MARIN COUNTY FARM BUREAU

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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,

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