential new development has been provided for public review and comment.

Accordingly, the Commission should (1) deny the certification, and (2) return it to the County to resubmit when they have developed policies, findings, and analysis that effectively address and overcome all of these defects.

Respectfully submitted,



Amy Trainer, Executive Director

APPENDIX 1

Referenced Sections of the Coastal Act

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.
- (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.

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 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.

Section 30251 Scenic and visual qualities

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30006 Legislative findings and declarations; public participation

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support;

and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

APPENDIX 2

Recent LCP Coastal Permit Errors by Marin County Zoning Officials

- 1) Fergus-Beekman (Inverness, 2008). Staff recommended 24-foot height second unit, violating Community Plan standard requiring height exceeding 15 feet have no adverse impact on neighbors.
- 2) Bar-Or (Pt. Reyes Station, 2009): Zoning Administrator incorrectly found that an in-lieu housing fee for development of the subdivision was not required. Staff subsequently acknowledged the error but failed to obtain payment of the fee by the applicant.
- 3) Baxter (Inverness, 2011) CP 03-13. Application for Lot Split. Applicant not informed by staff that a lot division of the parcel required a Master Plan Amendment prior to investing substantial time and money.
- 4) Bar-Or (Pt. Reyes Station, 2012): Zoning Administrator incorrectly approved two dwellings on one lot of a four-lot single-family residence subdivision.
- 5) Kirschman (Dogtown, 2011). County approved administratively a land division that resulted in higher density than maximum allowed in the C-ARP-5 district.
- 6) Lambert (36 Starbuck, Muir Beach, 2012). Coastal Permit Extension approved without public notice and hearing. Further permit extension granted beyond the LCP maximum extension period.
- 7) Rivet-Cornac (Inverness, 2013). Failure to provide public hearing notice. Staff failed to require merger of contiguous parcels under same ownership when lot density exceeds maximum for zoning district (merger ultimately required at public hearing).

Appeals of County Issued Coastal Permits to CCC:

1. Caltrans (Stinson Beach, 2011). County approved repair and maintenance of State Highway One. Substantial issue hearing regarding visual resources and habitat protection policies: May, 2014.
2. Lawsons Landing (Dillon Beach, 2012). County approved residential housing trailers with no permitted septic, vehicles in wetlands and buffers. Coastal Commission adopted conditioned CDP that protect dozens more acres of ESHA than County approval.
3. Hansen-Brubaker (Marshall, 2012). Ridge-top housing in C-APZ. Application withdrawn.
4. Brader-Magee (Marshall, 2010). CCC required new biological report; conditioned CDP established wetland buffers and rerouted driveway.

5. NextEra (north shore of Tomales Bay, 2011). Meteorological wind turbine study towers. CCC found Substantial issue, nothing in LCP that justified county coastal permit. Application withdrawn.
6. Kirschman (Dogtown, 2012). Development of domestic well in wetlands. Pending.
7. Rumsey (Inverness, 2013). Bluff stairway in hazardous area and wetland buffer to Tomales Bay without adequate studies, no LCP provision allowing private stairway. CCC found substantial issue. Pending.
8. Crosby (Muir Beach, 2008). Superior Court found that proposed addition violates Muir Beach Community Plan standards – visual resources and that Muir Beach Community Plan is a component of the LCP. Pending.

CALIFORNIA CATTLEMEN'S ASSOCIATION

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California Cattlemen's Association (CCA)

May 12, 2014

Dr. Charles Lester, Executive Director
and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Via: Kevin Kahn, District Supervisor, LCP Planning
kevin.kahn@coastal.ca.gov

Re: Suggestions following the May 8, 2013 Agriculture Workshop

Dear Dr. Lester and Honorable Commissioners:

The California Cattlemen's Association (CCA) appreciates the opportunity to address the California Coastal Commission (Commission). We want to once again express our thanks to the Commission for hosting the Agriculture Workshop on May 8, 2013, and to remind the Commission of the issues discussed at the workshop and the work that must still be done to ensure that agriculture remains sustainable in the Coastal Zone.

Last year's Agriculture Workshop was extremely productive, and the agricultural community remains grateful to the Commission for conducting it. At the workshop, the agricultural community and the Commissioners agreed that agriculture is an equal, priority element of the Coastal Act, on par with the Act's other goals of resource protection and public access. Furthermore, the Commissioners generally recognized that enhanced agricultural productivity and streamlined regulations are important to ensure that agriculture remains sustainable in the Coastal Zone.

On May 31, 2013, CCA submitted a letter to the Commission suggesting four broad policies the Commission could explore to ensure that agriculture remains sustainable in the Coastal Zone. These policies were (1) allowing greater regulatory flexibility within a streamlined permit process, (2) exempting traditional agricultural practices from the permitting process, (3) increasing the availability of family housing in agriculturally-zoned parcels, and (4) the development of a Policy Guidance Document. One year after the Agriculture Workshop, these issues remain important, and it is our hope that the Commission will take this opportunity to follow up on last year's successful workshop by addressing these critical issues.

TIM KOOPMANN
PRESIDENT
SUNOL

JACK HANSON
TREASURER
SUSANVILLE

BILLY GATLIN
EXECUTIVE VICE PRESIDENT
HERALD

FRED CHAMBERLIN
SECOND VICE PRESIDENT
LOS OLIVOS

DAVE DALEY
SECOND VICE PRESIDENT
CHICO

BILLY FLOURNOY
FIRST VICE PRESIDENT
LIKELY

BILL BRANDENBERG
FEEDER COUNCIL CHAIR
EL CENTRO

RICH ROSS
SECOND VICE PRESIDENT
LINCOLN

MIKE SMITH
FEEDER COUNCIL VICECHAIR
SELMA

Agriculture requires both certainty and flexibility

As a business, agriculture requires certainty, a clear and streamlined permitting process, and regulatory flexibility in order to remain viable, adapt to changing market conditions, and to support emerging opportunities within agriculture. To ensure that these goals can be met, we ask for your support in maintaining such regulatory flexibility within the context a clear, streamlined permitting process. Agriculture faces significant challenges in the Coastal Zone, with land uses held to a high standard of resource protection and a high level of scrutiny within the review process. This places ranchers within the Coastal Zone at a significant competitive disadvantage to inland producers, who are not impacted by the extra time and expense required to navigate the regulatory maze confronted by ranchers on the coast. An efficient permitting process which provides flexibility for agriculture uses would alleviate some of these burdens upon ranchers.

It is also important to recognize that new ranchers and farmers are key to California's success as one of the world's largest suppliers of agricultural commodities. These farmers and ranchers are on the front lines as enlightened stewards of our working landscapes and habitat for wildlife. It is especially important for this new generation of ranchers and farmers to have the ability to diversify with compatible ancillary profit centers, such as visitor serving facilities, tours, and local events. Flexibility within the permit process is essential for the success of these new farmers and ranchers.

Traditional agricultural practices ought to be exempt from Coastal Development Permit requirements

At the May 8, 2013 Agriculture Workshop, the Coastal Commissioners and staff generally recognized that enhancing agricultural productivity and streamlining regulations of agriculture are both important, priority objectives. We believe that, in order to best achieve these objectives, traditional agricultural practices ought to be exempt from the requirement of obtaining Coastal Development Permits, even where those practices involve change or productivity enhancements such as irrigating land or improving rangeland from brush to grass. Such exempted agricultural practices would include (but not be limited to) the ability to maintain existing agricultural roads without seeking a permit, the ability to explore for potential water sources, and the cultivation of lands within the footprint of the agricultural operation, including improvement of rangeland for the purpose of increased livestock productivity. We strongly believe that such categorical exclusions for agriculture should apply to *all* agriculturally-zoned lands within the Coastal Zone.

The Commission should move to accommodate additional family housing on agriculturally-zoned parcels

There is a critical need for additional family housing on agriculturally-zoned parcels within the Coastal Zone. Most agricultural operations are family businesses, and may be operated by family members from several generations, or even multiple households within a generation. One public commenter at last year's Agriculture Workshop suggested that a 60-acre parcel could easily accommodate a second family dwelling unit without negatively impacting the resource values of the land. We recommend that, at a minimum, a second family dwelling unit be allowed on any agriculturally-zoned parcel which exceeds 60 acres. We support this concept where permitted

within existing local zoning codes. Such homes would not only support the agricultural operation, but would also serve to reduce the impacts of family members traveling from offsite locations to work the farm.

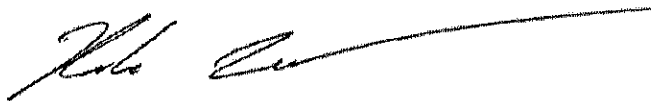
The Commission should draft a Policy Guidance Document to clarify agricultural policies

At the Agriculture Workshop, it was suggested by many members of the public and several Commissioners that the Commission ought to develop a Policy Guidance Document to address, update, and clarify the Commission's agricultural policies. Such a Document might address, in addition to general agricultural policies and terms, definitions for vegetation, major vegetation, removal of vegetation, and what constitutes development in the context of agricultural operations. The Policy Guidance Document would also provide an excellent venue and framework for the Commission to explore the above-detailed policy improvements.

Conclusion

Again, CCA, its members, and the broader agricultural community appreciate your work on last year's Agriculture Workshop and your continued dedication to addressing agricultural concerns within the Coastal Zone. We hope that the Commission will seriously consider the above suggestions and any other changes that will help to sustain agriculture throughout the Coastal Zone, and that you will act rapidly to implement them. A good place to begin is with the Marin County Land Use Plan Amendments that your Commission will address Thursday, May 15. The California Cattlemen's Association, its members in coastal counties, and others engaged in agriculture stand ready to assist the Commission and its staff in any way necessary to ensure implementation of these important objectives.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirk Wilbur', followed by a long horizontal flourish.

Kirk Wilbur
Director of Government Relations
California Cattlemen's Association

May 12, 2014

Th/2a

California Coastal Commission
Via email: MarinLCP@coastal.ca.gov

Dear Commissioners:

I am writing to ask you to reject the Marin County Local Coastal Plan Amendment (LCPA). The LCPA, as submitted, violates Coastal Act policies by failing to protect coastal resources. In fact, the submitted LCPA would encourage further degradation of watersheds and other habitat areas that have been protected for over 30 years by the current LCP.

Specifically, the LCPA:

1. Encourages development in the buffer areas of coastal streams and wetlands. Tomales Bay and Lagunitas Creek are already classified as impaired under the Clean Water Act. The relative ease of obtaining buffer adjustments under the LCPA would accelerate the degradation of these invaluable coastal resources. Buffer adjustments should only be allowed in order to avoid a taking of private property.
2. Encourages the conversion of agricultural lands to urbanized uses. Much of non-federal open space and wildlife corridors in the coastal zone are encompassed by agricultural lands. Facilitating development of these lands would compromise the Coastal Act's promise "to protect the ecological balance of the coastal zone and prevent its deterioration and destruction."
3. Encourages development without adequate ground or surface water to support it. The scale of development enabled by the LCPA would stress to the point of exhaustion the watershed resources that support the coastal zone's invaluable biological diversity.

Protection of natural resources is a paramount concern under the Coastal Act. The LCPA actively undermines that principle, and should be rejected as a result.

Respectfully,

Megan Isadore

Marquez, Maria Elena@Coastal

From: Sierra Club <information@sierraclub.org> on behalf of IONE CONLAN <iconlan@aol.com>
Sent: Tuesday, May 13, 2014 7:58 AM
To: CoastalMarinLCP
Subject: Marin County Coastal Plan

Th/2a

May 13, 2014

Coastal Commission

I and my late husband were and I continue to be a lifetime member of the Sierra Club. Our over one thousand acres have been in the same family continually in agriculture for almost 150 years, annually feted at the Sacramento State Fair.

Our lands are Certified Organic, and we produce Animal Welfare Approved grass fed livestock and poultry Agriculture remains in Marin County because of families such as ours have suffered bankruptcy, drought, inheritance taxes four times, predators human and animal. Now comes well meaning but uninformed groups, who have come into this beautiful county because of our preservation, and using "carpet bagger" methodology want to tell us how to farm, what we can farm, where we should place our buildings, whether our children have the right to live on the farm My well meaning but uninformed Sierra Club members, should come out to the farm and observe how we have to nightly secure our heritage poultry to avoid being torn apart while alive by "those cute little badgers", observe how we rotate our livestock to preserve our lands, and the myriad of sacrifices we make daily to provide those lands they now want to control. The community through many sessions honed the LCP for Marin, and now self interest well meaning folks who have never cleaned an egg or sat up all night with a sick calf, now have become farm experts. I protest and ask the CCC to accept the suggestions of real honest to goodness farmers. Ione Conlan

Sincerely,

Mrs. IONE CONLAN
PO Box 412
Valley Ford, CA 94972-0412
(707) 876-1893

Marquez, Maria Elena@Coastal

Th 12a

From: Sierra Club <information@sierraclub.org> on behalf of Carol Smith <carolsmith2@gmail.com>
Sent: Monday, May 12, 2014 1:53 PM
To: CoastalMarinLCP
Subject: SUPPORT LCP BY MARIN NOT STAFF

May 12, 2014

Coastal Commission

Dear California Coastal Commissioners,

Please SUPPORT the LCP as developed and submitted by Marin residents.
I've been a Sierra club member for decades and I support well thought-out coastal protection.

This took years of hard work by locals from the entire political spectrum who want to maintain the rural agricultural nature of west Marin.

Marin doesn't want big political engines like the Sierra Club pushing them around and destroying their rural lifestyle.

The updating of Marin's LCP has been in process for more than five years, numerous meetings were held in West Marin spread amongst all the Coastal communities, 28 public hearings were conducted by the County Planning Commission and seven public hearings were convened by the Board of Supervisors. After all of that scrutiny, including consideration of thousands of public comments, letters, and emails, does it make sense to allow Marin voters be bullied by a political engine?

Thanks for your consideration and vote in favour of Marin and it's voters.

Sincerely,

Ms. Carol Smith
3500 north highway one
Albion, CA 95410

From: sherry baty <sherrybaty@gmail.com>
Sent: Monday, May 12, 2014 9:47 AM
To: CoastalMarinLCP
Subject: Opposition to the proposed changes in the agricultural component of the West Marin LCP

TO: California Coastal Commission
FROM: Thomas Baty

Dear Commissioners,

Please reconsider the sweeping changes being proposed for the agricultural lands in West Marin in the LCP update.

I grew up in West Marin, witnessing firsthand the nearly miraculous preservation of our natural and pastoral landscapes as so much of the rest of the state has been dramatically (and in some cases, tragically) changed by development. I actively support local agriculture, particularly on privately held lands---those most at risk from both the sprawl of development and the disappearance of genuine working landscapes.

The economic realities of Bay Area real estate are tilting more historic coastal Marin agricultural properties into the category of country estates or ranchettes where the primary use is residential and agricultural use is just a hand-waving exercise. We now have non-productive olive orchards and vineyards that are simply planted to satisfy the requirements of the County's agricultural zoning.

Easing the restrictions for development on these agricultural lands will only accelerate the shift away from genuine agricultural use. Agricultural land valuations are perhaps barely within range of the economic valuations of what can be produced on these lands. The significant potential of additional development embedded in the proposed policy changes will plainly increase the demand for these agricultural parcels from interests with little or no commitment to agriculture.

Agricultural preservation efforts such as MALT will ultimately be handicapped the proposed changes as increased development potential will surely increase the price of conservation easements and diminish landowner's interest in participation.

I urge the Commissioners to table these proposed changes and to re-direct staff and LCP consultants to draft a more modest vision of potential development and build-out on these lands. If the Commission, the County of Marin, and the community are truly intent on preserving agriculture in the West Marin Coastal Zone, there needs to be a basic recognition that authentic, long-term agricultural interests will not be well-served by inviting substantially more development on these lands.

Respectfully,

Thomas Baty

Th12g

Carolyn K. Longstreth

P.O. Box 657, Inverness CA 94937
(415) 669-7514; (415) 497-3010 [cell]
cklongstreth@gmail.com

May 12, 2014
California Coastal Commission
Via email: MarinLCP@coastal.ca.gov

Dear Commissioners:

I write to urge you to decline to certify Marin County's proposed LCP Amendment. While many of the changes are beneficial, the Program has serious deficiencies that need to be addressed before certification would be warranted.

The protection of California's precious coastal resources should not be taken for granted. The people of Marin are the beneficiaries of a strong tradition of conservation, particularly in the western part of the County. This heritage has been handed down by many committed and far-sighted individuals who worked tirelessly to assure the protection of coastal resources in this County.

Agriculture is an important part of this legacy. While I am open to adjustments that would strengthen the economic viability of our local farms and ranches, I fear that the proposed LCP Amendment "throws the baby out with the bathwater." It greatly loosens the regulations that govern residential and commercial/industrial development on coastal ranches while simultaneously weakening protections for visual resources and curtailing the public's opportunity to be heard and to appeal.

A case in point is the removal of the current LCP's recognition of the east shore of Tomales Bay for its scenic qualities. Unit II eloquently stated:

Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling

grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed.

This formal recognition of the east shore as a sensitive visual area had particular significance in light of Section 30251 of the Coastal Act, which provides:

The scenic and visual qualities of coastal areas shall be considered and protected as a *resource of public importance*. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. *New development in highly scenic areas such as those designated by local government shall be subordinate to the character of its setting* [emphasis added].

The existing LCP further addresses scenic resources by specifically requiring structures to be "designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places." LCP II at 194, 207.

For now at least, Marin County Code Section 22.57.024(1)(a,b)I requires that structures be sited in the "least visually prominent" portion of the site--specifically, behind "existing vegetation, rock outcroppings or depressions in topography-- adding that such siting "is especially important on grassy hillsides."

With the interplay between Unit II, the County Code and Section 30251 of the Coastal Act, these provisions afforded strong protection for the viewshed on east shore of Tomales Bay and throughout the coastal zone. But such enhanced protections have been gutted under the new LCP: the specific recognition for the renowned scenic resources on the east shore of Tomales Bay has been eliminated.

Not only has the County withdrawn its recognition of the special scenic qualities of the east shore of Tomales Bay, the new standards for protecting scenic views are weaker and more general. While there is a clustering rule of debatable effectiveness, the standards otherwise state only that agricultural housing must be "compatible with ridgeline policies" and sited to protect "significant public views." C-AG-7, 9. With the additional new allowances

for residences, worker housing and sales or processing facilities on coastal zone ranches, the weakening of scenic protections is decidedly worrisome.

I question whether the record supports these changes. Is there evidence that the public wants less viewshed protection than afforded by the current LCP? Is there evidence to support the conclusion that agricultural needs cannot be met without sacrificing viewshed protections?

These poorly conceived substantive changes are exacerbated by significant procedural modifications. The new LCP expands the definition of Principal Permitted Use (PPU) in the Agricultural Protection Zones (C-APZ) so as to include so-called "intergenerational" residences, worker housing and processing or sales facilities. C-AG-2. Because of the operation of Coastal Act Section 30603(a)(4) (permits authorizing PPUs may not be appealed to the Commission), the effect is to empower County staff to issue administrative permits for residential and other development on ranches, with minimal notice, no public hearing and no public right of appeal to this Commission.

As a result, impairment of coastal resources will inevitably occur. Although standards for issuing permits for agricultural housing set forth in C-AG-7 and 9 include some protections for scenic and natural resources, these make no reference to Environmentally Sensitive Habitat Areas (ESHAs). Moreover, interested persons-- if they receive notice-- will have only minimal opportunity to be heard by staff or to present information regarding the application of the standards to specific proposals. Without a public hearing, the applicant and County staff will likely be less responsive to concerns raised by the public and the factual record for any appeal to County agencies or a court will be less robust than currently.

In the aggregate, these changes will confer upon the County the discretion to approve poorly sited new housing and processing facilities on coastal ranches, curtail public comment and then evade scrutiny of its decisions by this Commission. This surely fails to comply with the spirit of the Coastal Act, which states:

...the public has a right to fully participate in decisions affecting coastal planning, conservation and development; ... achievement of sound coastal conservation and development is dependent upon public understanding and support; and ... the continuing planning and implementation of programs for coastal conservation and

development should include the widest opportunity for public participation.

Section 30006.

Sadly, experience shows what the outcome of these changes will be: resources in the coastal zone will lose protections that are currently in place. Administrative decisions are more likely to be carelessly or arbitrarily made, and with more deference to the only party to the proceedings, the applicant. The result: the public will lose confidence in the Coastal Act and in this Commission.

The concept of "intergenerational housing" is also not ready for approval. C-AG 5. While ranchers' need to provide housing for family members and workers should be addressed, the proposal is entirely disconnected from either familial relationship or intention to help with ranch work. Basically, the farmer or rancher could simply build a second residence and rent it out to whomever he or she pleases. Indeed, under your staff's annotations, the requirement that residential development not diminish agricultural production does not even apply to these new PPU's.

This inadequately regulated housing program violates the purpose of the C-APZ by failing to protect productive land for agricultural use or to assure that development within the C-APZ be necessary for agricultural production. C-AG-2. It will seriously weaken protections for natural resources and scenic values and is arguably unfair to others in all other zoning districts whose development proposals must meet more stringent standards and go through a public process.

For these reasons, I urge the Commission to reject the LCP Amendment in its current form. I respectfully suggest that you instruct the County to restore the existing protections for scenic resources, abandon the ill-conceived broadening of PPU in the C-APZ, and restore the right of interested persons to be heard on specific applications to construct new housing and to appeal adverse decisions to this Commission.

Please support the following additional changes to the staff report:

1. Viticulture should be categorized as a "conditional use" rather than a "principally permitted use" due to the lack of groundwater and surface water

supplies in West Marin and significant impacts to habitat such development would cause.

2. All new development on C-APZ lands should be clustered on no more than 3% of agricultural lands to maintain the maximum amount of land in agricultural production. Under absolutely no circumstances should development be allowed on greater than 5% of agricultural lands. [For a 500 acre parcel, this would allow 15 acres of developed area at 3%, and 25 acres at 5%]. All existing and new roads should be included in the calculation of development.

3. Language should be added to policies for adjustments to Wetland Buffers (C-BIO- 20) and Stream Buffers (C-BIO-25) so that the proposed exceptions to the 100-foot buffer requirement are only allowed: 1) for rare and exceptional circumstances, and only for the Principally Permitted Uses in that zoning district, or 2) only for a public purpose, or 3) to avoid a taking of private property. A public hearing should be required for any proposed buffer adjustment.

4. Qualify the last sentence in C-MAR-1 such that “support for onshore facilities necessary to support mariculture operations in coastal waters” is limited to shellfish grown in Tomales Bay. That is, expansion of existing onshore facilities should not be driven by increased importation [“ship and dip”] of shellfish from other locations.

5. Require professional engineering or other studies for coastal permit applications for new or expanded groundwater wells or other sources serving two (2) or more lots, rather than five (5) or more, and require such studies for any application for viticulture or row crops under policy C-PFS-13.

6. Require a showing that any new or expanded groundwater well will not exacerbate saltwater intrusion under policy C-PFS-16.

Thank you for your attention and for carefully considering the important issues raised by this proceeding. The future of our priceless coastal zone rests in your hands.

Sincerely,

Carolyn K. Longstreth

TH12a

TH12a
Catherine Caufield

Steve Kinsey, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Subject: Marin County Local Coastal Program Amendment Number LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update).

Dear Commissioners,

I am writing to urge you to adopt several changes to Marin's proposed LCP Amendment. As it stands, the LUPA contains language that not only greatly expands the potential for residential, industrial and commercial development on agricultural land, but removes the public's existing rights to comment on these developments and to appeal to your Commission. However, a few changes that do not affect the underlying intention to protect agricultural lands and the ability of farming families to remain in farming, can right these wrongs.

1. Reinstate the existing definition of a parcel.

The existing LCP defines a parcel as "all contiguous assessor's parcels under common ownership." (LCP Unit II, p. 100). Thus a 600 acre C-APZ ranch that consists of three 200-acre lots is currently considered one parcel. But the LUPA defines a parcel as a "legal lot of record," meaning that the same 600 acre ranch will now be considered three parcels. Because the LUPA allows as a principally permitted use one residential unit and one inter-generational unit plus garages and office space (for a maximum of 8580 sq ft) on each parcel, this ranch would be allowed a total of 25,740 sq ft of residential development, three times as much as would be allowed under the current definition.

Besides dramatically expanding the development potential of agricultural lands, the new definition is inherently unfair, favoring ranchers whose land happens to be divided into several legal lots over those whose land is in one legal lot. This historical accident does not reflect agricultural needs and should not be the basis on which development rights are awarded.

In the LUPA that you are being asked to approve, the County indicates that the existing definition: "*Parcel*" is defined as all contiguous assessor's parcels under common ownership has been kept, but moved to a different location in the LUPA. (Exhibit 4, p. 10 [p. 1518 of the staff report PDF]). This is incorrect; it has not been included in the LUPA. Instead, the County has included a new definition of Parcel in Section 22.130 of the LCPA IP development code, which is still in draft mode.

"Parcel" (coastal). See "Legal Lot of Record"

*"Legal Lot of Record" is defined as a parcel created in conformance with either
a) a recorded subdivision, b) individual lot legally created by deed, or c) government conveyance.*

I ask that you instruct the County to reinstate in Section 22.130 the existing definition of parcel as all contiguous assessor's parcels under common ownership, and amend the LUPA as indicated in the attached excerpts.

2. Restrict principally permitted uses to agricultural production, accessory structures, one agricultural dwelling, and agricultural worker housing.

If intergenerational housing and agricultural produce sales and processing are made principally permitted uses, the public has almost no right to comment on or appeal to the Coastal Commission about what could be a major surge in development on coastal agricultural land -- as much as one million sq ft of development in the form of residences, sales facilities and processing plants.

The LUPA allows one intergenerational unit per legal lot as a principally permitted use, and a second as a conditional use. Commission staff have attempted to address the potential massive explosion of intergenerational housing by limiting to 27 the number of IG units that can be approved in Marin. This is not the right solution. It will create a first-come, first served stampede that will favor ranchers who can afford to build right now at the expense of those whose needs may be greater, but who cannot afford new development at the present time. Rather than setting an arbitrary limit, approval of IG units should be based on their demonstrated contribution to preserving family farming. However, since reserving housing for family members conflicts with state and federal housing law, the so-called IG units will merely be required to be occupied by people "authorized by the farm owner or operator." As Homer Simpson would say, "Doh." This is not a high bar to meet and does nothing to ensure that the IG unit will be used to further agriculture. A more equitable and responsive approach is needed and could be achieved either by requiring IG housing to be subject to public review and to appeal to the Coastal Commission or by sending the Amendment back to Marin County to draft policies that actually support the young generation of family farmers.

Agricultural Accessory Activities should be eliminated because it is vague and unnecessary, given the inclusion of "Agricultural Production" and "Other Agricultural Uses."

Viticulture should be categorized as a "conditional use" rather than a "principally permitted use" due to the lack of groundwater and surface water supplies in West Marin and significant impacts to habitat such development would cause.

I ask that you make the changes indicated via strikeouts and underlines in the attached excerpts of the Agricultural Policies of the LUPA, which incorporates the proposed staff alterations.

I regret that I have not had time to cover the rest of the LCP in the same detail, but I have reviewed the changes proposed by the Environmental Action Committee of West Marin, which I support and ask you to incorporate also.

Thank you for your work on this document, which is so crucial to the future of Marin.



Catherine Caufield
PO Box 884
Inverness, CA 94937

Catherine Caufield

Proposed amendments to Coastal Commission Staff amendments to Marin County LUPA:

C-AG-2 Coastal Agricultural Production Zone (C-APZ).

In the C-APZ zone, the principal permitted use shall be agriculture, limited to the following as follows, per parcel (defined as all contiguous assessor's parcels under common ownership):

1) Agricultural Production:

- *Uses of land for the breeding, raising, pasturing, and grazing of livestock;*
- *The production of food and fiber;*
- *The breeding and raising of bees, fish, poultry, and other fowl;*
- *The planting, raising, harvesting and producing of agriculture, aquaculture, mariculture, horticulture, viticulture, vermiculture, forestry crops, and plant nurseries.;*

2) Agricultural Accessory Structures;

3) ~~Agricultural Accessory Activities;~~

~~3-4) One farmhouse or a combination of one farmhouse and one intergenerational home per parcel (defined as all contiguous assessor's parcels under common ownership) legal lot,~~
consistent with the size limits of C-AG-5 and C-AG-9;

4-5) Agricultural worker housing, providing accommodations consisting of no more than 36 beds in group living quarters per legal parcel or 12 units or spaces per legal parcel for agricultural workers and their households;

5-6) Other Agricultural Uses, if appurtenant and necessary to the operation of agriculture, limited to:

- *~~Agricultural product sales and processing of products grown on-site, provided that for sales, the building(s) or structure(s), or outdoor areas used for sales do not exceed an aggregate floor area of 500 square feet, and for processing, the building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet;~~*
- *Not-for-profit educational tours.*

Conditional uses in the C-APZ zone include up to two a second intergenerational homes per parcel legal lot, agricultural product sales and processing of products not grown on-site or off-site, provided that for sales, the building(s) or structure(s), or outdoor areas used for sales do not exceed an aggregate floor area of 500 square feet per parcel, and for processing, the building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet per parcel; water-intensive agricultural activities such as viticulture; for-profit educational tours, agricultural homestay facilities, agricultural worker housing above 12 units per legal lot, and additional agricultural uses and non-agricultural uses, consistent with Policies C-AG-6, 7, 8 and 9.

Development shall not exceed a maximum density of 1 agricultural dwelling unit per 60 acres. Densities specified in the zoning are not entitlements but rather maximums that may not be achieved when the standards of the Agriculture policies below and other relevant LCP policies are applied. The County (and the Coastal Commission on appeal) shall ~~may~~ include all contiguous properties under the same ownership when reviewing a Coastal Permit application

C-AG-5 Agricultural Dwelling Units (Farmhouses, Intergenerational Housing, and Agricultural Worker Housing). *Support the preservation of family farms by facilitating multigenerational operation and succession. Agricultural dwelling units may be permitted on C-APZ lands subject to the policies below, as well as any applicable requirement in C-AG-6, 7, 8,*

and 9, and all other applicable requirements in the LCP. No more than a combined total of 7,000 sq ft may be used as an agricultural dwelling by the farm owner or operator, whether in a single farmhouse or in a combination of a farmhouse and intergenerational homes(s).

Intergenerational farm homes may only be occupied by persons authorized by the farm owner or operator, shall not be divided from the rest of the ~~parcel~~ legal lot (defined as all contiguous assessor's parcels under common ownership) and shall be consistent with the standards of LCP Policy C-AG-7 and the building size limitations of Policy C-AG-9. Such intergenerational homes shall not be subject to the requirement for an Agricultural Production and Stewardship Plan (C-AG-8), or permanent agricultural conservation easement (C-AG-7). A density of 60 acres per unit shall be required for each farmhouse and intergenerational house (i.e. at least 60 acres for a farmhouse, 120 acres for a farmhouse and an intergenerational house, and 180 acres required for a farmhouse and two intergenerational homes), including any existing homes.

~~Where a legal lot is less than 60 acres, the reviewing authority shall consider all contiguous properties under the same ownership to achieve the requirements of the LCP. No Use Permit shall be required for the first intergenerational home on a qualifying lot. A Use Permit shall be required for each a second intergenerational home. No more than 27 intergenerational homes may be allowed in the County's coastal zone.~~

A. Standards for Agricultural Uses All Development in the C-APZ:

All of the following development standards apply:

2. Development shall be permitted only where analysis by qualified engineers demonstrate that adequate water supply, sewage disposal, road access and capacity and other services are available to support the proposed development after provision has been made for existing and continued agricultural operations production.

Th 12a

PO Box 31
Inverness, CA 94937

May 12, 2014

California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
FAX (415) 904-5400
Email: Dan.Carl@coastal.ca.gov

Th12a, May 15, 2014
Marin County LCPA LCP-2-MAR-13-0224-1 Part A

Re: Opacity in permitting of housing development on agricultural land

My comments focus on the extensive curtailment of public participation in land use Coastal Development Permit decisions proposed in Marin County's Local Coastal Plan Amendment (LCPA), accurately termed the "Rewrite" by the Environmental Action Committee of West Marin.¹

Wide public participation in decisions regarding coastal development is a fundamental principle included in the Coastal Act:

Section 30006 Legislative findings and declarations; public participation

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

Protection of coastal resources benefits from public participation and oversight of local governmental decisions. The submitted LCPA, however, narrows and largely eliminates public participation in the decision-making on coastal permit applications in the agricultural production zone (C-APZ) district. The Rewrite proposes to classify (1) residential housing, (2) farmworker housing, (3) farmstays, (4) processing facilities having areas up to 5000 sq. ft, (5) retail sales facilities and activities having areas up to 500 sq. ft., and (6) educational tours as "principal permitted uses".

¹ Comment letter: West Marin Environmental Action Committee dated May 12, 2014.

As a result, all of these uses on agricultural production lands will:

1. Receive limited public notice (no newspaper publication)
2. Have no staff report
3. Have no public hearing
4. Not be appealable to the Commission

Unlike nearly all other housing developments in other coastal zoning districts, the LCPA uniquely grants agricultural housing a favored "streamlined" status. Development of a new residence on an agricultural parcel does not receive the same scrutiny as nearly all other housing developments in other zoning districts, which require widespread public notice, a staff report, and a public hearing, and where the county coastal permit decision is subject to appeal to the Commission. Opaque administrative decisions, made out of sight of public view, are the polar opposite of the transparency required by the Coastal Act.

When Marin County coastal permits decisions have been appealed, the Commission and its staff have consistently found that residential development in the C-APZ district is not "the principal permitted use" for purposes of Coastal Act section 30603 (a)(4).

Providing for public participation at public hearings, informed by wide public notice and meaningful staff reports, expands the relevant information available for assessing a coastal development application and helps to ensure that developments are consistent with the LCP and that coastal resources are protected. In fact, Marin County has made numerous errors in issuing coastal permits, and appeals of County permit decisions have raised substantial issues of consistency with the County LCP that required the Commission to address the development applications *de novo* in public hearing.

The latest of these is the appeal brought by Commissioners Shallenberger and Stone of the permit granted to CalTrans for developments on Highway One at Stinson Beach.² Earlier, the Commission found that two residential developments on C-APZ parcels above the East Shore of Tomales Bay were appealable because they included residential development in the C-APZ district and raised significant issues of consistency with the LCP visual resource protection policies.³ Other recent appeals of County-issued coastal permits that have raised substantial issues include permits for Tomales Bay residential bluff stairs in a wetland buffer⁴ and NextEra meteorological towers in Pacific flyway.⁵

² Agenda item Th14b at this Thursday's (4/15/14) Commission meeting.

³ Hansen-Brubaker (Th9a, 3/7/2003) and Brader-Magee (W9a, 3/6/2013).

⁴ Rumsey (F8a, 6/14/2013).

⁵ NextEra (W24b, 3/9/2011).

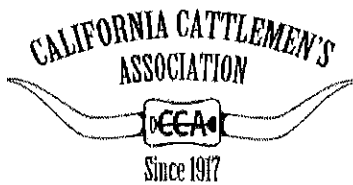
Each of these permits was granted following a public hearing. Nevertheless, it is undeniable that the right to appeal to the Commission was necessary to achieve consistency with the certified LCP.

The Marin LCPA would deprive the public of its right of review of most land use developments on almost two-thirds of the non-federal land in the Marin County coastal zone. I urge the Commission to **continue to find County coastal permit decisions on residential development on agricultural production land to be a land use that is appealable to the Commission** and thereby to maintain the public's right of full participation in land use decisions affecting coastal resources, including public hearings

Sincerely yours,

A handwritten signature in cursive script that reads "B. Mitchell".

Bridger Mitchell



MARIN COUNTY FARM BUREAU

Th/2a

Th12a
California Cattlemen's Association (CCA)
Marin County Farm Bureau (MCFB)

May 12, 2014

Dr. Charles Lester, Executive Director
and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Via: Kevin Kahn, District Supervisor, LCP Planning
kevin.kahn@coastal.ca.gov

**Re: May 2, 2014 Staff Report on the Marin County Local Coastal Program Amendments
Number LCP-2-MAR-13-0224-1 Part A (Marin Land Use Plan Update) (2)**

Dear Dr. Lester and Honorable Commissioners:

The California Cattlemen's Association (CCA) and Marin County Farm Bureau (MCFB) welcome the opportunity to comment on the California Coastal Commission (Commission)'s staff report on the Marin County Local Coastal Program Amendments (LCPA). CCA represents over 3,400 members, including over 1,700 cattle ranchers throughout the state. MCFB represents over 700 members. A significant number of CCA and MCFB's members conduct their ranching and farming activities in the Coastal Zone, and thus coastal issues are of utmost importance to members of both organizations, and have implications for farmers and ranchers up and down the California coast. Additionally, Marin's Countywide Plan specifies that regulations certified in the LCPA will eventually be applied to the Inland Rural Corridor.

CCA and MCFB have closely followed Marin County's LCPA, and in recent years have on numerous occasions submitted comments to the Marin County Board of Supervisors regarding concerns about the LCPA's impacts on agriculture. We write the Commission now both to reiterate concerns we have had with the proposed LCPA throughout the amendment process, as well as to object to modifications to the LCPA proposed by Commission staff which, if adopted, would prove *more* harmful to agriculture than was the Marin County draft.

We urge the Commission to defer action on the LCPA until it has had a chance to work with agricultural stakeholders to develop language with greater flexibility for agricultural producers and landowners. Deferring action until a later date will also allow the Commission to ensure consistency between the LCPA and the language and intent of the California Coastal Act. As Commission staff notes in their May 2 memorandum to the Commission, the Commission has

until July 27, 2014 to take final action on the LCPA, and has the authority to extend the action deadline by up to one year (as late as July 27, 2015). We hope the Commission will use at least some of that available time to further deliberate and work on these important issues.

I. CONTINUED OBJECTIONS TO LCPA POLICIES ADOPTED BY MARIN COUNTY AND FORWARDED TO THE COMMISSION

Though the Marin County Board of Supervisors consulted extensively with the public in preparing its LCPA, and in so doing addressed some of the concerns of CCA and MCFB members, there are a number of objections to the LCPA that we have had since the beginning of the amendment process, and that bear repeating at this stage.

A. Categorical Exclusion Orders

We remain disappointed that there has been no policy language produced to address the inequity of the geographical designation of where Categorical Exclusions can be applied. The County Categorical Exclusion Orders E-81-2 and E-81-6 exclude from coastal permit requirements agriculturally-related development, including production activities, barns and other necessary buildings, fencing, storage tanks and water distribution lines, and water impoundment projects. As currently written and shown on maps 27g & 27j, large areas encompassing thousands of acres are considered "Non-Excludable Areas," and as such require Coastal Development Permits for all agricultural projects including barns, storage, equipment and other necessary buildings, fencing, and other agricultural development. "Non-Excludable Areas" include lots immediately adjacent to the inland extent of any beach and apply to parcels zoned C-APZ at the time of the exclusion orders' adoption if those parcels are outside of the area between the sea and the first public road or a half-mile inland, whichever is less.

To prevent a circumstance in which an entire ranch that happens to be inland of the coastline is considered Non-Excludable, Marin County legal staff and supervisors discussed specifically defining the term "lot" in the last sentence of Section 30610.5(b)—a term that is undefined in the Coastal Act. The term "lot" in this context could be defined as follows:

"Lot. Coastal Tidelands, Agricultural, Non-Excludable, Unrecorded. A buffer that runs inland from the beach/mean high tide line of the sea and from waters subject to the public trust, by X feet."

As for determining the buffer width "X," the agriculture community would likely support a 100 foot designation, which would also be consistent with the Marin County LCPA's C-BIO-19 Wetland Buffers and C-BIO-20 Wetland Buffer Adjustments and Exceptions.

This would substantially alleviate the present inequity of designating certain inland lots that are not adjacent to the beach/mean high tide line as Excludable Areas, while *not* excluding large portions of agricultural lots that happen to be adjacent to the beach/mean high tide line, but that may run inland to the same extent as those excluded lots.

Please amend the Categorical Exclusion Orders with the addition of this definition.

B. C-BIO-1 Environmental Sensitive Habitat Areas (ESHAs)

CCA and MCFB have on numerous occasions written to oppose the overbroad definition of ESHAs under the proposed LCPA. It remains our view that threatened and endangered plant and animal species in California are already protected by state and federal endangered species designations, and thus do not require any further perceived protection under an ESHA designation. Additionally, wetlands and riparian areas receive protection from local, state, and federal jurisdictions. For those plant and animal species that are not otherwise protected, the public interest would best be served if those designations were appropriated through a public process.

C. C-BIO-3 ESHA Buffers

Throughout the LCPA process, we have consistently objected to arbitrary minimum absolute ESHA buffer widths. We renew that objection now. The LCPA already requires that biological site assessments be conducted for terrestrial ESHA. We strongly urge the Commission to recognize the importance of these biological site assessments, and to permit ESHA buffers to be based on the conclusions drawn from the individual site assessments. An absolute minimum buffer of 25 feet reflects an arbitrary policy decision, rather than the evidence-based approach intended by the biological site assessments. If a biological site assessment suggests that there is no threat to ESHA from a buffer of fewer than 25 feet, there is no sound purpose for demanding that the buffer nevertheless be 25 feet. We ask the Commission to reject this—or any other—absolute minimum buffer, and instead permit for ESHA buffers to accommodate the findings of individual biological site assessments.

D. C-AG-9.3

We have long objected to Marin County's policy limiting the aggregate of residential development to no more than 7,000 square feet for a total of all agricultural dwellings. A 7,000 square foot cap not only severely limits the ability of families to stay on their farms, but it is grossly unfair to disallow larger homes on big ranches when large residences are allowed on tiny lots in other parts of Marin County. It is critical that farmers and ranchers have the ability to build accessory structures and residences that support their continued economic sustainability. It is also important for Commission staff to remember that including these structures as principally permitted uses does not mean that the planning and permitting will not be reviewed. Adding an additional layer of regulatory burdens to farm and ranch families who wish to expand their ability to continue to work and live on their land is counterproductive. Such a limit could also be construed as a taking, as it ignores the zoning and existing development potential. We urge the Commission to remove the aggregate square footage cap.

II. OBJECTIONS TO MODIFICATIONS PROPOSED BY COMMISSION STAFF

Though CCA and MCFB members are concerned with a number of LCPA elements that we have opposed from the inception of Marin County's amendment process, we are particularly concerned with a number of *amendments* proposed by Commission staff in their May 2 staff

report. These amendments are significant, represent an overreach by commission staff, and detract from the five years of work that went into developing the proposed LCPA carefully considered and adopted by the Marin County Board of Supervisors.

A. Concerns about the scope of Commission staff's review

California Public Resources Code Section 30500(c) states that "the precise content of each local coastal program shall be determined by the local government . . . in full consultation with the commission and with full public participation."¹ In passing the California Coastal Act, the legislature demonstrated an intent that the Commission would *consult* with local governments in local governments' development of local coastal programs.

Here, however, Commission staff has acted beyond this role of consultation, unilaterally making significant amendments to Marin County's Local Coastal Program. Marin County's LCPA reflects a lengthy public engagement process over many years which permitted the County to draft reasonable and responsible amendments that reflected the views of local ranchers, farmers, and all other concerned parties. The LCP is, by statute, supposed to be a *local* plan developed by the *local* government. To permit Commission staff to replace carefully-negotiated language, addressing multiple interests over the course of many years, greatly compromises the local control envisioned by statute. Where Commission staff has significantly amended Marin County's LCPA, the policies devised by the local government should be given deference over staff's suggestions.

B. C-AG-2 Coastal Agricultural Protection Zone (C-APZ): Deletion of "Substantially similar uses of an equivalent nature and intensity" from the list of permitted agricultural production

Our members strongly object to the omission of "substantially similar uses of an equivalent nature and intensity" from the list of principal permitted uses for agricultural production. One of the common themes heard at the May 8, 2013 Agriculture Workshop was that, in order to remain viable and sustainable, agricultural enterprises required regulatory flexibility and efficiency in the permitting process. This item would permit for just such regulatory flexibility, and it is for this reason that we request that it be reincorporated in the LCPA.

Given the uncertainty in future conditions, including climate, economics, disease, and other unforeseen circumstances, new and creative types of food and fiber production might prove beneficial or necessary for ranchers in the future. Furthermore, the requirement under the amendment as adopted by the Marin County Board of Supervisors that such use be "of an equivalent nature and intensity" adequately protects against any risk of harm to coastal resources. Thus, we respectfully request that this element be reincorporated into the LCPA.

C. C-AG-5 Agricultural Dwelling Units

As stated in our discussion above of C-AG-9.3, CCA and MCFB have on numerous occasions expressed to the Commission the need for more family housing for agriculture in the Coastal

¹ Cal. Pub. Res. Code § 30500.

Zone. Most agricultural operations are family businesses and involve several generations. Increased family housing is necessary to sustain agriculture in the Coastal Zone, and such an increase would have the added benefit of reducing negative impacts from family traveling to the farm from offsite locations.

Unfortunately, Commission staff's amendments regarding Agricultural Dwelling Units only serves to exacerbate, rather than alleviate, the problem.

We are also quite concerned by the addition of language that "No more than 27 intergenerational homes may be allowed in the County's coastal zone." While this number may be based on some determination involving the number of properties not currently encumbered with development right limitations, limiting the number of intergenerational homes *throughout Marin County's Coastal Zone* does nothing to address farmers' and ranchers' important need for additional housing—rather, it additionally burdens agriculture.

D. C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands

Under the Marin County LCPA, structural developments could be centered in one or more clusters. Commission staff would limit this to one cluster. Importantly, under both versions of the amendment, no more than 5% of gross acreage could be used for structural developments. We urge the Commission to defer to the County standard, which permitted flexibility for ranchers and farmers while protecting an equal amount of agricultural land as would Commission staff's proposed amendment. Staff's amendment provides no further benefit, with the detriment of limiting ranchers' ability to meaningfully manage their property.

E. C-AG-9.2

We further object to staff's addition that clustered development "shall be sited and designed to protect significant public views." We have long argued that when siting agricultural development, best management practices are most important, and also that while protecting the public's views of the coastline from obstruction by development, nowhere in the Coastal Act does the public own rights to views *of* our properties.

F. C-BIO-14 Wetlands: "Wetlands" emerging from agricultural activity

In some instances, "wetlands" may emerge from agricultural activities such as livestock management, tire ruts, row cropping, or other means. Under Marin County's carefully considered proposed LCPA, the origin of these "wetlands" would be considered, and if substantial evidence demonstrated that they originated *as a result* of agricultural activities *and* they did not provide habitat for ESHA, then such "wetlands" could be maintained for agricultural uses.

Under the Commission staff's proposed amendments, most of this provision has been eliminated, substituted by "Prohibit grazing or other agricultural uses in a wetland, except for ongoing agricultural activities." This amendment is concerning because it substitutes the very specific language adopted by the Marin County Board of Supervisors with the vague "for ongoing agricultural activities." Under the LCPA as adopted by Marin County, a field left fallow, but

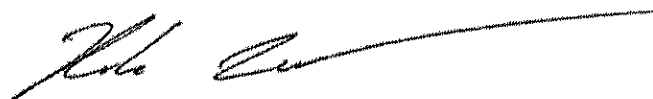
which has "wetlands" resulting from previous cultivation, may be cultivated once again despite having lain fallow so long as ESHA are not present in the agriculturally-produced wetlands. Under the Commission staff's substantial amendment, however, it may be deemed that the agricultural activity has not been sufficiently "ongoing," and a farmer or rancher may arbitrarily be stripped of the historical use of his or her land. This is particularly concerning because the very **nature** of responsible land stewardship requires the laying fallow of pastures for several seasons. This vague proposed amendment threatens to punish farmers and ranchers for practicing responsible land stewardship. This policy was much better under the Marin County version, which permitted much greater temporal flexibility than Commission staff's amendment, and we strongly urge the Commission not to adopt staff's amendment.

III. CONCLUSION

CCA and MCFB once again thank the Commission for the opportunity to provide comments on Marin County's LCPA. While there are many elements of the LCPA adopted by Marin County's Board of Supervisors with which we disagree—such as failure to address Categorical Exclusions and the insistence on arbitrary ESHA buffers—we nevertheless find the carefully-considered LCPA developed over years of public participation in Marin County to be preferable to the amendments hastily and unilaterally suggested by Commission staff. However, to best address both categories of concerns, we ask that the Commission defer action on a final LCPA until a later date, permitting the Commission to consult with a number of agricultural stakeholders and ensure that the LCPA is consistent with the language and intent of the California Coastal Act.

Finally, we hope that you will recognize, as was made clear at the May 8, 2013 Agriculture Workshop, that agriculture is of co-equal importance to resource protection and public access. We urge you to consider the regulatory flexibility necessary for coastal ranchers and farmers to maintain viable operations, and to reflect the importance for such regulatory flexibility in the final version of the Marin County LCPA.

Sincerely,



Kirk Wilbur
Director of Government Relations
California Cattlemen's Association



Sam Dolcini
President
Marin County Farm Bureau

CC:

Marin County Board of Supervisors, bos@co.marin.ca.us

Christian Scheuring, Managing Counsel, California Farm Bureau Federation

cscheuring@CFBF.com

Stacy Carlsen, Marin County Agriculture Commissioner, SCarlsen@co.marin.ca.us

Paul J. Beard, Principal Attorney, Pacific Legal Foundation pjb@pacificlegal.org

Louise Gregg

Remove Large WECS from the Energy Plan.

Box 127

Tomales, Ca. 94971

RECEIVED
MAY 13 2014
CALIFORNIA
COASTAL COMMISSION

Dear CCC,

I am sending you a copy of a letter I wrote on 8/26/2010. "Appeal of Marin County Deputy Administration's Approval of Joblons and Cornett Coastal Permits (Meteorological Research Towers)."

My reason is the CCC is still including LARGE WECS . After 2 years of hearings and a CEQA Law suit I would expect the CCC to move on to considering other options for this area. Every Environmental organization in Marin Co. attended each and every hearing. No one wanted this monstrous industrial giant. I do not think the people who were employed to represent the Machine, Next EraEnergy, wanted it. I really don't understand why it was left in. Please remove it.

Thank you for reading my letter,

Louise Gregg 707-878-2778 louisebgregg@yahoo.com

Louise B. Gregg
PO Box 127
Tomas, CA 94971

Appeal of Marin County Deputy Administration's Approval of Joblons and Cornett Coastal Permits (Meteorological Research Towers). August 26, 2010

I, Louise B. Gregg, 27075 Hwy 1, Tomas, CA., support the appeal, submitted September 2, 2010.

-- In regards to #1 of the appeal: I spoke with Ron Parson, coordinator of CEQA, in Sacramento.

He told me that there is *no exemption* for wind turbines, period. Ron Parson can be reached at: 916-445-7016.

-- In regards to # 3: Living in Marin County all my life, I am aware that there has been a law against building anything on ridge lines. In fact, the law requires that nothing shall be built protruding above ridge lines. (See: Ridgeline Development, Single Family Design guidelines in the Marin County Plan, November 6, 2007.)

-- In regards to #4: The most important facts are: Joblons and Cornet property are both across the road from the Estero De San Antonio; Joblons Farm is in contract with MALT; and Cornet is in contract under the Williamson Act. Both are receiving federal money to *not* develop their properties beyond agricultural use. These agricultural contracts are incompatible with the proposed industrial business, i.e the MET towers *and* future industrial wind turbines.

-- In regards to # 5: All scientific data should be made public and collected by an unrelated unbiased third party.

-- In regards to #6: Our appeal requires the project to file an environmental impact report.

"Whenever federal monies are involved, an historical resources survey must be conducted before starting a project such as this." (Peterson, Dan, AIA Architect. Tomas Historic Resource Survey, January 1976.) Also see: Section 106:

"Those undertaking Federally sanctioned or permitted projects that might affect historic properties listed or eligible for listing in the National Register of Historic Places should initiate consultation with State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO).

It is important to note that an environmental impact report shall be filed for any property included in the National Registry of Historic properties (including districts, sites, buildings, structures, and objects, their settings) when conditions of a proposed undertaking cause or may cause any changes -- beneficial or adverse -- in the quality of the historical, architectural, archeological or cultural character that qualified the property under the National Register criteria. It is

important to note that Tomales Presbyterian Church is on the National Registry. As well, there are numerous important Miwok archeological sites in this area; indeed, I have found and donated numerous Miwok artifacts to Tomales History Museum. Additionally, the entire town of Tomales is designated as a Historic District by Marin County and the State of California.

See: 800.9 Criteria of Adverse Effect [See also: 800.8: Criteria of Effect]

- a. destruction or alteration of all or part of a property;
- b. isolation from or alteration of its surrounding environment;
- c. introduction of visual, audible, or atmospheric elements that are out of character with the property or its setting;
- d. transfer or sale of a federally owned property without adequate conditions or restrictions regarding preservation, maintenance, or use; and
- e. neglect to a property resulting in its deterioration or destruction.

There will be adverse effects. The placement of this tower alters Tomales and its surrounding environment. The tower is out of scale and out of character and will do irreparable damage to the historic character of this region. The tower introduces visual elements incompatible with the historic character of Tomales; the future wind turbine project introduces audible and atmospheric elements that are definitely out of character for those properties *and their surroundings* already on and eligible for the National Historic Registry. This pristine historical region should be protected for the future.

I would like to add that the general public was not adequately informed of the August 2, 2010 hearing. This is illegal; according to the Brown Act, authored by Assembly member Ralph M. Brown, 1953, the public has the right to attend and participate in meetings of local legislative bodies.

It is extremely important to remember that according to NOAA, there is a restriction on over-flight of motorized aircraft within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance (ASBS), as designated by the State of California (15 CFR Ch. IX §922.82), including Bird Rock (Tomales Point), Point Reyes Headlands, and the Farallones Marine Sanctuary. It can be safely concluded that a wind turbine mounted on a potentially 400-ft tower operating 24 hours a day can be accurately compared to an aircraft flying at less than 1000 ft. If laws are ignored, birds will die, lands will be destroyed, and human community will suffer.

Please, let us protect the birds, the land, the air, and the water. Those who came before us have created laws to protect the land. We must continue this work and preserve this beautiful coast for future generations.

sincerely,

Louise Gregg

1/24/11

cover

wecs

case

Susan Brandt-Hawley/SBN 75907
BRANDT-HAWLEY LAW GROUP
P.O. Box 1659
Glen Ellen, CA 95442
707.938.3900, fax 707.938.3200

Attorneys for Petitioners

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

West Marin/Sonoma Coastal Advocates, Case No.
an unincorporated association, and
Susie Schlesinger;

Petitioners,

v.

**County of Marin and Marin County
Board of Supervisors;**
Respondents;

**Petition for
Writ of Mandamus**

California Environmental Quality Act
[CEQA]

**NextEra Energy Resources, Diane
Cornett, Gregory Cornett, Francis
Cornett, David Jablons, Tamara Hicks,
and Does 1 to 10;**

Real Parties in Interest.

e-mail
we c s
case

From: Susan Brandt-Hawley (susanbh@preservationlawyers.com)
To: louisebgregg@yahoo.com; chisosdog@earthlink.net;
Date: Fri, April 8, 2011 4:33:39 PM
Cc:
Subject: update

Hi Louise and Susie.

Happy spring!

I finally have been able to talk to the NextEra lawyer. Since the Coastal Commission will be reviewing this matter now, NextEra suggests that we put the lawsuit on hold to see what the Commission does. If the Commission denies the permit, the lawsuit won't be needed. If the Commission approves it, we can proceed with the lawsuit to request an EIR.

This sounds like it might make sense. Maybe we could all talk together on a conference call about it? I have a conference call capability on my phone. If it's just the three of us, I can just call you both at once, or if you'd like more people on the call we could arrange a call-in number.

Monday or Tuesday would work for me, let me know what you think!

Susan

Susan Brandt-Hawley
Brandt-Hawley Law Group
707.938.3900
preservationlawyers.com

email
wec's
case

Re: Good news!!! Confirmation re NextEra Withdrawal from Tomales

Hide Details

FROM: Susan Brandt-Hawley

Sunday, October 16, 2011 12:03 PM

TO: Susan Brandt-Hawley

CC: louise gregg ; Susie Schlesinger ; Sid Baskin ; Bev McIntosh ; helen kozoriz ; 2 More...

Thanks for all of your happy and appreciative emails. I still don't have written confirmation from NextEra's lawyer, except to confirm that the demurrer is off-calendar (I will keep on top of that with the court too, not just take counsel's word for it...) I really haven't done that much since the case had not yet moved forward to briefing, but I was ready to -- and I'm sure NextEra knew that. Glad to be part of this happy moment, realize it's not over but still a great place to be for now. Susan

From: Susan Brandt-Hawley

Sent: Wednesday, October 12, 2011 5:19 PM

To: Susan Brandt-Hawley

Cc: Frank Egger ; louise gregg ; Susie Schlesinger ; Sid Baskin ; Bev McIntosh ; chips Armstrong ; helen kozoriz

Subject: Good news!!! Confirmation re NextEra Withdrawal from Tomales

Hello all.

As you know, we have a case management conference and demurrer in our case pending in two weeks. I have been preparing for both and was planning to talk to you all soon.

But after I received the emails below, I called the NextEra attorney Chris Griffith from the SSL law firm. We spoke yesterday and again just a few minutes ago -- and she has confirmed to me that NextEra is going to withdraw their application for the Tomales project. I am waiting for something in writing but she was very clear about the decision.

I can explain next steps as I know more.

The bottom line is that the pending demurrer (NextEra was asking the case to be put on hold while awaiting Coastal Commission final action) is going to be dropped by NextEra, and NextEra is going to withdraw its project application in Tomales. :-)

Before we dismiss the case, I will seek to have the categorical exemption set aside and your costs reimbursed, as well as some small amount of attorneys fees for my time. They will argue that their project withdrawal is unrelated to our lawsuit (hard to prove either way) and that we should not get costs or fees. But hopefully they will pay since the amounts are small.

Congratulations!

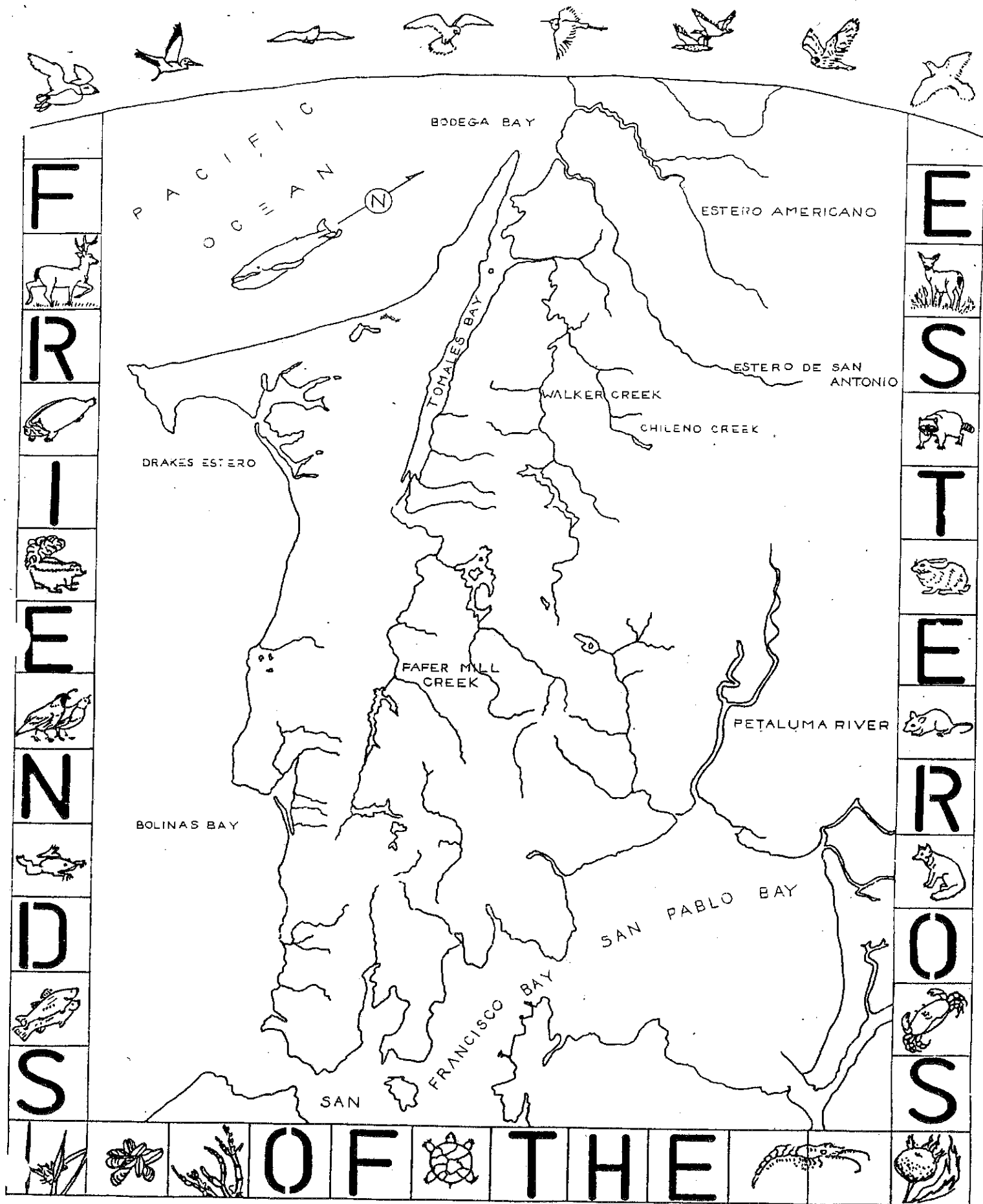
As soon as I have something in writing confirming any of this, I will forward to you.

This is public info, you are not required to keep it confidential.

Thanks! Happy to confirm good news!

Susan

Susan Brandt-Hawley
Brandt-Hawley Law Group
707.938.3900
preservationlawyers.com



Louise Gregg 92

Change Visitor Appeal to Historic Resources.

RECEIVED
MAY 13 2014
CALIFORNIA
COASTAL COMMISSION

Dear California Coastal Commission:

My HAR Comments:

PP 3. Please use Legal language that will best protect our Historical Resources. It is important for that MLCP, CEQA and NEPA are all on the same page. Please do not create conflict by softening the Legal Language. It will result in confusion on a local level and needless expensive time consuming Law Suits.

Section 30251 example, "protection for visual resources etc." Why not be legally accurate by saying Historic Resources? The way Architecture looks is important but as important is the Historic Architecture's legal "view shed."

PP5. If the LCP protects archaeological and paleontological resources by requiring development applications to be reviewed for potential impacts to these resources why not to Historic resources? Please include Historic Resources in this legal process.

Policies:

The CCC keeps Archeological and Paleontological Resources in the Northwest Information Center and this also includes all information acquired through the EIR process. Please treat our National Historic Resources with as much care. This should be easy. Due to the fact that the Northwest Information Center is working with and is supported by the California Historical Resources Information System. See: nwic@sonoma.edu

C-HAR7- Please include "No demolition by neglect." The owner of historic property should at least stabilize it and not use neglect to get rid of a Historic building.

C-HAR-8- Please say Historic Villages. Within Historic Areas. See mapped Historic Boundaries in Stinson Beach, Bolinas, Tomales, Marshall, Point Reyes, Olema, and Inverness.

Downgrading Treasured Historic Areas by describing them as "Visitor Appeal" creates indifference to the loss of nationally valuable Resources.

Thank you for your time in reviewing my comments. Louise Gregg 707-878-2778
louisebgregg@yahoo.com

P.O. Box 127-Tomales, Ca. 94971

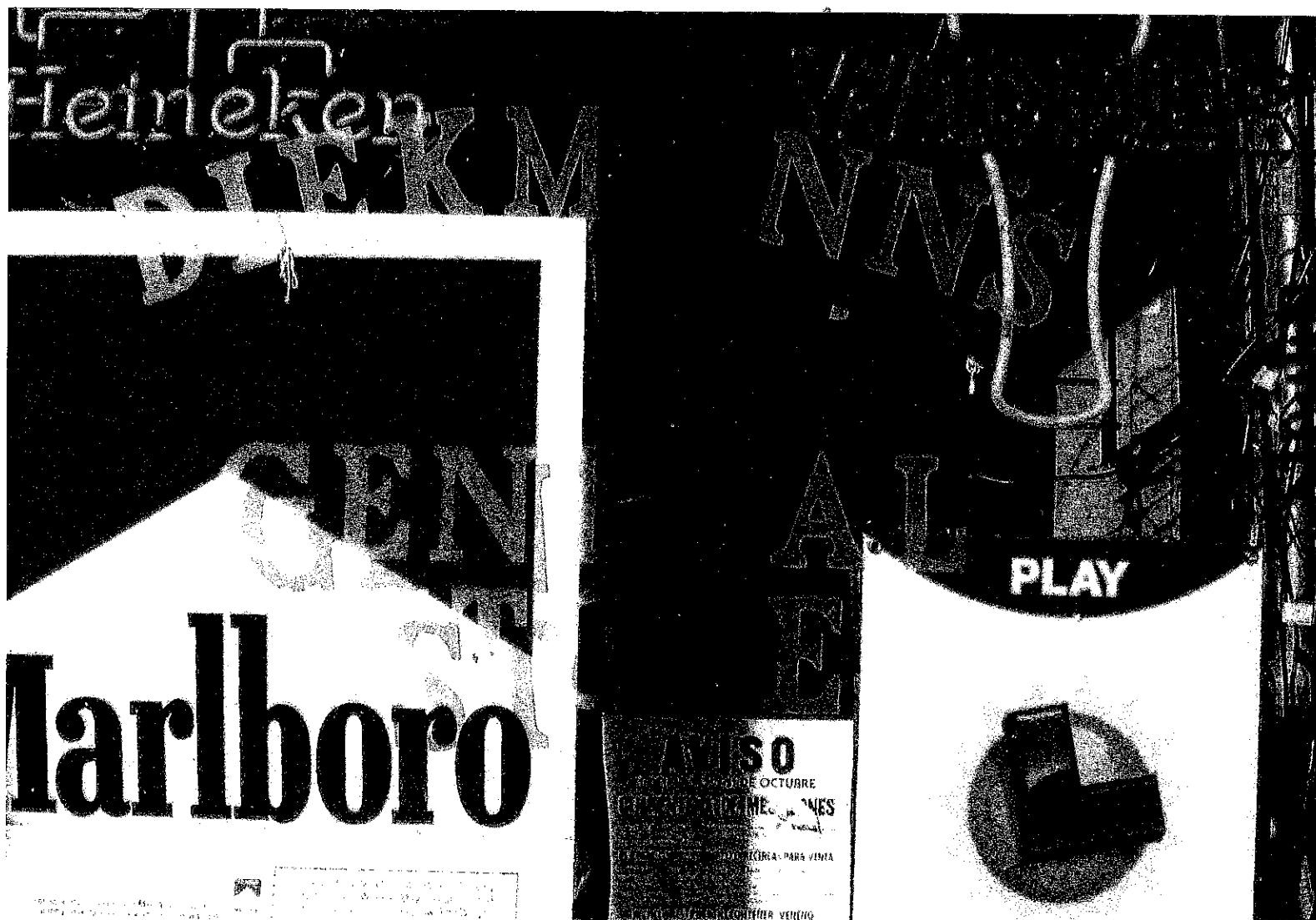
My neighbors wanted to sign. Alex and Diana Muhanoff

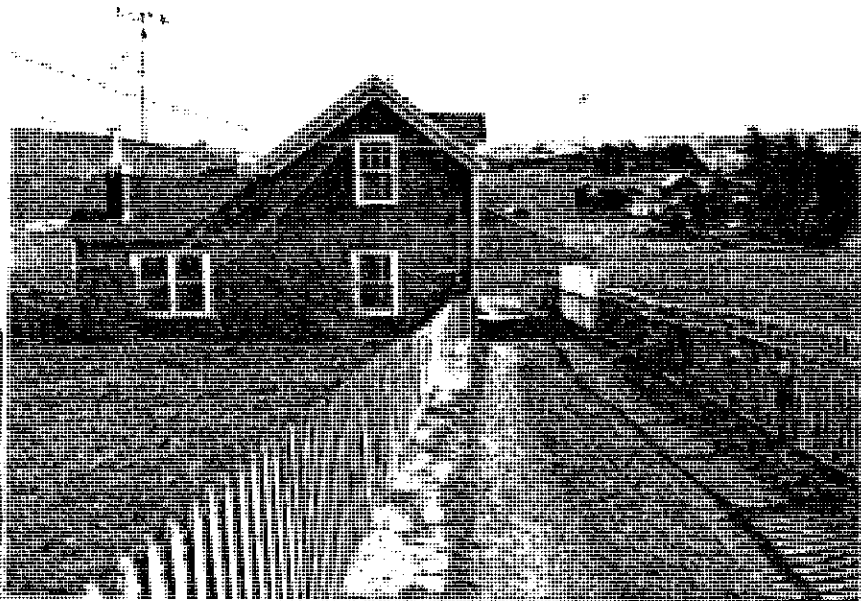


THE BEAUTIFUL LITTLE TOWN OF TOMALES MARIN CO. CAL. U.S.A.

PHOTO TAKEN FEB. 21 1900

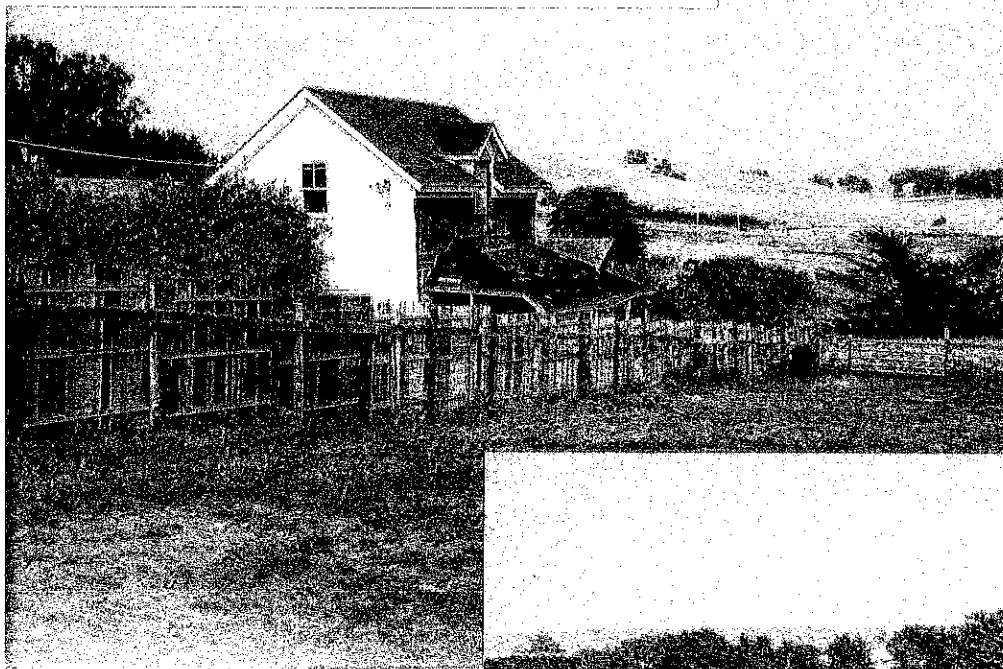
NOW DIEKMANN'S GENERAL STORE HAS
11 NEON SIGNS AND A LOTTO RESEVING
DISK 1 FT. FROM OUR P.O. DOOR



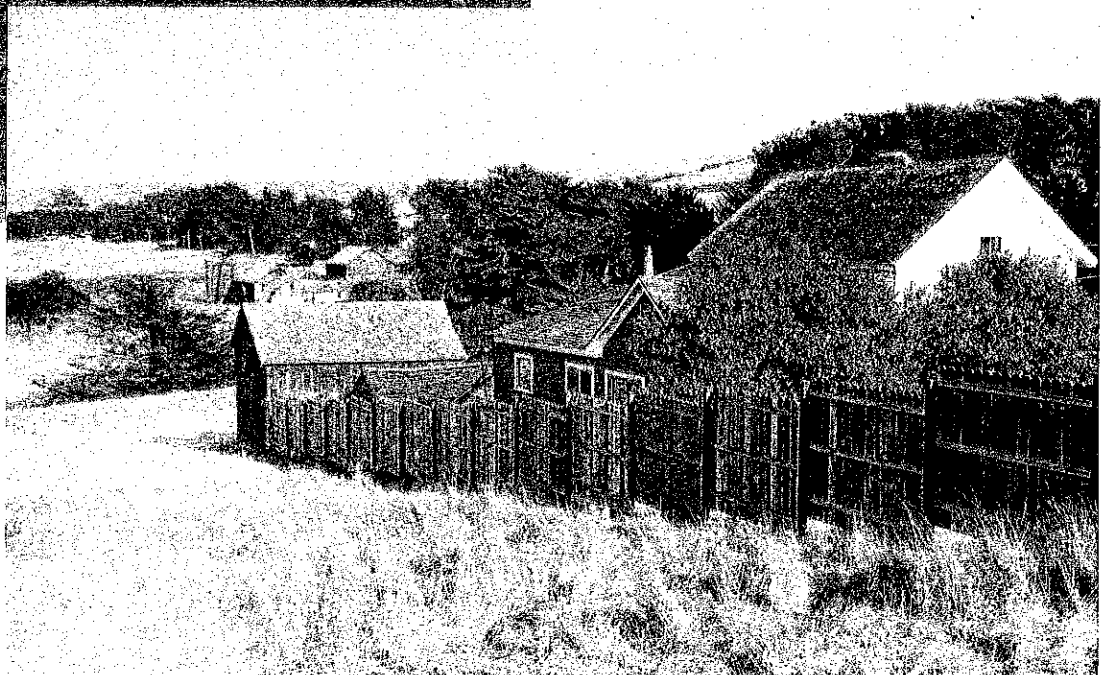


Andrew Fisher house (on Highway One across from the History Center) may be the oldest dwelling in Tomales. Andrew Ludwig Fisher (Irish immigrant born in 1837, moved the rough cabin, built in 1850, by John Keys, and added to it—this is the 1 1/2 story portion of the house. Fisher was a carpenter. He and Peter Morrissey are credited with the construction of the Church of the Assumption and the original rectory (now on Tomales Petaluma Road).

This picture was on the cover of the 1977 Tomales Community Plan

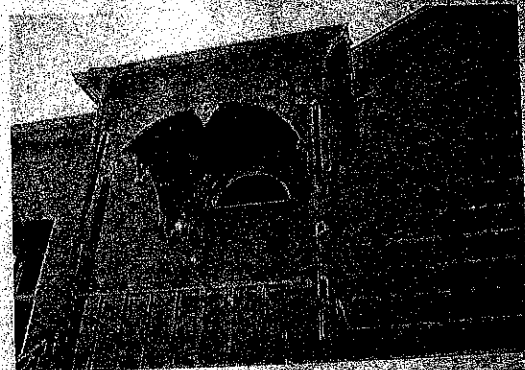


fence hiding a sliding glass door on North side of "Fisher house" built 1850





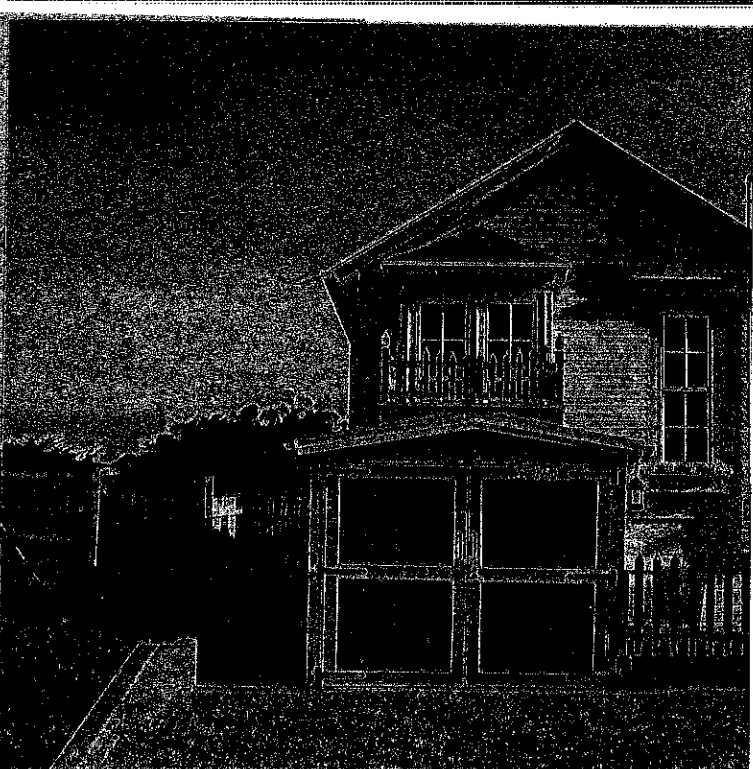
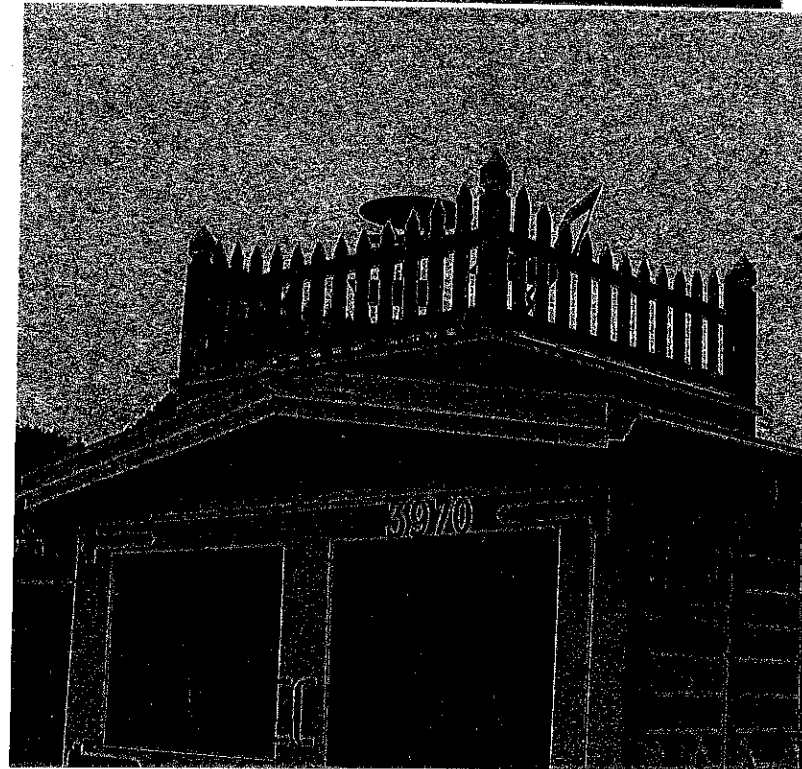
East facade (front) of 2770 (Lithuanian)



Detail of portion (west facade) including porch (Lithuanian) (Lithuanian)

DPH-5234 (1/95)

66



Tomales

Catholic

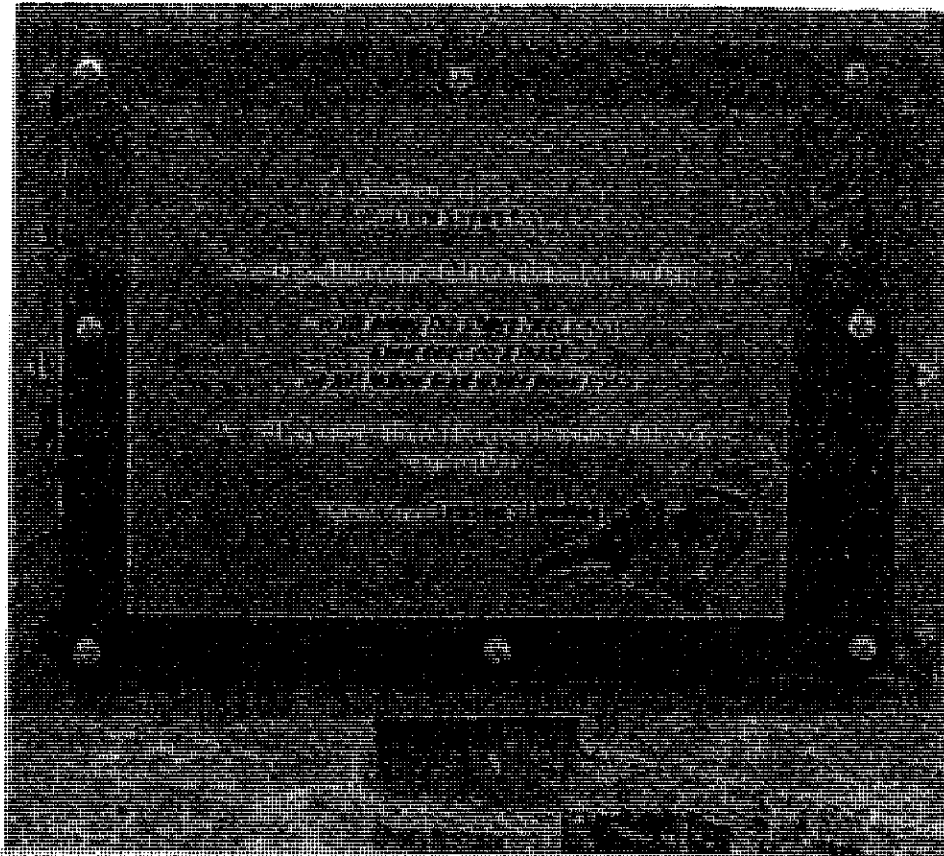
Parish

Night

2014



Dillon Beach



Lawson's
Landing

MAY 1 1964

RECEIVED
MAY 1 1964
OFFICE OF THE
SHERIFF



Parking Lot bussiness

Coalition to Protect Tomales Dunes

Dillon Beach

California Coastal Protection Network
California Native Plant Society (CNPS)
Dorothy King Young Chapter, CNPS
Marin Chapter, CNPS
North Coast Chapter, CNPS
Coastal Organizers & Advocates for Small Towns
Environmental Action Committee of West Marin
Environment in the Public Interest
Friends of the Dunes
Friends of the Earth US
Golden Gate Audubon Society
Humboldt Watershed Council
League for Coastal Protection
Marin Audubon Society

Marin Conservation League
Ocean Outfall Group
Planning and Conservation League
Salmon Protection & Watershed Network
Save Our Shores
Sierra Club, Great Coastal Places Campaign
Sierra Club, Gaviota Coast Campaign
Sierra Club, Marin Group
Santa Lucia Chapter, Sierra Club
SLO Coast Alliance
Tomales Bay Association
Vote the Coast
Wilderness Society—California/Nevada Office



Lawson's Landing Gate. They
have a Leash law

Parking Lot bussiness

Do not have a Leash law

From: louise gregg (louisebgregg@yahoo.com)

To: editor@pointreyes.com;

Date: Tuesday, June 19, 2012 10:37 AM

415-289-SEAL
the marine mammal center
Dillon Beach

I sent you 2 photographs from the Marine Mammal Rescue you can use for this news story. Thank you all for time in working with this. Louise Gregg

----- Forwarded Message -----

From: louise gregg <louisebgregg@yahoo.com>

To: "eac@svn.net" <eac@svn.net>; Frederick Smith <fmsmith@ucdavis.edu>; "editor@pointreyes.com" <editor@pointreyes.com>

Sent: Monday, June 18, 2012 12:21 PM

Subject: Fw:

I hope this is the FINAL DRAFT. I am open for corrections thanks Louise

----- Forwarded Message -----

From: louise gregg <louisebgregg@yahoo.com>

To: louise gregg <louisebgregg@yahoo.com>

Sent: Monday, June 18, 2012 12:14 PM

Subject: Fw:

----- Forwarded Message -----

From: louise gregg <louisebgregg@yahoo.com>

To: louise gregg <louisebgregg@yahoo.com>

Sent: Sunday, June 17, 2012 10:54 AM

Subject:

that *included*

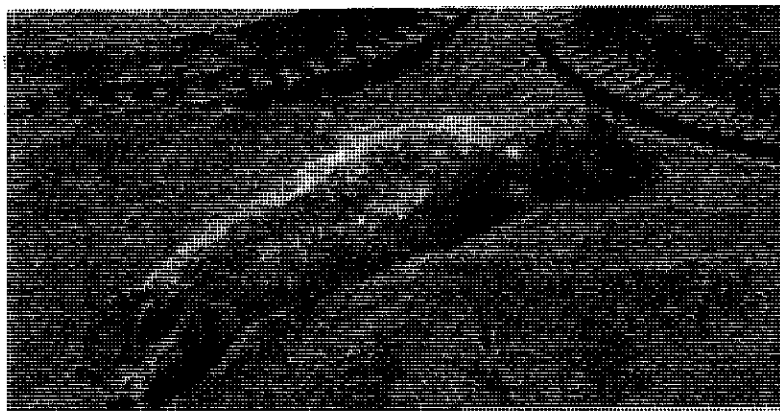
Greetings, It was good to see everyone at the EAC 41st annual Pot Luck. The best food I have had all year and the lecture was important. I am sending you an e-mail I requested from Marine Mammals Rescue center in Sausalito. It shows the "Dog Problem" on Dillon Beach. "Responded to a report of a HS on the beach near the parking lot at Dillon Beach (Marin County). Found a HS pup, est. 9 Kg, (actual; 7.6 Kg.), 2 ft., no umbi, no tags, no visible injuries, pink mucus membranes. The pup was being washed around in the shallow surf like a disrag, hence the name "Dishrag." This is a free dog beach and there were several unleashed dogs in the vicinity. The reporting person and another couple spent several hours fending off dogs from the pup. The pup was much too lethargic to defend itself from, or escape from dogs. After discussion with the Center, I picked it up before I took pictures because of the incoming tide. Stranding Intern." After Eac, with Catherine Caufield's leadership, won a 13 year battle to protect the Tomales Dunes which includes protecting the Snowy Plovers on Dillon Beach I became aware of a Dog problem. While walking with my daughter on the beach recently we witnessed a Harbor Seal Pup that was hauled out onto the beach by its mother while she was fishing. The Pup was in danger because the Dogs were off their leashes. This problem is being ignored by the new owners of the Dillon Beach Store and Parking lots. While they are receiving \$7.00 a Car and more for a bus the Snowy Plovers that are on the endangered Species List and the Harbor Seals, that have a 100 ft distance law to protect them, are not being enforced. At the Gate of the Parking lot there is a new sign that reads "No Pit Bulls" I was told a child was bitten by a Pit Bull. The Coastal Zone is for all the people including children and older people who now have to deal with the aggressive dog behavior and the unsanitary waste they leave behind.. Every year more people and their dogs visit this beach. I do hope we can correct this problem. I believe that dog owners need to create their own Dog Park and not turn Dillon Beach into one. We really need to figure this out.

leashes

6/19/2012 10:38 AM

Stranding Intern
stranded@tmmc.org
415.289.7350

The Marine Mammal Center
#15-289-SEAL





May 13, 2014

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

Re: Marin County LCP Amendment No. LCP-2-MAR-13-0224-1 Part A

Dear Commissioners,

A long and open process

The Marin County Local Coastal Program Amendment you are considering for approval on May 15, 2014 has arrived after a more than five-year process of public meetings, draft documents, public comment, and revisions. The Marin County Community Development Agency staff, Marin County Planning Commission, Marin County Board of Supervisors, and Coastal Commission staff have made themselves available to hear concerns and develop related options that maintain the intent of the Coastal Act. As Commissioners, you toured Marin County to visit sites so that you could better understand Marin's Coastal Zone on April 29, 2012. You also hosted the first California Coastal Commission workshop on Agriculture on May 8, 2013.

Flexibility for farming and ranching

Through this process a shared understanding has been forged that agricultural production is not a past, current, or future use. Agriculture is as dynamic and vibrant as weather, climate, and the natural resources, to which it is inextricably linked. Agriculture is always changing, day to day, intra-annually and inter-annually, from decade to decade and century to century.

Farm diversification has become increasingly important both globally and locally, especially for marginally profitable farms that might not otherwise be able to survive the price fluctuations and income seasonality typical to many farm enterprises. Agricultural diversification has been directly responsible for allowing many of the younger generation of Marin farmers and ranchers to stay on their family farms and keep them in business.

Flexibility and the ability to diversify agricultural operations are essential to the continued economic sustainability of farming and ranching. Changing crops as needed, adapting to new market trends, processing raw harvests into value added products, and developing new marketing strategies have allowed generations of Marin County farmers and ranchers to stay in business for over 150 years.

Appreciation of the need for flexibility in viable farming and ranching operations, including diversification, is evident in Commission staff's approval of C-AG-2. This includes listing as Principally Permitted Uses (PPUs) the diversity of agricultural production systems represented in items 1 through 4 and "accessory structures or uses appurtenant and necessary to the operation," including intergenerational home and agricultural product processing and retail sales.

Farm diversification has been a central tenet of Marin County farmers' ability to survive in times when market forces, increasing regulation and more attractive careers threaten to lure young farmers and ranchers away from our many multi-generational farms. Diversification, in the form of on-site agricultural product processing and retail sales has saved numerous Marin family farms over the past decade. The younger generation is creatively producing new products and finding new markets to keep 4th, 5th, and 6th generation farms viable.

Local review and approval to meet strict requirements

Allowing small-scale agricultural processing and retail sales, as well as intergenerational homes on coastal farms and ranches as PPUs, will allow local farm families within the Coastal Zone to be able to afford to diversify their operations as their inland neighbors can. This means that, even as PPUs, these activities require extensive permitting through Marin County's Planning, Building Environmental divisions of the Community Development Agency, and Marin County Public Works and Fire Departments. These reviews and approvals insure that siting, parking, employee support, fire protection and other aspects of any project are appropriately designed and implemented to protect environmental resources and public safety.

Agritourism

By making homestay facilities and educational tours that earn income for farm families conditional uses in C-AG-2, the recommended amendment is rendering agritourism inoperable on Marin coastal farms and ranches. Agricultural tourism is a commercial enterprise at a working farm or ranch, conducted for the enjoyment or education of visitors, and that generates supplemental income for the owner.

Marin farmers and ranchers have generously been hosting individuals, school children, and other groups for decades. The popularity of such farm tours has increased in recent years, especially for urban residents who want to learn and teach their children about the source of their food.

Requiring that agricultural landowners obtain conditional permits for farm, ranch, or processing plant tours would discourage this type of agricultural education and potential income source. In cases where farmers and ranchers wish to earn additional income to help support their primary agricultural use, charging fees for tours should be an option as organizing and leading tours take valuable time away from other income producing work. The cost of obtaining conditional permits would require landowners to intensify the number of tours offered in order to cover permitting costs. If tours are offered free of charge by the landowner, the cost of obtaining a conditional permit may prevent them from opening their farm or ranch for public education.

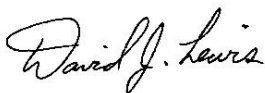
Marrying on-site and off-site agricultural products

The recommendation that “processing and sales of production grown on-site is a principally permitted use, while those using products grown off-site are conditional” needs to be tempered with situations wherein such processing and sales is necessary for on-site production and that of other ranches and farms in Marin and the region. For instance, some cheeses are made using milk from multiple species. These “mixed milk” cheeses are generally artisan products marrying goat, sheep and cow milk. It is likely that a farm with a creamery would have the pasture and facilities for one of these livestock species and maybe two but not all three, requiring them to seek out the missing milk type from another local producer. This is one example of many for why processing as a PPU should not be limited to on-site agricultural products.

Response and understanding

Both Marin County and Coastal Commission staff have demonstrated a strong commitment through their responsiveness to comments and suggestions from community members throughout the Marin County Local Coastal Program Amendment. This has fostered a strong understanding of the Coastal Act and how agricultural producers are the keystone partners in achieving Coastal Act goals. This includes revisions submitted by Coastal Commission staff that clearly recognize protecting coastal resources and supporting agricultural production are not mutually exclusive, and that, in fact the nexus between these two important elements of the Coastal Act is vast. Additionally, Commission staff understands that sustainable agricultural production relies not only on productive soils and adequate water, but also on each farm family’s ability to live on their land and diversify their farming operations as changing times require. It is hoped that staff and the Commission can again respond to the identified concerns and offer a solutions to advance further the understanding that the proposed LCP demonstrates.

Sincerely,



David J. Lewis
Director



Lisa Bush
Agricultural Ombudsman