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August 21, 2015

Katie Rice, President
Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Comments on Marin County's proposed Local Coastal Program Update Resubmittal

Dear President Rice and fellow Supervisors:

On August 25, 2015 starting at 1:30 PM, the Marin County Board of Supervisors will hold a public hearing to consider proposed new Local Coastal Program (LCP) revisions, ultimately for submittal to the Coastal Commission. These revisions include a modified Land Use Plan (LUP) and portions of a modified Implementation Plan (IP). We are providing these comments to assist the County in its consideration of a revised updated LCP. Thank you for the opportunity to provide these comments in advance of your proposed action.

As you know, the County previously approved a proposed updated LCP, including an updated LUP and an updated IP, on July 30, 2013 and subsequently submitted the LCP update to the Commission for consideration. On May 15, 2014, the Coastal Commission unanimously approved, subject to suggested modifications, the County's updated LUP. On April 16, 2015, the Commission conducted a public hearing to consider the County's updated IP. Commission staff recommended approval of the updated IP subject to suggested modifications in order for the IP to conform with and adequately carry out the Commission's conditionally approved updated LUP. However, citing the need for additional time to consider the proposed IP modifications, the County withdrew the submitted IP prior to the Commission taking a vote on the submittal.

After the Commission's IP hearing and the County's withdrawal in April 2015, County staff began sharing a small subset of its proposed resubmittal language with Commission staff starting in mid-June. That subset was based on the seven agricultural issues that County staff was interested in discussing at that time, and did not include all of the proposals before you today. On July 2, 2015, the two staffs met to discuss County staff's seven priority agricultural policy issues, during which time County staff agreed to send final proposed draft language on those issues to Commission staff. On July 31, 2015, the County provided Commission staff with draft copies of its August 25, 2015 staff recommendation and asked for our comments. It is important to note that the currently proposed resubmittal includes substantially more changes than were previously shared and different versions of what we previously discussed with County staff.

According to the draft resolution, County staff is recommending that the Board of Supervisors not accept all of the Commission-approved LUP modifications, but instead consider and

resubmit a modified LUP, incorporating most of the Commission-adopted suggested modifications but revising the LUP in a manner other than that suggested by the Commission in a few areas. If the Board adopts a resubmittal for Commission consideration, the Commission will have the legal ability to review the entire resubmittal. Practically speaking, however, it is likely that the Commission will focus on sections for which the County has proposed alternative modifications, such as, for example, the agricultural sections of the proposed LUP resubmittal where the majority of the County's newly proposed changes are located.

Given the compressed timeframe, we have not had the opportunity to discuss the draft County staff recommendation in detail directly with County staff as a means of identifying issues of concern, and of ideally reaching agreement prior to you conducting this public hearing. Thus, we are now submitting comments to that draft language directly to the Board. Overall, while we concur on some of the alternative language suggested by County staff (such as County staff proposed language for agricultural processing and retail sales), there are several proposed policy changes with which we do not agree, and which we do not believe to be consistent with the Coastal Act as described below.

County Proposed Modifications to the Commission-approved LUP affecting the LCP's Coastal Agricultural Production Zone (C-APZ)

Commission and County staff share the goal of maintaining the maximum amount of land available for agricultural production in order to assure the protection of Marin's coastal agricultural economy by, among other means, restricting the types of allowed development on Coastal Agricultural Production Zone (C-APZ) lands, and by ensuring that permissible development is appropriately sited and designed, including ensuring that it is placed on lands not suited for agricultural production prior to the conversion of agriculturally productive lands. Commission staff has spent considerable time and effort working with County staff, as well as with local agricultural interests and other stakeholders, in developing policy language that will both foster Marin's local family farms, while also meeting the coastal resource protection requirements of the Coastal Act. In support of this goal, we offer the following observations on the County's now proposed agricultural protection policies.

"Necessary for" Agricultural Production

The County staff report characterizes County staff's new alternative language relating to the type of structural uses and development permitted in the agricultural production zone as reverting to the original language approved by the Marin County Board of Supervisors in July 2013. However, the Board-adopted language from 2013 stated that, within C-APZ lands, "any development shall be accessory and incidental to, in support of, *and* compatible with agricultural production." The 2013 Board policy also goes on to state that the principal permitted use in C-APZ "shall be agriculture," and defined agricultural uses to include both agricultural production and "accessory structures or uses appurtenant *and necessary* to the operation of agricultural uses", including farmhouses and agricultural processing facilities (emphasis added). This "necessary for" language also appeared in the 2013 Board-adopted standards for farmhouses and agricultural worker housing set forth in IP Sections 23.32.023 and 22.32.025. Consistent with County LUP policy language already requiring all structural development to be "necessary for" agricultural operations, in 2014, the Coastal Commission approved a suggested modification that

relied on but slightly modified the Board's 2013 language to state that "any development shall be accessory and incidental to, in support of, compatible with, *and necessary for agricultural production*", thereby ensuring internal consistency with required development standards. Moreover, this "and necessary for agricultural production" language also follows from the express purpose of the Agricultural Production Zone itself. In comparison to the Agricultural Residential Zone (C-ARP), wherein the concentration of residential structures in C-ARP serves to maintain the maximum amount of agricultural land in production, the agricultural production zone is solely intended to preserve agricultural land for agricultural production. The County staff's newly proposed language not only rejects the Commission's approved language by deleting the phrase "and necessary for", but also would weaken the Board-approved original 2013 language by changing principally permitted uses to those that are "accessory to, in support of, *or* compatible with agricultural production."

We neither understand why County staff now proposes to eliminate the "necessary for" standard in the agricultural production zone nor why County staff now proposes that only one of the four Commission-approved standards be applicable to structural development in the agricultural production zone. It is clear that farmhouses, intergenerational homes, and dwellings for agricultural workers, as specifically defined within the resubmittal, are "accessory and incidental to, in support of, compatible with, *and necessary for agricultural production*." The definitions of these agricultural dwellings help ensure implementation of these requirements. For example, a farmhouse is defined in Section 22.32.025 to ensure that the owner of the farmhouse is actively and directly engaged in agricultural use of the legal lot, meaning making day to day decisions for the agricultural operation and being directly engaged in the production of agricultural commodities for commercial purposes on the property. By replacing "and" with "or" and eliminating "necessary for agricultural production," County staff instead are proposing that structural development within C-APZ only be subject to one of three criteria. Requiring a structure only be "compatible," for example, with an agricultural operation is contrary to the LCP goal of keeping agricultural lands in agricultural production and is in conflict with the Coastal Act requirements to maintain the maximum amount of agricultural land in agricultural production.

We oppose the County staff proposed language changes to the Commission's previously adopted suggested modifications, especially since the weakened standard is not appropriate for structural development that would be considered a principally permitted use in the agricultural production zone. The principal permitted use of the C-APZ is agriculture, defined to include agricultural production, and the structures necessary for agricultural production (agricultural accessory structures, agricultural dwelling units, agricultural sales and processing facilities). In order to classify development other than agricultural production itself as a principally permitted use of agricultural land, development must in fact be necessary to agricultural production. In response to previously stated County concerns about this LUP suggested modification, Commission staff added a definition to the proposed IP to articulate precisely what "necessary for" means. While we are open to further discussion on this definition and hope to develop mutually agreeable language on this issue, the notion that all structural development within an agricultural production zoning district must be necessary for agricultural production is a core Coastal Act and land use planning tenet and must be stated as such in the County's agricultural protection policies. In fact, both the County and MALT have adopted agricultural easement templates that

utilize such language, limiting structures to those "reasonably necessary" to the agricultural operation. Therefore, Commission staff suggests that the Commission's previously adopted addition of "and necessary for agricultural production" be retained throughout the LCP's LUP and IP.

Agricultural Dwelling Units on Contiguous Legal Lots in Common Ownership

A fundamental concept in the Commission-adopted LUP is the allowance for one farmhouse, or a combination of one farmhouse and up to two intergenerational homes, per "farm", as opposed to per legal lot. As stated at the Commission hearing on the originally proposed LUP, allowing a farmer with multiple legal lots to have multiple farmhouses in the agricultural production zone would frustrate the purpose of the agricultural production zone, especially since there are other agricultural zones in the County wherein residential development is to be concentrated in order to maintain the maximum amount of land in agricultural production. Reading the provisions of Policy C-AG-2 with Policy C-AG-5, as is expressly stated within Policy C-AG-2, a "farm" may consist of one legal lot, or it may consist of multiple legal lots held under common ownership that together function as a unified farming operation. Regardless of the number of legal lots, a farm is allowed one farmhouse and up to two intergenerational homes.

In their newly proposed language, County staff allows as a principally permitted use within C-APZ one farmhouse or a combination of one farmhouse and one intergenerational home per "farm tract." County staff's proposed definition for "farm tract" has evolved since Commission and County staff met on July 2, 2015 to discuss the County's new resubmittal. At that time, County staff proposed to define farm tract simply as "all contiguous legal lots under common ownership," with which Commission staff concurred. Thus, we felt we had reached agreement on what constituted a farm tract, and, really, had reached agreement on perhaps one of the most fundamental and contentious issues in the proposed updated LCP. However, since then, in its draft submittal to the Board, County staff has proposed to define farm tract as "a single legal lot, *or* a collection of all contiguous legal lots, under common ownership within a C-APZ zoning district," leaving open the possibility that more than one farmhouse could be allowed per farm tract, depending on the number of legal lots.

Commission staff does not agree with County staff's subsequently proffered alternative definition and instead favors the earlier alternative agreed to on July 2nd. First, it is unclear how the most recently proposed definition would functionally work, including when and how the County would make a determination that a farm tract should consist of more than one legal lot, especially since the definition of "farm tract" is only proposed in the IP and not the LUP. Second, given that farm tracts can be made up of more than one legal lot, the proposed definition appears to indicate that more than one farmhouse or a combination of one farmhouse and one intergenerational home are allowed per farm tract, which is neither supported by Coastal Act or LCP C-APZ agricultural protection policies nor the limited availability of public services, such as water supply or wastewater treatment. It is for these reasons that the Commission unanimously approved its staff's recommendation on this important resource protection issue. Whether an individual owns one or more contiguous legal lots, the definition of "farm tract" must clearly indicate that permissible agricultural dwellings are assessed using all contiguous legal lots in common ownership. Therefore, we recommend that the Board define farm tract as "all contiguous legal lots under common ownership," per the language that County staff

originally shared with us, and on which we reached agreement. Furthermore, we recommend that the definition of farm tract be added to Policies C-AG-2.4(b) and C-AG-5 so that it is clear where, why and how the phrase "farm tract" replaces the phrase "legal lot." Finally, Policy C-AG-2.4(b)'s ongoing requirement that the "farm tract" be consistent with Policy C-AG-5 will continue to impose the other overall limitations on agricultural dwellings, including maximum number, size and density limitations, as follows:

C-AG-2 Coastal Agricultural Production Zone (C-APZ).

4. Agricultural Dwelling Units, consisting of:

a. One farmhouse or a combination of one farmhouse and one intergenerational home per farm tract, defined as all contiguous legal lots under common ownership, consistent with C-AG-5, including combined total size limits;

b. 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 farm tract for agricultural workers and their households;

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.*

A. 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. (plus 540 square feet of garage space and 500 square feet of office space in the farmhouse used in connection with the agricultural operation) may be permitted as an agricultural dwelling per farm tract, whether in a single farmhouse or in a combination of a farmhouse and intergenerational homes(s). Farm tract shall be defined as all contiguous legal lots under common ownership. Intergenerational family farm homes may only be occupied by persons authorized by the farm owner or operator and shall not be divided from the rest of the legal lot, 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. 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 farm tract, but a Use Permit shall be required for a second intergenerational home. No more than 27 intergenerational homes may be allowed in the County's coastal zone.

B. Agricultural worker housing providing accommodations consisting of no more than 36 beds in group living quarters per farm tract or 12 units or spaces per farm tract for

agricultural workers and their households shall not be included in the calculation of density in the following zoning districts: C-ARP, CAPZ, C-RA, and C-OA. Additional agricultural worker housing above 36 beds or 12 units shall be subject to the density requirements applicable to the zoning district. An application for agricultural worker housing above 36 beds or 12 units shall include a worker housing needs assessment and plan, including evaluation of other available worker housing in the area. The amount of approved worker housing shall be commensurate with the demonstrated need. Approval of agricultural worker housing shall require recording a restrictive covenant running with the land for the benefit of the County ensuring that the agricultural worker housing will continuously be maintained as such, or, if no longer needed, for nondwelling agricultural production related uses.

Securing Affirmative Agricultural Easements through Conditional Residential Development

In the C-APZ, the County's agricultural production zone, the principal permitted use of the land is agriculture, and while farmhouses and other agricultural dwellings are permitted, residential development is neither a permitted nor a conditional use. County staff recommends, in Program C-AG-2.b, that the County continue to research the use of affirmative agricultural easements, including in conjunction with residential development. Although the County and its staff are free to undertake the research County staff identify in Program C-AG-2.b, Commission staff recommend that all references to a potential subsequent LCP amendment and future policy changes allowing residential uses in addition to farmhouses be removed from any Board-approved LCP. Such references suggest that residential development will eventually become a conditional use in C-APZ, even though the County has not yet conducted its study.[1]

Regarding the specifics of the study to be conducted through Program C-AG-2.b, we recommend that the study take into account the results and recommendations of the Marin County Agricultural Economic Analysis undertaken for the County by Strong Associates in November 2003,[2] especially those recommendations that may help keep land values in balance with

[1] In its staff report to the Board, County staff point to the Commission's action on the Chan CDP (CDP #A-2-SMC-06-021) as support for allowing residential development, in conjunction with affirmative agricultural easements, on land located in the agricultural production zone. Commission staff notes that the Chan dwelling did not convert agricultural land to a residential use because the dwelling approved by the Commission was sited in a non-farmed area with an existing concrete pad and access road. Also, the Applicant voluntarily proposed to record an affirmative agricultural easement over all of the property outside the development envelope because the property was actively being farmed. Another Commission action on CDP# A-2-SMC-07-001, the Sterling application also cited by County staff in its staff report, authorized a residential structure on agricultural lands along the urban rural boundary where agricultural lands may be converted in order to concentrate development and protect the agricultural productivity of rural agricultural lands. These are very particular circumstances whose outcome should not be "lumped" into an expectation that affirmative agricultural easements can appropriately offset and allow residential use in all cases. We recommend any County study clearly evaluate and explain the types of circumstances where the County believes such uses and easements are appropriate in Marin County's agricultural production zone.

[2] The Strong Study stated*: "The wild card in the agricultural land/cost/income balance is property value increase for new residential development. 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. This may result in the owner of the new estate having little motivation to continue the traditional grazing use. ….if agricultural income is no longer significant in offsetting ownership costs, the agricultural use becomes less likely, especially into the future as high value parcels change ownership."*

agricultural income in order to maintain long-term agricultural viability. As County staff is aware, one of the properties it identifies in its draft staff report as having an affirmative agricultural easement was the subject of the Strong Report, the Moritz property. According to a Property Detail Report now available on Realquest, the 84-acre Moritz property sold for $5.2 million dollars in 2013, highlighting that land costs can be driven up beyond a current or subsequent farmer's ability to pay for the taxes, insurance and maintenance costs associated with the land, thus discouraging maintenance of the agricultural operation. Therefore, another farmland conservation tool Commission staff recommends that the County consider during its study to help ensure land-affordability for farmers is known as Options to Purchase at Agricultural Value ("OPAV"). An OPAV allows easement holders to step in any time a farm property threatens to sell for estate value, and as such, provides a substantial deterrent to non-farm buyers as well as an opportunity for land trusts to help farmers purchase the farms each time land is transferred. OPAVs also protect affordable housing in agricultural areas and serve as an enforcement mechanism for affirmative agricultural language included within easements.

Other Proposed Modifications to the LUP

Environmental Hazards

Commission staff requests clarification regarding the lack of Environmental Hazards Policies in the County's proposed LUP resubmittal. In discussions with County staff after the IP was withdrawn this past April, we understood that the County intended to resubmit the same LUP hazards chapter that was unanimously approved subject to modifications by the Commission in 2014, and that the County intended to continue to pursue a separate LCP amendment in the future that might propose revisions to it, potentially as a result of the ongoing C-SMART grant efforts. In the current staff report, County staff have omitted the LUP hazards chapter entirely. Since all Local Coastal Programs must include hazard provisions, it is unclear from the County staff's proposed LUP resubmittal whether the County intends on keeping its existing LUP hazards chapter, whether the County intends on accepting the Commission-approved LUP Environmental Hazards section, whether the County will later submit a new Hazards chapter, taking into account the Commission's previously approved suggested modifications on Hazards, or some combination thereof. We recommend that the Commission-approved LUP Hazards chapter be added to the County resubmittal package, as was previously agreed to by your staff. If the County intends some other proposal, it must be clearly articulated. And we note that certain proposals will be more problematic than others (such as omitting a hazards chapter entirely), and may raise even more significant concerns.

Amendment History

Your staff proposes adding back in references to the history of changes to various LUP policies that the Commission required be deleted in its 2014 action on the LUP update. Inclusion of the amendment history of individual LCP policies within the actual LCP must be accompanied by language identifying its purpose and intent so it is clear if and how the reference to the amendment history will be used in connection with other certified LCP provisions. Depending on how such history reference is proposed to be used, we may have additional comments. As we previously articulated, we believe that it will be clearest for implementation if the history is omitted in the actual LUP text, including so as to avoid somehow allowing policies to be understood in ways not intended by virtue of "reaching back" to former policies that are no

longer in effect. If the amendment history is not meant to guide future permitting decisions, as we continue to recommend, Commission staff recommends that the County should track the amendment history in a separate document. For example, in the 'Introduction' under 'Appendices,' the County added the statement that additional historical and background information is available on the County's website and that this information is not a part of the LCP. Perhaps the amendment history of LCP policies could be similarly made available.

Public Facilities and Services

The Coastal Act requires new development to be served by adequate public services, including water, sewer, and traffic (Coastal Act Section 30250). In areas with limited public services, Section 30254 explicitly requires that service capacity be reserved for certain priority land uses, including agriculture, public recreation, and visitor-serving uses. These Coastal Act requirements are mostly embodied in LUP Policies C-PFS-1 and C-PFS-4. County staff expressed concerns about how to implement these policies, including how to determine whether service availabilities were "limited," and how to effectively prioritize certain land uses in those areas with defined service limitations. Commission staff developed detailed implementing language in its IP recommendation, articulating the process by which such determinations would be made. In discussions with the County staff regarding those IP sections, Commission staff clarified that whether an area had limited service capacity would be determined through a broad range of information sources, including information from the water/sewer service providers, on-site tests of well and septic capacities, and the build-out analysis County staff prepared for the LCP, information that largely emanated from the County's recent General Plan update in 2007 (the Marin Countywide Plan). For example, based on this information, if projected water demand based on existing and proposed future development is greater than the known water supply, then service capacity is limited. We hope to continue discussion with County staff on further refining such language and to develop mutually agreeable implementing standards. However, for purposes of the LUP, we recommend the following modification to ensure that adequate capacity is reserved for priority land uses when all services, and not just public/community water and sewer systems, are limited, as follows:

> ***C-PFS-4 High-Priority Visitor-Serving and other Coastal Act Priority Land Uses.*** *In acting on any coastal project permit for the extension or enlargement of ~~community~~ water or ~~community~~ sewage treatment facilities, determine that adequate treatment capacity is available and reserved in the system to serve VCR- and RCR-zoned property, and other visitor-serving uses, and other Coastal Act priority land uses (i.e. coastal-dependent uses, agriculture, essential public services, and public recreation).*

Additional LUP Comments

- Although County staff states that the second to last sentence of Policy C-AG-5.A is redundant with the last sentence of Policy C-AG-2, Commission staff believe that the two sentences serve different purposes. The statement in Policy C-AG-2 is permissive, rather than mandatory, and authorizes the permit issuing authority to consider all contiguous properties under common ownership when reviewing CDP applications. In contrast, the statement in Policy C-AG-5 is mandatory, directing that the reviewing authority *shall* consider all contiguous properties and thereby addressing the issue of minimum acreage for

legal non-conforming (less than 60-acre) lots. Commission staff, therefore, recommend retention of the Commission's previously adopted modification:

> ***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.*
>
> *A. 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. (plus 540 square feet of garage space and 500 square feet of office space in the farmhouse used in connection with the agricultural operation) may be permitted as an agricultural dwelling per farm tract, whether in a single farmhouse or in a combination of a farmhouse and intergenerational homes(s). Intergenerational family farm homes may only be occupied by persons authorized by the farm owner or operator and shall not be divided from the rest of the legal lot, 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. 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, but a Use Permit shall be required for a second intergenerational home. No more than 27 intergenerational homes may be allowed in the County's coastal zone.*

- LUPA Policy C-AG-7(B) describes the additional standards that non-principally permitted development within the C-APZ zoning district shall meet. Such development includes land divisions, a second intergenerational home per farm tract, and agricultural processing facilities greater than 5,000 square feet in size, among others. The policy currently reads that the density of a second intergenerational home and land divisions would *only* be based upon Policy C-AG-6 (which includes standards for non-agricultural development) and the rest of C-AG-7(B)'s enumerated standards. However, those standards are not be the only standards by which the County is to determine the density of non-principally permitted development because all of the LCP's coastal resource protections, including all agricultural policies and infrastructure limitations, apply to such development. We therefore offer the following recommendation:

  > ***C-AG-7(B) Standards for Non-Principally Permitted Uses***
  > *In addition to the standards of Section A. above, all of the following development standards apply to non-principally permitted uses. The County shall determine the*

density of permitted agricultural dwelling units or land divisions ~~only~~ upon applying Policy C-AG-6 and the following standards and making all of the findings listed below.

County Proposed Modifications to the IP

To clarify, although County staff is proposing amendments to portions of its LUP and IP in one resubmittal, it is our understanding that the County does not intend any portion of its LUP resubmittal to become effective until after the County completes the remaining portions of its IP. Paragraph 27 of the draft resolution states "that it is the County's intent to complete additional amendments to the Implementation Program that are required to put the policies of the Land Use Plan in effect; and that the County will exercise its authority to determine that the Resubmitted Amendments shall not become effective unless and until the Board of Supervisors takes further action to place them in effect." Although it is the County's intent that the amended LUP not take effect until both the LUP and the IP are certified, any Commission-adopted suggested modifications to the LUP will expire 6 months from the date of Commission action (which deadline can be extended for good cause up to 18 months in certain circumstances). In the event that, in order to avoid expiration of any Commission-adopted LUP suggested modifications, the LUP becomes effectively certified prior to the effective certification of the IP, the updated LUP will control permitting requirements in the interim period. Therefore, Commission staff recommends that the County add a provision to the LUP stating that until the IP is effectively certified, the updated LUP will control over any currently certified IP provisions that are conflicting or less protective.

Coastal Permit Requirements for Ongoing Agriculture

There has been considerable discussion regarding the way in which the LCP's coastal permitting program affects agricultural activities. The County staff report describes the Commission-approved LUP and Commission's staff's recommended IP as instituting a *new* coastal permit program for agriculture where one never existed, inconsistent with the Coastal Act and the Commission's own guidance on this point. We respectfully disagree with this characterization and wish to clarify the record. Ongoing legally established agricultural uses do not require a coastal permit. What requires a coastal permit is new development that constitutes either a change in use or intensity of use or new grading into an area that has not previously been farmed. The fact is that the Coastal Act exempts *only* crop harvesting from coastal permit review, and all other agricultural activity that constitutes development requires coastal permits just as other development in the coastal zone does (including grading never before farmed areas and changes in the intensity of use). The Commission has historically developed guidance to help facilitate agricultural development, and, as with many coastal counties, adopted a broad categorical exclusion that allows much agricultural development in Marin without coastal permits.

In addition, since 1982, the County's certified LCP has included agricultural production as the principal permitted use in the Coastal Agricultural Production Zone. However, even development that is designated as principally permitted is not exempt from coastal permitting requirements. Therefore, since certification in 1981, proposed changes in the intensity of the use of agriculturally zoned land, as well as agricultural grading into areas not previously farmed, required County-issued coastal permits. Thus, in May 2014, the Commission-approved modifications to the County's existing LUP did not "establish" a new coastal permitting

requirement for agricultural production in Marin County, as County staff suggests. Rather, such a permit process has existed in the C-APZ since 1981 (and prior to LCP certification through the Commission).

Commission staff agree that ongoing agricultural production activities (i.e., activities such as grading and other routine agricultural practices on land where such activities have been routinely performed and have not been expanded into never before used areas) do not require a CDP. Accordingly, Commission staff have proposed to define ongoing agricultural activities as existing legally established agricultural production activities, including all ongoing grading and routine agricultural cultivation practices (e.g., plowing, tilling, planting, harvesting, seeding, etc.) that have not been discontinued. Staff expects that most existing farming operations and activities in the County's coastal zone will fall into the category of ongoing agricultural production activities.

However, conversion of grazing to crop production on land not previously used for crop production purposes would constitute a change in the intensity of use of land or water, along with any associated grading for such production activity, and therefore would constitute new development requiring a CDP. County staff's proposed definition is inconsistent with Section 30106 of the Coastal Act because it does not differentiate between different types of agricultural activities that constitute development either because they are a change in the intensity of use of land or because they involve grading in areas not previously farmed.

We note that in response to public comments that have been received on this topic, Commission staff's proposed definition expressly acknowledges that existing legally established ongoing agricultural production activities that have been part of a regular pattern of agricultural practices that has not been discontinued (such as ongoing rotational grazing and crop farming) does not constitute a change in intensity of use but is a recognized agricultural practice that helps to further productive use of the land. Therefore, to the extent the rotational crop farming or grazing has been part of a regular pattern of agricultural practices, it is not a change in intensity of use of the land despite the fact that the grazing and crop growing are rotationally occurring on different plots of land. Therefore, ongoing agricultural activities are defined by Commission staff to include an established pattern of agricultural production activities such as ongoing rotational grazing and crop farming.

Further, in recognition of the fact that agricultural activities, including cattle grazing, have historically been occurring on properties in Marin for decades, Commission staff's proposed definition allows an applicant to overcome the presumption that the agricultural production activity is no longer ongoing if the applicant demonstrates his or her ongoing intention to reinstate the agricultural production activity based on the history of agricultural production on the property, the long-term investment in the agricultural production activity on the property, and the existence of infrastructure to support the agricultural production activity.

In short, the definition proffered by Commission staff recognizes the unique attributes of farming in Marin, and responds appropriately, including to public comments received on this topic. It also respects both the Coastal Act and the Commission's guidance related to agricultural activities over the years. We believe we have appropriately addressed bona fide ongoing activities in ways that they will not require a coastal permit process, and only bona fide new activities will. On this point we respectfully disagree with County staff's assessment, and firmly

believe that only new activities will be subject to a coastal permit. And even those may either not require a coastal permit (if covered by the County's agricultural exclusion), or may be waived (per the process recommended by Commission staff), or subject to lesser processing (per the process recommended Commission staff), as is discussed below.

Regarding the County staff report suggestion to exempt conservation practices required by a government agency, such practices cannot be exempt from permit requirements, but can be addressed through local coastal program expedited processing procedures, multi-year CDPs or the Commission's federal consistency process. While the County can utilize the expedited processing procedures contained within their certified LCP, the consistency process additionally authorizes the Commission to review general types of activities rather than a specific project. For example, the Natural Resource Conservation Service (NRCS) has made a consistency determination pursuant to the federal regulations implementing the Coastal Zone Management Act (CZMA), 15 CFR §930.36(c), to simplify the process for landowners as they participated in projects to reduce sedimentation of impaired waterways and enhance habitat.

Finally, any listing of activities that warrant more careful review must be clarified as 'including but not limited to' activities that require coastal permits.

Thus, we do not agree with your staff's proposed ongoing agricultural activities definition. We recommend three next steps here. First, we recommend that the term "ongoing agricultural activities" be deleted in the one place in the LUP where it is located (i.e., Policy C-BIO-14). This would eliminate the need for further defining ongoing agriculture in the LUP:

> ***C-BIO-14 Wetlands.*** *Preserve and maintain wetlands in the Coastal Zone as productive wildlife habitats and water filtering and storage areas, and protect wetlands against significant disruption of habitat values. Prohibit grazing or other agricultural uses in a wetland~~, except for ongoing agricultural activities~~.*

Second, we recommend that ongoing agricultural activities could then be addressed via modifications to the IP Section 22.68 regarding coastal permit requirements, given that is the place where this issue resides. This option would allow County and Commission staff to continue discussion in order to develop a clear and implementable definition of ongoing agricultural activities. Third, and toward that end, we note that we spent considerable time developing that definition in the IP, including working with your staff as well as many stakeholders. We believe that we have identified the necessary components of such a definition, including that it be legally established, ongoing, not discontinued, and not expanded into new areas. Thus, we suggest that we work together on IP changes starting with this definition:

> ***Chapter 22.130, Definitions.***
> ***Agriculture Production Activities, Ongoing (Coastal****) means the following agricultural activities:*
>
> *1. Existing legally established ~~routine~~ agricultural ~~cultivation~~ ~~practices~~ production activities, ~~(e.g.~~ including plowing, tilling, planting, harvesting, and seeding~~)~~, which ~~are~~ have ~~not~~ neither been expanded into ~~Environmentally Sensitive Habitat Areas (ESHAs) and ESHA buffers, or areas~~ never before used ~~for agriculture~~ areas nor discontinued. Agricultural production activities may include the conversion of grazing to crop*

production or other ongoing activity involving a change in intensity of use of land or water, such as ongoing rotational grazing and crop farming, if the ongoing production activity has been part of a regular pattern of agricultural practices that has not been discontinued. If the ongoing production activity has been discontinued, the permit issuing authority may allow an Applicant to overcome the presumption that the agricultural activity is no longer ongoing if the Applicant demonstrates his or her ongoing intention to reinstate the agricultural production activity based on the history of agricultural production on the property, the long-term investment in the agricultural production on the property, and the existence of infrastructure to support the agricultural production activity.

Conversion of grazing to crop production or any other new or expanded activity involving grading or a change in the intensity of use of land or water that has not been part of a regular pattern of agricultural practices or has been discontinued is not an ongoing agricultural production activity but rather constitutes new development requiring a coastal permit, unless such development is categorically excluded by a Coastal Commission approved Categorical Exclusion Order. ~~*; and*~~
~~*2. Conservation practices required by a governmental agency including, but not limited to, the State Water Resources Control Board or Regional Water Quality Control Board, in order to meet requirements to protect and enhance water quality and soil resources.*~~

The following list includes examples of activities that are not considered ongoing agriculture for the purposes of the definition of "Development" and constitutes new development requiring a coastal permit consistent with Chapters 22.68 and 22.70, unless such development is categorically excluded by a Coastal Commission approved Categorical Exclusion Order. Examples include but are not limited to:
1. Development of new water sources such as construction of a new or expanded well or surface impoundment;
2. Installation or extension of irrigation systems;
3. Terracing of land for agricultural production;
4. Preparation or planting of land for viticulture, including any initial vineyard planting work as defined in Chapter 22.130;
5. Preparation or planting of land for growing or cultivating the genus cannabis; and
6. Routine agricultural cultivation practices on land with an average agricultural slope of more than 15%. (Note: See page 15 for proposed definitions of "initial vineyard planting" and "average agricultural slope")

It should be noted that much agriculturally-related development will continue to be allowed without a coastal permit under the County's existing agricultural categorical exclusion. That which isn't covered by the exclusion can make use of the new streamlining tools we built into the LCP (including for administrative permits and permit waivers). For the limited amount of other such development that will require a coastal permit, we have continued to recommend that the County itself can create any number of streamlined coastal permit processes (e.g., lesser fees, prioritized processing, etc.). In fact, we have provided the County with examples where such processes were developed just to facilitate such permitting for agriculturally related development (e.g., streamlining built into the San Luis Obispo County LCP). We continue to encourage the

County to make expanded use of the categorical exclusion process should it wish to identify particular categories of agricultural development that it believes shouldn't require a coastal permit.

In short, we believe that we have crafted a measured response and implementation program designed to facilitate agriculture, including in relation to agricultural development. In terms of exempting ongoing agriculture, we believe we have crafted a solution that is consistent with the Commission's identified policy guidance and the Coastal Act. For agriculturally related development that is not ongoing, we believe that we have provided a variety of tools to help streamline the process (i.e., categorical exclusion, administrative permits, permit waivers, etc.) and we have identified yet other potential mechanisms that could be pursued by the County to make the process even easier. We recommend eliminating the phrase in Policy C-BIO-14, and continuing to build on all of these efforts through the IP.

Land Divisions

Commission staff recommend that the limitations on rural land divisions contained in Section 30250(a) of the Coastal Act be added to the development standards for non-agricultural uses and development, and that the County apply the rural land division criteria limiting the timing of land divisions and minimum parcel sizes at the time the permit issuing authority acts on the proposed land division; compliance with the rural land division criteria should not be presumed in advance. Limitations on land divisions are critical to the long-term viability of agriculture because the division of land fuels speculation that drives up the cost of land and eventually makes it unaffordable for agricultural production. In the currently certified LCP, the County expressly "recognizes that parcel sizes of 60 acres are too small generally to independently support existing agricultural operations." Therefore, the currently certified LCP states that 60-acre densities must be utilized in conjunction with protective standards that limit land division of lands zoned for agricultural production. Commission staff therefore recommends that Coastal Act Section 30250 limitations on land divisions be reinserted in Section 22.65.040.C.3.d subsections 5 and 6, as originally proposed by Commission staff:

22.65.040 – C-APZ Zoning District Standards

C. Development standards.

3. Standards for Non-Agricultural Conditional Uses and Development

d. Required findings

5. Land divisions shall only be permitted where 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, except that lease of a legal parcel at a level of agricultural use that will sustain the agricultural capacity of the site is not prohibited.

6. Land divisions shall be prohibited if the resulting lots cannot be developed consistent with the LCP.

Additional IP Comments

- The Coastal Act definition of development includes "grading, removing, dredging, mining, or extraction of any materials." Therefore, any thresholds or minimum volumes for defining

grading as development requiring a coastal permit would not be consistent with the Coastal Act's definition of development:

> ***Chapter 22.130, Definitions. Grading (coastal)***
> *Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof ~~that exceeds 50 cubic yards of material~~. As used in this Development Code, grading does not include plowing, tilling, harrowing, aerating, disking, planting, seeding, weeding, fertilizing or other similar routine agricultural cultivation practices for ongoing agricultural operations (see "Agriculture, Ongoing").*

- In our discussions with County staff, Commission staff has continually suggested that the County pursue changes to its categorical exclusion if it wished to exclude additional development from permit requirements. County staff has recently indicated they are not interested in pursuing this option. Nevertheless, Commission staff remains committed to continuing to work with County staff in drafting revisions to the Categorical Exclusion for agriculturally-related development that could include exclusions below a specified volume of grading, as well as other categories of development that the County may wish to pursue. Commission staff reiterates the need for the County to limit permit exemptions in the LCP to those authorized by the Coastal Act and its implementing regulations. Commission staff also reiterates that Categorical Exclusions are the prescribed mechanism to authorize development without a CDP if such development is not expressly exempted by the Coastal Act and its implementing regulations. Categorical Exclusions especially make sense in an agricultural context "because one size does not fit all" (e.g., a well in northern and southern California will have differing impacts on coastal resources; grading at one location can have no significant impact whereas grading at another could; etc.). Further, note that categorical exclusions require a <u>two-thirds vote</u> of the Commission's appointed members (as opposed to a straight majority of appointed members as is required for an LUP).

- Under Section 22.32.023.D, Agricultural homestays are permitted only within otherwise permissible dwellings and cannot be new stand-alone structures. Therefore, the County staff's recommendation should be deleted.

- Section 22.32.024.G should be revised to change the phrase "parcel" to legal lot because a farm tract is all contiguous legal lots under common ownership and the size of the legal lot determines the number of agricultural dwellings, especially since intergenerational homes may not be divided from the rest of the legal lot.

- Under Section 22.32.024.J.5, County staff's addition should be removed because residential uses are neither a permitted nor conditional use in the agricultural production zone, and will only be addressed though a subsequent LCP amendment.

- Section 22.32.026, the permit process for agricultural processing, should be structured as it is for permitting agricultural sales in Section 22.32.027.

- Under Section 22.32.028.B.1, County staff's addition should be edited to "which exceeds 36 beds or 12 units."

- Under Table 5-1-a, the County staff's deletion of development listed as principally permitted and development that is permitted/conditional should be accompanied by a new note that specified development is only principally permitted when it is consistent with all applicable definitions and development standards, including those set forth in Section 22.32.024 for intergenerational homes, Sections 22.32.024 and 22.32.025 for farmhouses, Sections 22.32.024 and 22.32.028 for agricultural worker housing, as well as Section 22.32.026 for agricultural processing, and Section 22.32.027 for agricultural sales. This is critically important because, under the submitted IP's coastal development permit procedures chapter in Section 22.70.080, a development is not appealable if it is demarcated with a "PP" in Tables 5-1 through 5-3 of Chapter 22.62. Commission staff, County staff, as well as members of the public, have spent considerable time and effort in developing appropriate standards to clearly define when an allowed development is principally permitted, and therefore not subject to appeal to the Coastal Commission. Those developments are only principally permitted when they meet objective, enforceable definitions and criteria spelled out in the LCP. If they do not meet these specific definitions and criteria, then those developments are appealable (and/or may not be allowed). This is the reason why Commission staff's recommended IP expressly stated in the tables that certain development meeting particular definitions and criteria were deemed "PP", and those that didn't were "P" uses. Deleting such references in the tables may cause uncertainty related to this fundamental permitting concept, including by an applicant or County or Commission staff member inappropriately designating a particular development as principally permitted solely based on rote reliance on a listing in Chapter 22.70.080. We therefore strongly recommend either retaining Commission staff's recommended language in its April 2015 IP document, or inserting a footnote that tracks our recommendation and that clearly establishes the definitions and standards that must be met in order for development to be principally permitted.

- Finally, Commission staff recommends that County staff revise the IP to provide consistency of terms, such as conforming references to "farm tract" and removing all references to the potential permissibility of residential development. Commission staff also recommends the County staff revise the IP to provide consistency in cross references as a result of formatting changes between Sections 22.65 and 22.32.

Thank you again for the opportunity to comment on the staff report. We hope that these comments prove useful to you as you consider a new LCP update package for submittal to the Commission. Please feel free to contact me at (415) 904-5290 or by email at nancy.cave@coastal.ca.gov if you wish to discuss these matters further.

Sincerely,

Nancy Cave

Nancy Cave
District Manager, North Central Coast District
California Coastal Commission