Appendix

Table of Contents

Filed August 29, 2025

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ARRON BENEDETTI et al., Plaintiffs and Appellants, v. COUNTY OF MARIN, Defendant and Respondent; CALIFORNIA COASTAL COMMISSION, Real Party in Interest.	A170403 (Marin County Super. Ct. No. CIV2103128)

Arron and Arthur Benedetti and the Estate of Willie Benedetti (collectively, Benedettis) appeal from the trial court's judgment denying their petition for writ of mandate and complaint for declaratory judgment and injunctive relief.[1] The Benedettis' complaint challenged a new provision in the County of Marin's (county) amended local coastal program that allows owner of certain farm lands to build additional residential units so long as the property owner records a restrictive covenant in favor of the county that states the owner of the new units will be actively and directly engaged in agriculture, which is defined as being

[1] Where necessary to avoid confusion, we refer to the individual Benedettis by their first names.

directly engaged in commercial agriculture or leasing the property to a commercial agricultural producer. The Benedettis contend this provision is facially unconstitutional because it does not satisfy the nexus and proportionality requirements of *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 (*Nollan*) and *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*) and violates their substantive due process rights under the state and federal constitutions not to work in a specific occupation. We conclude, contrary to the trial court, that the Benedettis may raise a facial *Nollan*/*Dolan* claim. But we agree with the trial court that they have failed to show the provision is unconstitutional, so we affirm the judgment.

BACKGROUND

I. Legal background

The California Coastal Act of 1976 (Pub. Resources Code,[2] § 30000 et seq.; Coastal Act) "'was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California.'" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793.) The Coastal Act "requires local governments . . . to develop a local coastal program (LCP). The LCP, consisting of a land use plan (LUP) and implementing ordinances, is designed to further the objectives of the Coastal Act. [Citations.] The Coastal Act provides that a local government must submit its LUP to the California Coastal Commission (the [c]ommission) for certification that the LUP is consistent with the policies and requirements of the Coastal Act.

[2] Undesignated statutory citations are to the Public Resources Code.

[Citations.] After the Commission certifies a local government's LUP, it delegates authority over coastal development permits to the local government." (*Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 252 (*Beach & Bluff*).) A local government must also submit its implementing ordinances to the commission for approval. (§ 30513, subd. (a).)

The Coastal Act contains several provisions prioritizing the maintenance of agricultural land in the coastal zone. (§§ 30241-30242.) Most relevant here is section 30242, which states that lands "suitable for agricultural use" other than prime agricultural lands "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 . . . ." (See § 30241 [addressing preservation of prime agricultural lands, which are scarce in the county].)

II. The county's LCP

The county's original LCP, which the commission originally certified in 1981, adopted a planned district zone, designated as the agricultural production zone (APZ), for all agriculturally-zoned lands in the coastal zone that fall outside the boundaries for community expansion. The principal use of APZ lands was agricultural, with a maximum density of 1 unit per 60 acres of development that were accessory, incidental, or in support of agriculture. The permitted uses of APZ land were for agriculture; one single-family dwelling for each group of contiguous parcels under common ownership; and accessory structures appurtenant and necessary to agricultural uses, such as

barns or corrals. Conditional uses included land divisions, farmworker housing, and mobile homes for the owner's employees who were actively and directly engaged in agriculture. Any land division or development required, among other things, a master plan showing that the proposed division or development would protect and enhance continued agricultural use and was necessary because agricultural use of the property was no longer feasible. Development also required permanent conservation easements allowing only agricultural uses over the portion of a property not developed.

III. The county's amended LCP

The county's amended LUP, which is part of its amended LCP and which the commission certified in 2019, continues to limit the use of land in the APZ, renamed the coastal APZ (C-APZ), to agriculture or accessory and supporting uses and to restrict land divisions and non-agricultural uses. The amended LUP allows residential development in other zones, such as the coastal agricultural residential planned zone and the coastal residential agricultural district. The amended LUP's policies were designed to protect and strengthen agriculture while also deterring the incursion of non-agricultural uses that would convert agricultural land. But the amended LUP also recognizes that farmworker housing is an integral part of many agricultural operations.

The amended LCP's implementing ordinances state that the principal permitted uses of lands in the C-APZ are agriculture, defined as agricultural production, agricultural accessory structures and activities, agricultural dwelling units, sale and processing of products grown on the farm, and non-profit

educational tours. Agricultural dwelling units consist of one farmhouse or one farmhouse and one intergenerational home per farm tract, and agricultural worker housing with up to 36 beds in group living quarters. A farm tract is all contiguous lots under common ownership. An intergenerational home is an agricultural dwelling unit occupied by occupants authorized by the farm owner or operator actively and directly engaged in agricultural use of the property. Conditional uses include a second intergenerational home, worker housing above 36 beds per lot, and land divisions.

Each agricultural dwelling unit must be owned by a farmer or operator "actively and directly engaged in agricultural use of the property." Development of a farmhouse or intergenerational home also requires the recording of a restrictive covenant running with the land for the benefit of the county ensuring that any use will be in conformance with zoning restrictions, prohibiting the future division of the lot containing the unit except for a lease of the rest of the lot for agricultural use, and assuring that the owner of the unit will be "actively and directly engaged in agricultural use" of the lot and the use of the lot will be restricted to agriculture. "Actively and directly engaged" is defined to mean "making day-to-day management decisions for the agricultural operation and being directly engaged in production of agricultural commodities for commercial purposes on the property or maintaining a lease to a bona fide commercial agricultural producer."

The commission's staff explained in response to public comments on the draft implementation plan for the amended LUP that the amended LCP (both the LUP and implementing ordinances) were intended to

ensure that the values of agricultural land would be driven by agricultural uses rather than residential uses, to maintain the economic appeal of agriculture and control the cost of agricultural land.

IV. The litigation

Before his death in 2018, Willie owned 267 acres of land across two contiguous parcels in the C-APZ. Willie operated two agricultural companies, and Arthur and Arron currently both have roles in the companies. However, Arron and Arthur are both full-time plumbers. Neither Arron nor Arthur is engaged in day-to-day operations of the companies, and neither they nor the companies are engaged in agricultural activity on the property. Poultry companies rent buildings on the property at times, but not year-round.

One of the two parcels has a residential structure. Willie lived in the home with Arron before Willie's death, and he intended to build another home on his property for Arthur. Arthur now wishes to build the second residence for himself. Willie's will devises the parcels separately to his sons, one to Arron and one to Arthur.

After the county's board of supervisors adopted the implementing ordinances for the amended LCP in 2021, the Benedettis challenged them by filing a petition for writ of mandate and complaint for declaratory relief against the county. The Benedettis alleged in their first cause of action that the restrictive covenant condition forcing a landowner to engage in an occupation in exchange for a development permit was facially unconstitutional under the unconstitutional conditions doctrine. They alleged the restrictive covenant condition was unconstitutional

because it violated their due process rights under the state and federal constitutions and because it could never satisfy the nexus and proportionality requirements under the federal constitution as established in *Nollan*/*Dolan*. The Benedettis also alleged a cause of action for writ of mandate under Code of Civil Procedure section 1085.[3]

In an order addressing a demurrer filed by the county and the commission (collectively, "joint parties"), the trial court ruled that the Benedettis could not allege a facial takings challenge based on *Nollan*/*Dolan*. Later, applying rational basis review, the trial court denied the Benedettis' petition and complaint based on their due process theory.

DISCUSSION

I. Standard of review

"'In evaluating a facial challenge, a court considers "only the text of the [challenged enactment] itself, not its application to the particular circumstances of an individual." [Citation.] The California Supreme Court has not articulated a single test for determining the propriety of a facial challenge. [Citation.] Under the strictest test, the [enactment] must be upheld unless the party establishes the [enactment] "'inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions.'" [Citation.] Under the more lenient standard, a party must establish the [enactment] conflicts with constitutional

[3] The Benedettis also alleged a cause of action for writ of mandate under Code of Civil Procedure section 1094.5. The trial court sustained the joint parties' demurrer to that cause of action with leave to amend. The Benedettis did not amend their complaint and do not challenge this ruling on appeal.

principles "'in the generality or great majority of cases.'" [Citation.] Under either test, the plaintiff has a heavy burden to show the [enactment] is unconstitutional in all or most cases, and "'cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the [enactment].'"'" (*Beach & Bluff*, *supra*, 28 Cal.App.5th at p. 264.)

"'Facial challenges to statutes and [local enactments] are disfavored. Because they often rest on speculation, they may lead to interpreting [enactments] prematurely, on the basis of a bare-bones record. [Citation.] Also, facial challenges conflict with the fundamental principle of judicial restraint that courts should not decide questions of constitutional law unless it is necessary to do so, nor should they formulate rules broader than required by the facts before them.'" (*Beach & Bluff*, *supra*, 28 Cal.App.5th at p. 263.)

"The interpretation of a legislative enactment and the determination of its constitutionality are questions of law we review de novo. [Citation.] '[W]e start from "the strong presumption that the [enactment] is constitutionally valid." [Citation.] "We resolve all doubts in favor of the validity of the [enactment]. [Citation.] Unless conflict with a provision of the state or federal Constitution is clear and unmistakable, we must uphold the [enactment].'"' (*Beach & Bluff*, *supra*, 28 Cal.App.5th at p. 264.)

II. Takings Claim

A. Legal Overview

"As a general matter, the unconstitutional conditions doctrine imposes special restrictions upon

the government's otherwise broad authority to condition the grant of a privilege or benefit when a proposed condition requires the individual to give up or refrain from exercising a constitutional right." (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 457.) The Supreme Court has applied the unconstitutional conditions doctrine to protect various rights, including the rights of free speech and travel. (*Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595, 604 (*Koontz*).)

"*Nollan* and *Dolan* 'involve a special application' of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits." (*Koontz*, *supra*, 570 U.S. at p. 604.) Those cases established a two-part test to determine whether a permit condition is an unconstitutional taking. (*Sheetz v. County of El Dorado, California* (2024) 601 U.S. 267, 275 (*Sheetz*), revg. *Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394.) "First, permit conditions must have an 'essential nexus' to the government's land-use interest. [Citation.] The nexus requirement ensures that the government is acting to further its stated purpose, not leveraging its permitting monopoly to exact private property without paying for it. [Citation.] Second, permit conditions must have "'rough proportionality"' to the development's impact on the land-use interest. [Citation.] A permit condition that requires a landowner to give up more than is necessary to mitigate harms resulting from new development has the same potential for abuse as a condition that is unrelated to that purpose." (*Sheetz,* at pp. 275-276.)

The *Nollan*/*Dolan* test "applies regardless of whether the condition requires the landowner to

relinquish property or requires her to pay a 'monetary exactio[n]' instead of relinquishing the property." (*Sheetz*, *supra*, 601 U.S. at p. 276.) The Supreme Court also made clear last year that the test applies equally to fees or conditions imposed administratively as well as legislatively. (*Id.* at pp. 276, 279.) However, "there can be no valid unconstitutional-conditions takings claim without a government exaction of property." (*California Building Industry Assn. v. City of San Jose*, *supra*, 61 Cal.4th at p. 457.) A regulation that "simply restricts the use of property without demanding the conveyance of some identifiable protected property interest (a dedication of property or the payment of money) as a condition of approval" does not bring the unconstitutional conditions doctrine into play. (*Id.* at p. 460.)

B. Viability of a facial *Nollan*/*Dolan* Claim

The trial court denied the Benedettis' takings claim because it concluded they could not bring a facial *Nollan*/*Dolan* claim. It reached this conclusion largely based on *Beach & Bluff*, *supra*, 28 Cal.App.5th 244. As relevant here, that case concerned a *Nollan*/*Dolan* challenge via petition for writ of mandate and complaint for declaratory judgment against certain policies in an amended LCP governing the repair or replacement of stairways and shoreline or bluff protective devices. (*Id.* at pp. 252, 254-255, 263.) The court rejected the plaintiffs' argument based on the unconstitutional conditions doctrine because it concluded "the doctrine, with its attendant *Nollan*/*Dolan* test, generally is not applied to facial challenges." (*Id.* at p. 267, italics omitted.) It relied in part on *Action Apartment Assn. v. City of Santa Monica* (2008) 166 Cal.App.4th 456, 470, which in

turn followed *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 670, to hold that the *Nollan*/*Dolan* test governed only individual adjudicative permit approval decisions and fees, not generally applicable legislative general zoning decisions or development fees.[4] (*Beach & Bluff*, at pp. 267-268.)

The court also cited section 30010, which states the Legislature's view that the Coastal Act "is not intended, and shall not be construed as authorizing the commission . . . or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor." (*Beach & Bluff*, *supra*, 28 Cal.App.5th at pp. 271-272.) The *Beach & Bluff* court held that entertaining a facial challenge to the LCP policies at issue there would have deprived the local government and the commission of the opportunity under section 30010 to apply the policies in a way to avoid resulting in a taking or having to pay compensation for one, "such as exempting the property from the regulation, amending the regulation, or rescinding the regulation." (*Beach & Bluff,* at p. 272.)

While the trial court's reliance on *Beach & Bluff* was understandable when it ruled in July 2023, this aspect of *Beach & Bluff* is no longer good law after *Sheetz*, which was decided in April 2024. *Sheetz*,

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[4] While *San Remo Hotel v. City and County of San Francisco*, *supra*, 27 Cal.4th at page 649, fn. 1, applied only the California Constitution's takings clause, the court acknowledged that in all aspects relevant here it interprets the state and federal takings clauses "congruently" (*id.* at p. 644).

supra, 601 U.S. at page 270 expressly rejected the notion that "*Nollan* and *Dolan* apply only to permit conditions imposed on an ad hoc basis by administrators" and held that the Takings Clause "does not distinguish between legislative and administrative permit conditions." *Sheetz* itself vacated and remanded a Court of Appeal decision that had followed *San Remo Hotel v. City and County of San Francisco*. (See *Sheetz v. County of El Dorado*, *supra*, 84 Cal.App.5th at p. 410.) *Sheetz* therefore abrogated *San Remo Hotel v. City and County of San Francisco* and *Action Apartment Assn. v. City of Santa Monica* in this respect, as well as this aspect of *Beach & Bluff*.

The joint parties resist this conclusion, noting that the challenge in *Sheetz* was as applied, not facial. This is true but irrelevant. Because the challenge was as applied, *Sheetz* had no occasion to address whether a plaintiff could state a facial *Nollan*/*Dolan* challenge. But by sweeping away the distinction between legislative and administrative actions for the purposes of *Nollan*/*Dolan*, *Sheetz* eliminated the logical foundation for *Beach & Bluff*'s conclusion that *Nollan*/*Dolan* cannot be applied facially.

The joint parties also argue that allowing a facial *Nollan*/*Dolan* challenge to the restrictive covenant requirement would deprive them of their discretion under section 30010 to apply the requirement constitutionally, such as by relaxing the requirement where necessary to avoid a taking. They assert that because the Benedettis have not applied for a development permit, the joint parties have not committed to any final, definitive position regarding how they would apply the restrictive covenant condition to anyone. We have no quarrel with the

notion that some permit conditions can be altered or relaxed in specific circumstances to avoid constitutional problems and that this can preclude a facial challenge. However, section 30010's takings-avoidance mechanism can only foreclose a facial challenge to a permit condition if the permit can be applied constitutionally in some cases but not others. Where a party argues that a permit condition will always be a taking in every instance where it is applied, giving the county or commission discretion to waive the condition serves no purpose. If the Benedettis' challenge has merit, the county or commission must waive the condition in every instance when requested by a landowner. Having a court declare such a condition unconstitutional would thus not deprive the county or commission of the exercise of any expertise or discretion. It would also be unjust to require only as-applied challenges to such a condition and allow it to otherwise remain in force, since it would deter landowners from properly exercising their rights.

The Benedettis' takings challenge is mostly consistent with the tests our Supreme Court has established for facial challenges. With one exception that we mention *post*, the Benedettis contend the restrictive covenant condition can never satisfy the nexus or proportionality requirements, regardless of the specific circumstances of the landowner who applies to build a new agricultural dwelling unit. This mirrors the more stringent test that requires a plaintiff to demonstrate a legislative enactment's provisions """"inevitably pose a present total and fatal conflict with applicable constitutional provisions"""" (*Beach & Bluff*, *supra*, 28 Cal.App.5th at p. 264), so the Benedettis' takings claim is suitable for resolution

as a facial challenge. Because it meets the more stringent standard, it is necessarily also suitable under the less onerous approach that looks at whether an enactment creates constitutional problems at least """"in the generality or great majority of cases."""" (*Ibid.*)

In a variation on this theme, the joint parties assert that the Benedettis cannot bring a facial *Nollan*/*Dolan* challenge because the restrictive covenant condition operates through a permit process, so that the amended LCP does not impose any exaction on a landowner until the landowner applies for a permit to develop an agricultural dwelling unit. They again cite *Beach & Bluff*, but this contention fares no better.

In the alternative to its blanket conclusion that a facial *Nollan*/*Dolan* challenge automatically fails, *Beach & Bluff* rejected a facial challenge to one permit condition requiring conversion of private stairways to public stairways because it turned on questions of whether conversion was "'feasible,'" whether public access could "'reasonably be provided,'" and whether the stairway in question already partially used public land or land subject to a public access requirement. (*Beach & Bluff*, *supra*, 28 Cal.App.5th at p. 269.) The court found it impossible to consider *Nollan*/*Dolan*'s application to these considerations except on a case-by-case basis. (*Ibid.*) The other condition at issue in *Beach & Bluff* prohibited the use of certain bluff protective devices to protect new development and required landowners receiving permits for new development or blufftop redevelopment to record deed restrictions waiving any future right to construct such devices. (*Id.* at p. 270.) The court rejected a facial challenge to that condition because new development or blufftop redevelopment might or might not occur on

specific properties in the future and because the economic harm to property owners could only be determined on a case-by-case basis. (*Ibid.*) The court also reasoned that the required deed restriction would simply limit the use of property and was not a conveyance of an identifiable protected property interest, so it was not an exaction. (*Id.* at p. 271.)

These rationales do not persuade us that the Benedettis cannot bring a facial challenge to the restrictive covenant condition here. The restriction will apply to any landowner who seeks a permit for an agricultural dwelling unit, so there is no question about whether it will apply in the future.[5] The universal application of the condition and general nature of the Benedettis' challenge also means there is no need to consider whether or how the condition will apply to a particular property or landowner. The Benedettis do not seek economic relief, so there is no need to consider specific property uses or values. The restrictive covenant condition also requires a covenant running with the land in favor of the county that affirmatively requires the owner of an agricultural dwelling unit to engage in agriculture or

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[5] We disagree with *Beach & Bluff*'s conclusion that the possibility that some landowners will not seek to develop their properties in the future precludes a facial challenge to a condition of such development. "'Legislation is measured for consistency with the Constitution by its impact on those whose conduct it affects. . . . The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.'" (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 345 (plur. opn. of George, C. J.).) A condition of development will always be irrelevant to any landowners who do not seek to develop their property, but that does not preclude a facial challenge to the application of the condition to landowners who do.

lease the property to someone who will. A restrictive covenant prohibiting development of a property that runs in favor of a third party is itself a property interest for which compensation is owed to the third party when the restriction is violated in eminent domain proceedings. (*Southern California Edison Co. v. Bourgerie* (1973) 9 Cal.3d 169, 171.) Accordingly, the requirement that a landowner record a restrictive covenant in the county's favor as a condition of receiving a permit constitutes the exaction of an identifiable property interest.[6]

Our conclusion that the Benedettis' challenge to the restrictive covenant condition can largely proceed facially is consistent with two cases, one of which *Beach & Bluff* discussed and another that was decided later. *Levin v. City and County of San Francisco* (N.D. Cal. 2014) 71 F.Supp.3d 1072, 1074, 1081, concerned a challenge to an ordinance requiring a rental property owner to pay a lump sum to displaced tenants in exchange for a permit allowing the property owner to withdraw the property from the rental market. The district court held the ordinance was facially unconstitutional because it necessarily imposed a monetary exaction in all of its applications and the monetary exaction failed the nexus and rough proportionality tests. (*Id.* at pp. 1084, 1086, 1089.) *Levin* demonstrates that a facial constitutional challenge is appropriate when a party raises an

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[6] To the extent that *Beach & Bluff* cannot be distinguished on the basis that the restrictive covenant here affirmatively requires the property owner to engage in certain conduct (as opposed to waiving rights), we disagree with *Beach & Bluff*'s conclusion that the recording of a deed restriction waiving a property development right does not convey a property interest. (*Beach & Bluff, supra,* 28 Cal.App.5th at pp. 270-271.)

unconstitutional conditions argument that an enactment will impose a taking regardless of how a governmental entity applies it in any particular case.

Beach & Bluff dismissed *Levin* as an "anomaly" that only allowed a facial challenge because the amount of the lump sum payment required could be calculated precisely in advance and legislative demands for money may be challenged immediately without a prior damages suit. (*Beach & Bluff*, *supra*, 28 Cal.App.5th at pp. 268-269.) But the calculability of the lump sum was not the point in *Levin*. The case turned instead on the nature of the challenge and whether the ordinance at issue was unconstitutional in all of its applications, regardless of the circumstances of any particular property or landowner. And while *Beach & Bluff* at page 269 also correctly noted that *Levin* is not binding authority, unlike *Beach & Bluff*, we find *Levin*'s reasoning persuasive here.

Alliance for Responsible Planning v. Taylor (2021) 63 Cal.App.5th 1072, 1075-1077, 1085, concerned an initiative ordinance that required a developer, as a condition of approval of the developer's project, to build roads that would benefit other projects. The court held that a facial unconstitutional conditions challenge to the ordinance was ripe because the challenge did "not depend on the application of the measure to a particular petitioner or future County interpretation." (*Id.* at p. 1082.) The county had not yet had the opportunity to implement the ordinance constitutionally, but this did not convince the court that the challenge was unripe. (*Ibid.*) The challenge turned on whether the ordinance was reasonably susceptible to a constitutional interpretation, which did not depend on the application of the ordinance to any particular person. (*Ibid.*) The court also noted

that because it concluded the ordinance could not be interpreted constitutionally, "delaying consideration could only serve to impose unconstitutional conditions or delay on developers and spur unnecessary litigation." (*Id.* at pp. 1082-1083.) Similarly here, because the Benedettis' challenge mostly does not depend on the application of the restrictive covenant condition to any particular landowner or property and delaying resolution of the challenge would be unjust if the challenge has merit, the challenge is suitable for facial resolution. The joint parties dismiss *Alliance for Responsible Planning* as anomalous and contend it considered only ripeness, not the viability of a facial challenge. However, the court's ripeness reasoning applies equally to the question of whether a facial challenge is available, and it is consistent with *Levin*, so it supports our conclusion.

In sum, because the Benedetti's *Nollan*/*Dolan* challenge to the restrictive covenant requirement, with one minor exception discussed at pages 23-24, *post*, does not require consideration of any individual property or landowner, we may entertain it as a facial challenge.

C. Application of *Nollan*/*Dolan*

We turn now to the merits of the Benedettis' challenge, which requires us to consider whether the restrictive covenant requirement has a nexus to the harm to the government's land use interest and whether it is roughly proportional to the impact on that interest from the development of an agricultural dwelling unit. (*Sheetz*, *supra*, 601 U.S. at pp. 275-276.) On the nexus question, the Benedettis argue that the Supreme Court requires a direct and individualized connection, something more than a

generalized connection between an exaction and broader social goals. But they cite to *Dolan* for the requirement of a direct and individualized connection, which we discuss *post*. *Nollan* required only a reasonable relationship between a condition and the public need or burden to which a development contributes because the Court found the condition at issue there did "not meet even the most untailored standards." (*Nollan*, *supra*, 483 U.S. at p. 838.) In any event, the restrictive covenant condition at issue easily meets the nexus requirement, regardless of whether the joint parties must establish a reasonable relationship or a direct connection between the condition and their land use interests.

The joint parties' relevant land use interests in the Coastal Act and the county's LCP are to maintain the agricultural industry in the coastal zone, by separating agricultural from non-agricultural uses and preventing residential use values from driving up the costs of agricultural land. (§ 30242.) The restrictive covenant condition plainly has a nexus to this interest. Allowing further residential development of a farm tract would begin to erode the distinction between agricultural and residential uses of the land unless the residential development is tied to the agricultural use in some fashion. At the same time, limited development is necessary because farmworker housing is an integral part of many agricultural operations. The restrictive covenant condition threads the needle between these competing concerns and satisfies them both by only allowing development of agricultural dwelling units that will be used to support agricultural use of the property. This is a direct connection, not a generalized one, and a much closer fit than a reasonable relationship.

According to the Benedettis, there can never be a nexus because a requirement that property owners engage in agriculture is not related to the impacts of residential development on issues such as traffic, utilities, or environmental resources. This argument mistakes the nature of the joint parties' interest. The joint parties are interested in maintaining the viability of agriculture and restricting the use of agricultural lands for residential purposes. The interest behind the restrictive covenant condition is not mitigating the general impacts of residential development.

The Benedettis point out repeatedly that the development of a residential dwelling does not change the underlying zoning of the property, which already limits the property to agricultural use while allowing residential dwellings as a principal permitted use. They maintain that the construction of a dwelling without the covenant would not prevent individuals in the C-APZ from engaging in agriculture and the restrictive covenant approach could actually discourage the expansion of agriculture in the county by imposing onerous restrictions on development. But even if construction of an additional unrestricted residential unit would not itself prevent use of surrounding land for agriculture, it could increase the development value of agricultural land and thus contribute to making agricultural uses less economically viable or attractive. By tying the availability of a development permit to the continued use of a property for agriculture, the restrictive covenant requirement ensures that only residential development that is consistent with and furthers or incentivizes agriculture will take place. Also, contrary to the Benedettis' prediction about onerous restric-

tions, allowing additional residential development where necessary for agriculture should facilitate the expansion of agricultural operations. It should certainly encourage more expansion of agriculture than the original LCP's approach of entitling owners to only one single-family dwelling per group of contiguous parcels under common ownership.

In a related vein, the Benedettis note that the LCP strictly limits non-agricultural uses in the C-APZ zone. They speculate that the development of agricultural dwelling units without a restrictive covenant would not detract from this and would actually increase the number of individuals available to engage in agriculture, implying the covenant is unnecessary. While the C-APZ zoning limits the uses of the property, it still allows for residential uses, as the Benedettis also note. The zoning therefore means little if additional residential development is permitted that is not restricted to development actually necessary to support agricultural uses. For example, if the owners of a farm tract build a second residential dwelling to live in while leaving the farm unused (as the Benedettis themselves state they intend to do), the development de facto converts the property into a residential property and contributes to a market for residential real estate in agricultural areas. The Benedettis cite nothing in the C-APZ zoning restrictions or any other law or ordinance that would prevent this from occurring in the absence of an ongoing obligation to use the property for agriculture as a condition of building the second dwelling. The restrictive covenant condition seeks to address this specific problem and maintains a direct connection between the exaction and the impacts of the

development on the joint parties' land use interest in ensuring the viability of agriculture.

Turning now to *Dolan*, the Benedettis first contend the restrictive covenant requirement fails *Dolan*'s rough proportionality test because it is not related to the impacts of development. This is simply a restatement of the Benedettis' *Nollan* nexus argument and is not persuasive for the same reasons.

The Benedettis next fault the condition for applying equally to farmhouses, intergenerational homes, and agricultural worker housing, without regard to the size, location, or characteristics of the proposed development. *Dolan*, *supra*, 512 U.S. at page 391, did not require a precise mathematical calculation, merely "'rough proportionality,'" which the Court explained consisted of an individualized determination that a condition was related in both nature and extent to the impact of a proposed development. The restrictive covenant condition meets this test on its face, since residential development of any size or type that is not required and used to support ongoing agriculture begins to establish a market for residential development and erode the viability of agriculture. To the extent that the Benedettis are arguing that the restrictive covenant condition would be disproportional for an agricultural dwelling unit of a specific type, size, or location, their argument is no longer a facial challenge. Rather, such an argument is a challenge that the condition would be unconstitutional as applied to a specific context. We cannot rule upon it in the context of the Benedettis' facial challenge here.

Finally, the Benedettis point out that the restrictive covenant condition will last in perpetuity,

which they argue is facially disproportional. But the joint parties apparently intend to preserve the viability of agriculture in the C-APZ in perpetuity, so it makes sense to have the condition last that long as well. Otherwise, the covenant would merely slow the transition away from agriculture without actually stopping it.

The Benedettis compare this case to *Alliance for Responsible Planning v. Taylor*, *supra*, 63 Cal.App.5th at pages 1085-1087, which held that an ordinance requiring the developer of one development to build roads that would benefit other developments was not proportionate to the first development's impacts. But the cases are not similar. Nothing in the restrictive covenant condition requires a landowner to contribute towards ameliorating the effects of other developments. The problem the joint parties have identified is that any residential development in the C-APZ not used for agriculture makes a small but incremental contribution towards converting the market for agricultural lands into a market for residential land, thereby eroding the viability of agriculture. By requiring each residential development in the C-APZ to be used for agriculture, the restrictive covenant condition addresses each development's own incremental effect. The condition is thus proportional to each development's impact.

III. Due Process Claim

In addition to their *Nollan/Dolan* argument, the Benedettis contend the restrictive covenant condition is facially unconstitutional because it violates their rights to due process. The Benedettis contend that strict scrutiny applies because they contend the restrictive covenant condition violates their funda-

mental right to work. However, *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97 (*Nash*), which all parties agree is the closest case on point, rejected this argument.

At issue in *Nash* was a charter provision preventing a landowner from demolishing or converting rental units without a permit. (*Nash*, *supra*, 37 Cal.3d at pp. 100-101.) The charter provision made a permit available only if the rental units were not occupied by low or moderate income tenants, the units could not be afforded by low or moderate income tenants, removal would not adversely affect the housing supply, and the owner could not make a reasonable return on his investment. (*Id.* at p. 101.) An owner of a rental apartment building challenged the charter provision as unconstitutional because it conditioned his fundamental right to cease doing business as a landlord on relinquishment of his right not to sell his property. (*Id.* at pp. 103-104.)

The California Supreme Court refused to apply strict scrutiny. (*Nash*, *supra*, 37 Cal.3d at p. 104.) It explained, "All regulation of property entails some limitation upon the liberty of the owner; and, to the extent that the regulation limits the uses to which the property may be put, it entails limitation upon the owner's liberty to pursue his chosen occupation or business at that location. If the owner wishes to pursue his preference, he may be constrained to sell his property and move elsewhere. If the value of his property has decreased as a result of the regulation, he may perceive that to be an undesirable alternative, and to that extent feel economically constrained to continue in his present field of endeavor. Yet, the existence of these legal and de facto limitations upon his freedom of choice do not operate to subject the

property regulation to a strict scrutiny test, under modern legal principles." (*Ibid.*) The court also observed that the plaintiff was "not being called upon to operate a business or engage in a profession unrelated to the property; his landlordly obligations are those which arise out of the ownership of the sort of property which he acquired." (*Id.* at p. 105.) The court distinguished such obligations from personal services not attached to the land. (*Ibid.*)

Nash rejected the argument that the charter provision in question forced upon the plaintiff an occupation chosen by the state. (*Nash*, *supra*, 37 Cal.3d at pp. 102-103.) It noted that the plaintiff remained "free to minimize his personal involvement by delegating responsibility for rent collection and maintenance to a property manager." (*Id.* at p. 103.) The court also pointed out that the plaintiff could withhold rental units from the market as they became vacant or sell his property and invest the proceeds. (*Ibid.*)

Instead of strict scrutiny, *Nash* applied rational basis review. (*Nash*, *supra*, 37 Cal.3d at p. 103.) "Both federal and state Constitutions protect against deprivation of property without due process of law. Yet, '"[i]t is thoroughly established in this country that the rights preserved to the individual by these constitutional provisions are held in subordination to the rights of society. Although one owns property, he may not do with it as he pleases any more than he may act in accordance with his personal desires."' [Citation.] Thus, an ordinance restrictive of property use will be upheld, against due process attack, unless its provisions 'are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.'" (*Ibid.*; see also

Nash, at pp. 108-109 [due process test under California Constitution "requires that the regulation be 'procedurally fair and reasonably related to a proper legislative goal'"].)[7]

Following *Nash*, as we must, we conclude the Benedettis' argument for strict scrutiny falls flat. The restrictive covenant condition does not obligate landowners to work in agriculture; they are only limited in their ability to work in fields other than agriculture on a specific property. Additionally, the condition does not raise concerns about involuntary servitude or requiring landowners to perform personal services because it only obligates the landowners to engage in agriculture, which is an occupation quintessentially arising out of and attached to their land. The restrictive covenant condition leaves the landowners free to lease the property to someone else to engage in agriculture. They can also choose to sell the property if they no longer wish to engage in agriculture.

Because strict scrutiny does not apply, we consider only whether the restrictive covenant condition is arbitrary, unreasonable, or unrelated to the general welfare or a proper legislative goal. (*Nash*, *supra*, 37 Cal.3d at pp. 103, 108-109.) We find a reasonable relationship between the condition and the general welfare and a proper legislative goal for the reasons set forth *ante* regarding the Benedettis' *Nollan*/*Dolan* challenge. The joint parties' legislative goal is the maintenance of agriculture as a viable industry in the

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[7] The Legislature enacted the Ellis Act (Gov. Code, § 7060 et seq.) to statutorily prohibit measures like the charter provision at issue in *Nash*. (*Drouet v. Superior Court* (2003) 31 Cal.4th 583, 589-590.)

coastal zone by preventing the incursion of residential development and residential property values into agricultural lands, while also allowing for housing in support of agricultural work. The restrictive covenant is reasonably related to that goal because it ties the availability of further residential development of agricultural parcels to a commitment to continue to use the parcels for agriculture.

The Benedettis rejoin that while the charter provision in *Nash*, *supra*, 37 Cal.3d at page 103 allowed the landlord to withdraw units from the market as they became vacant and to demolish the building if he could not make a fair return on his investment or wished to withdraw from being a landlord, the restrictive covenant condition contains no exceptions for the potential scenario in which commercial agriculture on a property becomes unprofitable or the landowner wants to retire. It is true that the restrictive covenant condition does not provide exceptions for such eventualities, but *Nash* did not suggest that such features were essential to the constitutionality of the ordinance there. Landowners remain free to sell the property to escape the condition or lease the property to satisfy it. The Benedettis argue in a single sentence that the First Amendment protects the right not to associate (*Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 623) and a compelled lease would violate this right. But they cite nothing to suggest that a commercial lease of land for agriculture would qualify as a forced association for First Amendment purposes.

The Benedettis distinguish *Nash* as concerning a property that was already in use as a rental property when the plaintiff acquired it (*Nash*, *supra*, 37 Cal.3d at pp. 101, 105), whereas landowners in the C-APZ

may not yet be engaged in agriculture when they seek to develop their land. But the plaintiff in *Nash* received his property apparently as a gift, and nothing in *Nash* suggests the court's reasoning about the plaintiff's right to work argument turned on when or how the plaintiff became a landlord. (See *id.* at pp. 101, 104-105.)

In any event, we need not decide whether the restrictive covenant condition would be unconstitutional in the hypothetical scenarios the Benedettis describe. A plaintiff bringing a facial challenge """"cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the [enactment]."""" (*Beach & Bluff*, *supra*, 28 Cal.App.5th at p. 264, italics omitted.) The Benedettis offer no reason to believe their hypotheticals regarding lands where agriculture is no longer profitable or landowners that seek to develop land without having previously engaged in agriculture represent """"the generality or great majority of cases"""" (*ibid.*) in which the condition will be applied, so this argument does not allow us to declare the condition unconstitutional on its face. The condition can be constitutionally applied outside of these hypotheticals to landowners whose lands have been and can still be used profitably for agriculture, which is enough to defeat the Benedettis' facial challenge here.

DISPOSITION

The judgment is affirmed.

BROWN, P. J.

WE CONCUR:
GOLDMAN, J.
POLLAK, J.*
Benedetti et al. v. Marin County (A170403)

Trial Court: Marin County Superior Court

Trial Judge: Hon. Andrew E. Sweet

Counsel: Pacific Legal Foundation, Jeremy Talcott, Johanna Talcott and Jeffrey W. McCoy for Plaintiffs and Appellants.

Rob Bonta, Attorney General, Shari B. Posner and Stephanie Lai, Deputy Attorneys General; Brian Washington, County Counsel, and Brandon W. Halter, Deputy County Counsel, for Defendant and Respondent and for Real Party in Interest.

* Retired Presiding Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Filed February 23, 2024

* * * * *

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

ARRON BENEDETTI, et al, Plaintiff and Petitioners, v. COUNTY OF MARIN, et al., Defendants and Respondents, And CALIFORNIA COASTAL COMMISSION, Real Party in Interest.	Case No. CIV 2103128 AES ~~[PROPOSED]~~ **JUDGMENT DENYING COMPLAINT AND PETITION FOR WRIT OF MANDATE** **Dept: E** **Judge: The Hon. Andrew E. Sweet** ASSIGNED FOR ALL PURPOSES TO HON. ANDREW E. SWEET, DEPARTMENT E Complaint filed: September 13, 2021

This matter came up for hearing on January 5, 2024. Jeremy Talcott appeared on behalf of plaintiff and petitioners Arron Benedetti, Arthur Benedetti, and the Estate of Willie Benedetti ("Petitioners"). Deputy County Counsel Brandon W. Halter appeared on behalf of defendants and respondents County of Marin and County of Marin Board of Supervisors ("Respondents"). Deputy Attorney General Shari Posner appeared on behalf of Real Party in Interest California Coastal Commission. On February 1, 2024,

the court issued an order denying Petitioners' Complaint and Petition for Writ of Mandate (**Exhibit A**).

The Court, having reviewed the administrative record in this matter, the briefs submitted by counsel, and the arguments of counsel; the matter having been submitted for decision; and the Court having issued an order denying the Complaint and Writ of Mandate in this proceeding; hereby enters judgment as follows.

IT IS HEREBY ADJUDGED THAT:

1. **Exhibit A** is adopted as the Court's statement of decision.

2. Judgment is hereby entered in favor of Respondents and Real Party in Interest, denying Petitioners' Complaint and Petition for Writ of Mandate.

3. Respondents and Real Party in Interest are the prevailing parties, and in accordance with Code of Civil Procedure sections 1033, 1094.5, and 1094.6; and Rule 3.1700 of the California Rules of Court; may claim their costs of suit.

Date: 02/23/2024 By: /s/ Andrew E. Sweet
Hon. Andrew E. Sweet
Judge of the Superior Court

Exhibit A

Filed February 1, 2024

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

ARRON BENEDETTI, ARTHUR BENEDETTI, and the ESTATE OF WILLIE BENEDETTI, Plaintiffs and Petitioners, v. COUNTY OF MARIN, and BOARD OF SUPERVISORS OF THE COUNTY OF MARIN, Defendants and Respondents, and Real Party in Interest.	Case No. CIV 2103128 **ORDER DENYING WRIT OF MANDATE** HON. ANDREW E. SWEET

Petitioners' Petition for Writ of Mandate, which facially challenges certain provisions of Respondent/ Defendant County of Marin's Local Coastal Program under 42 U.S.C. Section 1983 along with Petitioners' claims for declaratory and injunctive relief, is denied.

Procedural Background

On September 13, 2021, Plaintiffs and Petitioners Arron Benedetti ("Arron"), Arthur Benedetti ("Arthur") and the Estate of Willie Benedetti ("Estate") (collectively, "Petitioners") filed their Verified Complaint for Declaratory and Injunctive

Relief and Verified Petition for Writ of Mandate ("Petition") against Defendant and Respondent the County of Marin (the "County") and Real Party in Interest California Coastal Commission (the "Commission") (collectively, the "Joint Parties"). Petitioners allege that the Estate owns a property interest in two parcels of land located in Valley Ford, within the California Coastal Act's Coastal Zone and specifically the Coastal Agricultural Production Zone ("C-APZ"). Due to its location, the property is subject to the provisions of the Marin County Local Coastal Program ("LCP") that regulate that zone. (Petition, ¶2.) Arron and Arthur are children of the late Willie Benedetti ("Willie") and will inherit a part of Willie's interest in the property by devise, as well as Willie's interest in the ongoing litigation connected to the property. They are also the executors and personal representatives of the Estate. (*Id.*, ¶¶3, 4.) The First Cause of Action alleges that the LCP facially violates the Fifth and Fourteenth Amendments of the U.S. Constitution and Article 1, section 7, of the California Constitution. The Second Cause of Action is for traditional writ of mandate under Code of Civil Procedure Section 1085 and the Third Cause of Action is for administrative writ of mandate under Code of Civil Procedure Section 1094.5.

On July 7, 2023, the Court overruled the Joint Parties' demurrer to the First and Second Causes of Action, sustained the demurrer to the Third Cause of Action with leave to amend, and denied the motion to strike. In its Order, the Court noted that the unconstitutional conditions claim based on Petitioners' takings theory may be subject to dismissal because a facial challenge is not available for such a claim under *Beach & Bluff Conservancy v. City of Solana Beach*

(2018) 28 Cal.App.5th 244. However, because the First Cause of Action was based both on a takings theory and a due process theory and a demurrer does not lie to only part of a cause of action, the Court overruled the demurrer to the First Cause of Action.

On September 20, 2023, the Court entered an Order adopting the Joint Stipulation filed by the parties regarding a briefing schedule. The Order stated among other things: "The Parties jointly agree that all causes of action that remain at issue in this matter are suited for resolution on the basis of the existing Administrative Record." The remaining causes of action, following the Court's July 7th Order, are the First Cause of Action for deprivation of due process and the Second Cause of Action for traditional writ of mandate. The Petition also includes requests for declaratory and injunctive relief. (Petition, ¶¶65-69 and Prayer for Relief, ¶¶2, 3.)

The Coastal Act

The California Coastal Act of 1976 (the "Coastal Act"), Public Resources Code § 30000 et seq., "'was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California. The Legislature found that 'the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people'; that 'the permanent protection of the state's natural and scenic resources is a paramount concern'; that 'it is necessary to protect the ecological balance of the coastal zone' and that 'existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state . . . .'

The Coastal Act is to be 'liberally construed to accomplish its purposes and objectives.'" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 792, 793-794 [citations omitted].) The Legislature also declared "the basic goals for the coastal zone" are, among other things, to protect the overall quality of the coastal zone environment, to ensure balanced utilization and conservation of coastal zone resources, to ensure priority for coastal-dependent and coastal-related development over other development on the coast, and to encourage state and local initiatives and cooperation for mutually beneficial uses. (Pub. Res. Code § 30001.5.)

Section 30200(a) of the Coastal Act provides: "Consistent with the coastal zone values cited in Section 30001 and the basic goals set forth in Section 30001.5 . . . the policies of this [Chapter 3] shall constitute the standards by which the adequacy of local coastal programs . . . and the permissibility of proposed developments subject to the provisions of this division are determined." Chapter 3 includes several articles, each addressing a specific policy: Article 2 of Chapter 3 addresses public access, Article 3 addresses recreation, Article 4 addresses marine environment, Article 5 addresses land resources, Article 6 addresses development, Article 7 addresses industrial development, and Article 8 addresses sea level rise.

Agricultural land, development and/or use is addressed within Article 5 (Sections 30240-30244). Section 30241 provides: "The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses

through all of the following: (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses. (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development. (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250. (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands. (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality. (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of prime agricultural lands."

Section 30242 provides: "All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands."

The Original LCP

Under the Coastal Act, local governments prepare, on their own or in conjunction with the Commission, a local coastal program ("LCP") to regulate development within the coastal zone. (See Pub. Res. Code § 30500(a).) A LCP consists of a Land Use Plan ("LUP") and an implementation plan ("IP") containing local ordinances. (*Beach & Bluff*, *supra*, 28 Cal.App.5th at p. 252.) The Commission reviews and certifies LCPs as consistent with Coastal Act policies. (Pub. Res. Code §§ 30512, 30512.2, 305313.)

The County adopted its original LCP in segments in 1979 and 1980, and the Commission certified the LCP segments in 1980 and 1981. (AR 3, 153.) The area covered by the LCP is approximately 75 square miles, and two-thirds of the LCP area is zoned for agriculture in the Agricultural Production Zone ("APZ") (AR 9850, 31663.)

With respect to agriculture, the original LCP stated among other things that "Coastal Act policies reflect the importance of agriculture to California and to the nation . . . . Unfortunately, agricultural land in California and the coastal zone which supplies the state's bountiful agricultural yield is steadily diminishing, primarily due to urban expansion and its effects . . . in various forms, prime, non-prime, cropland and grazing land, agricultural land in the state is steadily being lost. Coastal Act policies are intended to reduce this loss in the coastal zone." (AR 240.) A general policy of the LCP was "to protect the existing and future viability of agricultural lands in [the County's] coastal zone, in accordance with Sections 30241 and 30242 of the Coastal Act. The County's LCP policies are intended to permanently

preserve productive agriculture and lands with the potential for agricultural use, foster agricultural development, and assure that non-agricultural development does not conflict with agricultural uses or is incompatible with the rural character of the County's coastal zone." (AR 262.)

The LCP stated that the intent of the APZ was "to preserve lands within the zone for agricultural use. The principal use of lands in the APZ shall be agricultural. Development shall be accessory, incidental, or in support of agricultural land uses . . . ." (*Id.*) Permitted uses in the APZ included "Agricultural uses", "one single family dwelling per parcel" (with "parcel" defined as "all contiguous assessor's parcels under common ownership"), and "accessory structures or uses appurtenant and necessary to the operation of agricultural uses, other than dwelling units of any kind, but including barns, fences, stables, corrals, coops and pens, and utilities for facilities". (AR 264.) A number of conditional uses were also identified, including farmworker housing and mobile homes used by employees. (*Id.*)

The Amended LCP

The County began amending its LCP in 2008. (AR 31955.) With respect to housing on land in the APZ (renamed the C-APZ in the amended LCP), the County considered a number of approaches, including allowing one or two additional intergenerational housing units to support the continued operation of family farms and limiting the scale/size of single-family housing (AR 935) and allowing up to two intergenerational homes on C-APZ parcels conditional on the recording of a restrictive covenant that the

homes only be used by the farm operator's immediate family (AR 4242).

The County submitted its first comprehensive LCP update to the Commission in 2014/2015. (AR 31955.) The County eventually adopted, and the Commission certified, an LCP update organizing the LCP amendments into seven components, i.e., Amendment Nos. 1-7. (AR 13623-13628, 13965-13972.) The amended LCP ("LCPA") has two components: the LUP and the IP. The LCPA was adopted by the County Board of Supervisors on April 24 and December 11, 2018 and was certified by the Commission on February 6, 2019. (AR 31347.) On July 13, 2021, the County passed a resolution that placed certified Amendment Nos. 2 and 3 relating to the C-APZ, among others, into effect as of August 12, 2021. (AR 32281.)

The LCPA provides, among other things, that "[i]n Marin County, coastal agriculture is important as an essential livelihood, a foundation for regional economic activity, and a wholesome, local source of food for residents of the Bay Area and beyond" and that the LCPA "policies seek to preserve viable agriculture as a permanent part of the fabric of coastal Marin for the benefit of residents, visitors, and the environment itself." (AR 31361.) The LCPA further provides that its policies are intended to "deter the incursion of non-agricultural uses that would convert agricultural land and impair agricultural productivity now and in the future. A key measure to continue the preservation of agriculture is the Agricultural Production Zone (C-APZ), which limits the use of land to agriculture, or uses that are accessory to, in support of, and compatible with agricultural production." (AR 31362-31363.)

The LCPA identifies certain permitted uses in the C-APZ, including Agricultural Production, Agricultural Accessory Structures, Agricultural Accessory Activities, Agricultural Dwelling Units, and Other Agricultural Uses. "Agricultural Dwelling Units" is defined to include "[o]ne farmhouse or a combination of one farmhouse and one intergenerational home per farm tract, defined in this LCP as all contiguous legal lots under a common ownership within a C-APZ zoning district, consistent with C-AG-5, including combined total size limits", and "Agricultural worker housing." (AR 31363-31364.)

A report by Commission staff prepared in 2019 stated: "Rather than deviate from the framework set up in the existing LCP, the Commission-certified LUP policies serve to limit the proliferation of agricultural dwelling units in the coastal zone by acknowledging that the 'farm tract,' defined as all contiguous lots under common ownership, can consist of multiple legal parcels that together constitute one unified farming operation. Instead of allowing the potential for the same farmer to develop multiple farmhouses spread across multiple contiguously owned legal parcels that are under common ownership in the commercial agricultural zone, certified LUP Policy C-AG-5 allows for one farmhouse, or one farmhouse and up to two intergenerational homes per farm tract, to allow for family members (or any other person authorized by the owner) to live on the farm property. As observed in the existing LCP, the agricultural policies are intended to avoid inappropriate residential development, inefficiently utilizing the agriculturally productive land and requiring large investments for public service, and instead to facilitate agricultural production. Therefore, the LCP

Update provisions seek to cluster permissible agricultural residential development and to direct other residential-type construction to other zoning districts and to existing communities where it can better be accommodated." (AR 31978-31979.)

The IP sets forth the standards and requirements for implementing the LUP. Section 22.32.024, titled "Agricultural Dwellings Units", provides:

> The standards of this Section shall apply in the C-APZ Zone to Farmhouses, Intergenerational Homes, and agricultural worker housing, defined in Section 22.130.030.
>
> A. An Agricultural Dwelling Cluster consists of a farmhouse or a combination of one farmhouse and up to two intergenerational homes with the combined total of 7,000 square feet, up to an additional 540 square feet of garage space, and up to 500 square feet of office space in the farmhouse used in connection with the agricultural operation. Each agricultural dwelling unit must be owned by a farmer or operator actively and directly engaged in agricultural use on the property. See Section 22.130.030 for definition of "Actively and directly engaged."
>
> B No more than one Agricultural Dwelling Cluster may be permitted per farm tract, whether it contains a single farmhouse or in a combination of a farmhouse and one or two intergenerational homes, including existing homes.
>
> C. An application for a farmhouse or intergenerational home shall identify all legal lots owned by the same owner of the property upon which the proposed farmhouse or

intergenerational home is located including all contiguous legal lots under common ownership (the "farm tract"). The application shall identify all existing agricultural dwellings on the identified legal lots and shall demonstrate that the proposed farmhouse or intergenerational house is located on a legal lot.

D. Nothing in this subsection shall be construed to prohibit the sale of any legal lot comprising the farm tract, nor require the imposition of any restrictive covenant on any legal lot comprising the farm tract other than the legal lot upon which development of one farmhouse and up to two intergenerational homes is approved. Future development of other legal lots comprising the farm tract shall be subject to the provisions of the LCP and Development Code, including but not limited to Section 22.65.040.

F.[1] No allowable farmhouse or intergenerational home may be divided from the rest of the legal lot. As a condition of permit approval for a farmhouse and/or intergenerational home, future land division of the legal lot containing the farmhouse and/or intergenerational home(s) is prohibited except that lease of the rest of the legal lot at a level of agricultural use that will sustain the agricultural capacity of the site is not prohibited (see restrictive covenant requirements specified in Sections 22.32.024 and 22.32.025).

G. A density of 60 acres per unit shall be required for each farmhouse and intergenera-

[1] There does not appear to be a subsection E. (AR 31469.)

> tional house (i.e., a legal lot must be at least 60 acres for a farmhouse, 120 acres for a farmhouse and intergenerational house, and at least 180 acres for a farmhouse and two intergenerational homes).
>
> H. Agricultural dwelling units shall not be placed on land designated as prime agricultural land and shall be placed within the mapped clustered development area required in subsection 22.65.040.C.1.d.
>
> I. Agricultural dwelling units may be permitted only if they do not require any Coastal Zone Variance.

(AR 31469-31470.)

The term "actively and directly engaged" (as used in subsection A, above) is defined as "making day-to-day management decisions for the agricultural operation and being directly engaged in production of agricultural commodities for commercial purposes on the property or maintain a lease to a bona fide commercial agriculture producer." (AR 31600.)

Section 22.32.02x(D) requires the recording of a restrictive covenant for intergenerational housing. Specifically, this section provides that "Intergenerational housing requires the preparation and recordation of a restrictive covenant running with the land for the benefit of the County. The covenant must include, at a minimum, the following:

> 1. A detailed description of the intergenerational home or homes.
>
> 2. Assurance that any use will be in conformance with applicable zoning, building and other ordinances and noting that all

appropriate permits must be issued and completed prior to any change in use.

3. Assurance that the intergenerational housing will not be divided or sold separately from the rest of the agriculturally zoned legal lot. As a condition of permit approval for an intergenerational home, future land division of the legal lot containing the intergenerational home is prohibited except that lease of the rest of the legal lot at a level of agricultural use that will sustain the agricultural capacity of the site is not prohibited.

4. Language demonstrating that the restriction shall run with the land and shall be binding on all heirs, successors and assigns to the property, and its provisions shall be enforced by the County of Marin.

5. Assurance that the owner of the intergenerational home shall be actively and directly engaged in agricultural use of the agriculturally zoned legal lot and that the use of the agriculturally zoned legal lot shall remain confined to agriculture. See Section 22. 130.030 for definition of "Actively and directly engaged" and "Agricultural use".

(AR 31470-31471.)

A restrictive covenant is also required under Section 22.32.025(B) for the development of farmhouses (AR 31471).

Petitioners' Land and Desire to Build Second Dwelling

Petitioners own two parcels of land totaling 267 acres in Marin County, within the County's C-APZ. One of the parcels has a residential structure where Willie resided along with Arron before Willie's death. (Petition, ¶53.) Arthur wishes to build a dwelling on the second parcel, which will trigger the requirements [of] the LCPA that the property be owned by someone actively and directly engaged in agricultural use. Arthur would like to do so without being bound by this restriction. (*Id.* ¶¶61-63.)

Writ of Mandate Standard

Because the Court sustained Joint Parties' demurrer to the Third Cause of Action for administrative writ of mandate under Code of Civil Procedure Section 1094.5, only the Second Cause of Action for traditional writ of mandate under Code of Civil Procedure Section 1085 is currently before the Court.[2]

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is

[2] Petitioners also seek a declaration that the LCPA is unconstitutional. (See *Beach & Bluff*, 28 Cal.App.5th at p. 259 ["In addition to traditional mandamus, an action for declaratory relief is generally an appropriate means of *facially* challenging a legislative or quasi-legislative enactment of a public entity" [emphasis in original].)

unlawfully precluded by that inferior *tribunal*, corporation, board, or person." (Code Civ. Proc. § 1085.) A writ of mandate "will issue against a county, city, or other public body . . . ." (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 593 [citation and internal quotations omitted].)

A writ of mandate under Section 1085 is available where "the petitioner has no plain, speedy and adequate alternative remedy; the respondent has a clear, present and usually ministerial duty to perform; and the petitioner has a clear, present and beneficial right to performance." (*Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 751-752.)

Standards Applicable to Petitioners' Facial Substantive Due Process Challenge

Petitioners state in their Opening Brief that in light of the prior Order on Joint Parties' demurrer, they are briefing only their theory that the LCPA is facially unconstitutional under a Fourteenth Amendment due process theory (and not a Fifth Amendment takings theory). Thus, the Court addresses only the due process portion of Petitioners' claims. The Court acknowledges Petitioners' statement that they "do not concede or waive" other claims and "seek to preserve the argument for appeal." (Opening Brief, n. 1.)

"'A defendant challenging the constitutionality of a statute carries a heavy burden: The courts will presume a statute is constitutional unless its unconstitutionality clearly, positively, and unmistakably appears; all presumptions and intendments favor its validity.' Typically, a litigant may challenge the constitutionality of a statute in two ways: on its face or as applied." (*In re D.L.* (2023) 93 Cal.App.5th 144, 156 [citations omitted].) "A facial challenge to the

constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. [Citation.] To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute . . . . Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Thompson v. Spitzer* (2023) 90 Cal.App.5th 436, 452 [internal quotations omitted] [emphasis in original].)

Courts have articulated different tests for determining if a statute is facially unconstitutional. The more stringent test requires the statute to be unconstitutional in all applications. (See *Regina v. State* (2023) 89 Cal.App.5th 386, 401 ["To prevail on a claim a statute is unconstitutional on its face, the petitioner must demonstrate that no set of circumstances exists under which the Act would be valid, *i.e.*, that the law is unconstitutional in all its applications"] [citation and internal quotations omitted].) The less stringent test requires the statute to be unconstitutional in the generality or vast majority of circumstances. (See *Today's Fresh Start, Inc. v. L.A. County Office of Education* (2013) 57 Cal.4th 197, 218 ["Even under the least onerous phrasings of the test", the plaintiff must show the statute "will create due process problems in at least 'the generality' or 'vast majority' of cases"] [citations omitted]; *Howard Jarvis Taxpayers Assn. v. Weber* (2021) 67 Cal.App.5th 488, 496 ["To prevail on a facial

challenge, a plaintiff must demonstrate the statute is unconstitutional in the vast majority of cases"].)

The parties disagree as to the standard of review the Court is to apply when reviewing the constitutionality of the LCPA. Petitioners contend that the Court must apply a strict scrutiny standard because the LCPA infringes on the fundamental right to work or to not work, while Joint Parties contend that the Court should apply the more deferential standard applicable to land use regulations.

As Joint Parties argue, courts generally give deference to land use regulations adopted by municipalities for land within their jurisdiction. "[U]nder the California Constitution a municipality has broad authority, under its general police power, to regulate the development and use of real property within its jurisdiction to promote the public welfare. The variety and range of permissible land use regulations are extensive and familiar, including, for example, restrictions on the types of activities for which such property may be used (commercial or residential, or specific types of commercial ventures or specific types of residential developments—single family, multiunit) . . . . As a general matter, so long as a land use restriction or regulation bears a reasonable relationship to the public welfare, the restriction or regulation is constitutionally permissible." (*California Building Indust. Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 455 [citation omitted].) "'In deciding whether a challenged [land use] ordinance reasonably relates to the public welfare, the courts recognize that such ordinances are presumed to be constitutional, and come before the court with every intendment in their favor.'" (*Ibid.* [citation omitted].)

"'The most deferential review of land use decisions appears to be for those that pertain to 'essentially legislative determinations' that do not require any physical conveyance of property. A challenger to the validity of a legislative determination, such as a zoning regulation, bears the burden of proving that the regulation 'constitutes an arbitrary regulation of property rights.'" (*Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 966 [citations omitted].)

In *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97, cited by both parties, the court held that an ordinance requiring a landlord to obtain a predemolition removal permit before leveling rental units was valid in that it was reasonably related to the public goal of maintaining adequate rental housing. The court found that the burden imposed by the ordinance on the landlord's liberty interest did not warrant the application of a more stringent standard to determine the ordinance's validity.[3] Instead, the court applied the deferential standard applicable to economic regulations, noting among other things that "[a]ll regulation of property entails some limitation upon the liberty of the owner; and, to the extent that the regulation limits the uses to which the property may be put, it entails limitation upon the owner's liberty to

[3] After *Nash* was decided, the California Legislature enacted the Ellis Act, which expressly states the Legislature's intent "to supersede any holding or portion of any holding in *Nash* . . . *to* the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business . . . ." (Gov. Code, § 7060.7.) Government Code Section 7060(a) states: "No public entity . . . shall, by statute, ordinance, or regulation, or by administrative action . . . compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease."

pursue his chosen occupation or business at that location." (*Id.* at p. 104.) The court also reasoned that "Nash is not being called upon to operate a business or engage in a profession unrelated to the property; his landlordly obligations are those which arise out of the ownership of the sort of property which he acquired." (*Id.* at p. 105.)

Petitioners argue that the deferential standard applied in *Nash* and other cases does not apply here because LCPA is not simply a land use regulation. Rather, Petitioners argue, the LCPA regulates and/or compels a landowner's profession by requiring landowners to engage, either by themselves or through a third-party lease, in commercial agriculture. However, the *Sail'er Inn* and other decisions cited by Petitioners (*Purdy* and *Truax*) are distinguishable in that they involved discrimination based on class (gender, immigration/naturalization status) in the pursuit of employment. Several cases have noted the limited scope of the holdings in these decisions. (See *Warden v. State Bar* (1999) 21 Cal.4th 628 n. 8; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 17-18; *Kubik v. Scripps College* (1981) 118 Cal.App.3d 544, 549-550.)

Moreover, courts have generally held that there is no fundamental "right to work" at the profession one chooses. (See *California Gilnetters Association v. Department of Fish & Game* (1995) 39 Cal.App.4th 1145, 1154-1155 ["the courts have repeatedly held that legislative enactments affecting the 'right to work' are tested under a rational basis and not the strict scrutiny analysis because there is no fundamental right to work"]; *Graham v. Kirkwood Meadows Public Utility District* (1994) 21 Cal.App.4th 1631, 1645-1646 ["Notwithstanding the principle

enunciated in *Truax* . . . that the right to work at a lawful occupation is an essential component of liberty, the United States Supreme Court consistently has refused to recognize a fundamental right to particular employment' . . . '[T]he rational basis standard of review is traditionally applied to occupational regulation. [Citation.] The few exceptions invariably have involved a classification which is 'suspect' in constitutional terms.' Moreover, 'the California exceptions noted all have involved the creation of a general barrier to the pursuit of an occupation by a particular group'"] [citations omitted].)

Petitioners argue, for the first time in their Reply, that there is a fundamental right not to work, and that the LCPA violates this fundamental right by requiring landowners to engage in agriculture. The case they cite, *Chambers v. Unemployment Ins. Appeals Bd.* (1973) 33 Cal.App.3d 923, does not support their position. In *Chambers,* the court found that the state has a compelling state interest in requiring one seeking unemployment relief to keep himself available for employment and that any peripheral constitutional right to keep his particular hair style must yield to the unemployment insurance statute containing this requirement. Petitioners cite to the following language in *Chambers*: "We observe to [sic] substantial distinction between an unemployed person who for one reason or another voluntarily renders himself unavailable for work, and another who refuses work when it is offered. In each case the unemployed person has a clear constitutional right to do, or not to do, as he has chosen." (*Id.* at p. 927.) This language was not relevant to the court's holding and is arguably dicta. Petitioners do not cite to any other authority to support their argument.

While there is authority addressing involuntary servitude, that is not the situation here.

The Court concludes that the LCPA is subject to the deferential standard of review as set forth in *California Building* and *Santa Monica Beach*, *supra.* The LCPA is a land use regulation that regulates how land can be used, including what buildings can be built on the land, in the C-APZ. The LCPA can therefore withstand Petitioners' due process challenge unless there is no "reasonable relationship to the public welfare" (*California Building*) or there is an "arbitrary regulation of property rights" (*Santa Monica Beach*).

Discussion

Petitioners have failed to satisfy their burden of showing that the LPCA is unconstitutional under the deferential standard set forth above. As discussed above in the sections addressing the original LPC and the LPCA, the County has a governmental interest in preserving agricultural land in the coastal zone. Further, the C-APZ has a tradition of small family-run farming operations which would be threatened by the conversion of agricultural land to other uses and increases in land value driven by residential rather than agricultural use. (AR 31362, 10421.) The land subject to these policies and regulations has already been zoned for agriculture. (AR 31363.) There is a "reasonable relationship" between the LPCA provisions and the public welfare because they require new development to be connected to agricultural use and restrict the conversion of agricultural land to residential uses.

Further, contrary to what Petitioners imply, the LCPA does not force a landowner into an occupation

of commercial agriculture. A landowner does not have to record a restrictive covenant if he or she does not seek a permit to add a new agricultural dwelling unit. Even if the landowner did seek such a permit, he or she could lease the property to a third party who would use the property for agriculture, and the landowner could opt to pursue an entirely different occupation. The landowner could also sell the property or seek to establish a taking as set forth in Section 22.70.180. (AR 31597-31599.)

The Court also notes that at this time, Petitioners make only a facial due process challenge. (MPA, pp. 11:3-7 and n. 1.) Facial challenges are disfavored and all presumptions and intendments favor a statute's validity. (See *Beach* & *Bluff*, 28 Cal.App.5th at p. 263; *In re D.L.*, 93 Cal.App.5th at p. 156.) Petitioners must show that, at the very least, the LCPA is unconstitutional "in at least 'the generality' or 'vast majority'" of cases. (See *Today's Fresh Start*, 57 Cal.4th at p. 218; *Howard Jarvis*, 67 Cal.App.5th at p. 496.) They "'cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute'", but instead "'must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.'" (*Thompson*, 90 Cal.App.5th at p. 452 [emphasis in original] [citations omitted].) Petitioners do not meet that standard. The LCPA allows a landowner to lease the land to someone else to engage in commercial agriculture (leaving the landowner to pursue another occupation), choose not to build a residence on the property, or sell the property. Further, the impact of the LCPA on landowners will vary depending on the landowner's

specific circumstances, and any purported adverse impact the LCPA may create on property values if a landowner chooses to sell is speculative. The impact to Petitioners themselves, who state that they do not wish to engage in agriculture or sell the property, and possibly others who may be in the same position, is insufficient to prevail on a facial challenge.[4]

IT IS SO ORDERED.

Dated: February 1, 2024

/s/ Andrew E. Sweet
ANDREW E. SWEET
Judge of the Superior Court

[4] At the hearing, counsel for Petitioners referred the Court to a Supreme Court case, *City of Los Angeles v. Patel*, 135 S.Ct. 2443 (2015), but Petitioners only cited this case in passing in their papers (at the top of page 12 of their Opening Brief) and did not discuss its application to the present case in any way. Counsel for Petitioners also raised at the hearing the unconstitutional conditions doctrine, but Petitioners' Opening Brief focused only on the argument that the LCPA violated a landowner's alleged constitutional right to work or choose one's profession. The brief mentioned the unconstitutional conditions doctrine but in the context of this right to work argument only. The Court does not consider Petitioners' new arguments raised at the hearing as they were not properly or fully briefed in Petitioners' papers. (Cal. Rule of Court 3.1113(b); *Nationwide Ins. Co. of America v. Tipton* (2023) 91 Cal.App.5th 1355, 1365; *Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197 Cal.App.4th 927, 932-933; *Black v. Financial Freedom Senior Funding Corp.* (2001) 92 Cal.App.4th 917, 925 n.l.)

Filed December 10, 2025

Court of Appeal, First Appellate District,
Division Four — No. A170403

S293396

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ARRON BENEDETTI et al., Plaintiffs and Appellants,

v.

COUNTY OF MARIN, Defendant and Respondent;

CALIFORNIA COASTAL COMMISSION, Real Party in Interest.

The petition for review is denied.

GUERRERO
Chief Justice

MARIN COUNTY
LOCAL COASTAL PROGRAM
Land Use Plan

Adopted by the Board of Supervisors
April 24 and December 11, 2018

Certified by the California Coastal Commission
February 6, 2019

* * * * *

C-AG-3 Coastal Agricultural Residential Planned Zone (C-ARP). Apply the Coastal Agricultural Residential Planned Zone (C-ARP) designation to lands adjacent to residential areas in the Coastal Zone that have potential for agricultural production but do not otherwise qualify for protection under Policy C-AG-2 (Coastal Agricultural Production Zone). The intent of the C-ARP Zone is to provide flexibility in lot size and building locations in order to:

1. Promote the concentration of residential and accessory uses to maintain the maximum amount of land available for agricultural use, and
2. Maintain the visual, natural resource and wildlife habitat values of subject properties and surrounding areas. The C-ARP district requires proposed development to be clustered to avoid or minimize impacts to environmental and other coastal resources, such as natural topography, native vegetation and public views of the coast.

Residential use shall be the principal permitted use in all parcels with the land use designation of C-AG3. Agriculture shall be the principal permitted use in all

parcels with the C-AG1 and C-AG2 land use designations.

C-AG-4 C-R-A (Coastal, Residential, Agricultural) District. Apply the C-R-A zoning district to provide areas for residential use within the context of small-scale agricultural and agriculturally-related uses, subject to specific development standards.

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 (Non-Agricultural Development of Agricultural Lands), 7 (Development Standards for the Agricultural Production Zone Lands), 8 (Agricultural Production and Stewardship Plans), and 9 (Agricultural Dwelling Unit Impacts and Agricultural Use). 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, defined in this LCP as all contiguous legal lots under common ownership within a C-APZ zoning district, 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 legal lot, and shall be

consistent with the standards of C-AG-7 and the building size limitations of 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 legal lot or 12 units or spaces per legal lot for agricultural workers and their households shall not be included in the calculation of density in the following zoning districts: C-ARP, C-APZ, C-RA, and C-OA. Additional agricultural worker housing above such 36 beds or 12 units shall be subject to the density requirements applicable to the zoning district. An application for agricultural worker housing above such 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 non-dwelling agricultural production related uses.

C-AG-6 Non-Agricultural Development of Agricultural Lands. Non-agricultural development is defined to include division of agricultural lands and any development not classified as Agriculture. 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, on the subject parcel and any new parcel created, and that agricultural productivity on adjacent parcels would be maintained. In considering divisions of agricultural lands in the Coastal Zone, the County may approve fewer parcels than the maximum number of parcels allowed by the Coastal Zoning Code, based on site characteristics such as topography, soil, water availability, environmental constraints and the capacity to sustain viable agricultural operations.

C-AG-7 Development Standards for the Agricultural Production Zone (C-APZ) Lands. Proposed development in the C-APZ zone shall be designed and constructed to preserve agricultural lands and to be consistent with all applicable standards and requirements of the LCP, and in particular the policies of the Natural Systems and Agriculture Element of the LUP. In addition to the requirements applicable to a specific land use, the following requirements shall apply to development in the C-APZ:

A. Standards for All Development in the C-APZ:

All of the following development standards apply:

1. Permitted development shall protect and maintain renewed and continued agricultural production and viability on site and shall not impact adjacent agricultural lands. Development shall be sited to avoid agricultural land (i.e., prime agricultural land or "non-prime land") whenever possible, consistent with the operational needs of agricultural production. If use of such land is necessary, prime agricultural land shall not be utilized if it is possible to utilize non-prime lands. In addition, as little agricultural land as possible shall be used for structural development.
2. Development shall be permitted only where 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 production. Water diversions or use for a proposed development shall not adversely impact stream or wetland habitats, have significant effects on groundwater resources, or significantly reduce freshwater inflows to water bodies, including Tomales Bay, either individually or cumulatively.
3. Permitted development shall have no significant adverse impacts on environmental quality or natural habitats, and shall meet all other applicable policies, consistent with the LCP.

4. In order to retain the maximum amount of land in agricultural production or available for future agricultural production, farmhouses, intergenerational homes, agricultural worker housing, agricultural accessory structures, and agricultural product processing facilities shall be placed within a clustered development area 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 this 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.

The clustered development area, in combination with roads, agricultural product sales facilities and all other structural development, shall total no more than five percent of the gross acreage of the farm tract, to the extent feasible, with the remaining acreage retained in or available for agricultural production or open space.

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.

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 including by applying Policy C-AG-6 and the following standards and making all of the findings listed below.

1. Non-principally permitted uses shall only be allowed when such uses will serve to maintain and enhance agricultural production.

2. The creation of a homeowners' or other organization and/or the submission of an Agricultural Production and Stewardship Plan (APSP) may be required to provide for the proper utilization of agricultural lands, including their availability on a lease basis or for the maintenance of the community's roads, septic or water systems.

[photo]

C. Standards for Non-Agricultural Conditional Uses:

In addition to the standards of Sections A and B above, all of the following development standards apply to non-agricultural conditional uses.

1. Where consistent with state and federal laws, a permanent agricultural conservation easement

over that portion of the property not used for physical development or services shall be required for otherwise permissible land divisions, and other non-agricultural development to promote the long-term preservation of these lands. Only agricultural and compatible uses shall be allowed under the easement. In addition, the County shall require the execution of a covenant not to divide for the parcels created under this division so that each will be retained as a single unit and will not be further subdivided.

2. Proposed development shall only be approved after making the following findings:

a. The development is necessary because agricultural use of the property would no longer be feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship or enhance agricultural operations on the remainder of the property.

b. 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 structural development, on adjacent parcels, or on other agricultural parcels within one mile of the perimeter of the proposed development.

c. Appropriate public agencies are able to provide necessary services (fire protection, police protection, schools, etc.) to serve the proposed development without extending urban services.

C-AG-8 Agricultural Production and Stewardship Plans.

A. Submission of an Agricultural Production and Stewardship Plan (APSP) shall be required for approval of land division or other non-agricultural development of Agricultural Production Zone (C-APZ) lands, except as provided for in (C) below.

B. The purpose of an APSP, prepared and submitted for land division or other non-agricultural development of C-APZ lands, is to ensure that long-term agricultural productivity will occur and will substantially contribute to Marin's agricultural industry. Such a plan shall clearly identify and describe existing and planned agricultural uses for the property, explain in detail their implementation, identify on-site resources and agricultural infrastructure, identify product markets and processing facilities (if appropriate), and demonstrate how the planned agricultural uses substantially contribute to Marin's agricultural industry. An APSP shall provide evidence that at least 95% of the land will remain in agricultural production or natural resource protection and shall identify stewardship activities to be undertaken to protect agriculture and natural resources. An APSP shall be prepared by qualified professionals with appropriate expertise in agriculture, land stewardship, range management, and natural resource protection. The approval of a development proposal that includes an APSP shall include conditions ensuring the proper, long-term implementation of the plan.

C. The requirement for an APSP shall not apply to the farmhouse, agricultural worker housing or to intergenerational homes. The APSP may also be waived for non-agricultural land uses when the County finds that the proposal will enhance current or future agricultural use of the property and will not convert the property to primarily residential or other non-agricultural use, as evidenced by such factors as bona fide commercial agricultural production on the property, the applicant's history and experience in production agriculture, and the fact that agricultural infrastructure (such as fencing, processing facilities, marketing mechanisms, agricultural worker housing, or agricultural land leasing opportunities) has been established or will be enhanced.

D. Projects subject to the potential requirement of preparing an APSP shall be referred to such individuals or groups with agricultural expertise as appropriate for analysis and a recommendation. Such individuals or groups shall also be requested to periodically review and evaluate the effectiveness of the APSP program.

Program C-AG-8.a Commercial Agricultural Production. Develop criteria and standards for defining commercial agricultural production so that APSPs can differentiate between commercial agricultural production and agricultural uses accessory to residential or other non-agricultural uses.

C-AG-9 Agricultural Dwelling Unit 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, by the following means:

A. Agricultural dwelling units, other than principally permitted agricultural dwelling units, shall be reviewed to ensure they do not diminish current or future agricultural production on the property or convert it to primarily residential use.

B. Any proposed agricultural dwelling unit and related development subject to a Coastal Development Permit shall comply with LCP policies including ensuring that the mass and scale of new or expanded structures respect environmental site constraints and the character of the surrounding area. Such development must be compatible with ridge protection policies and avoid tree-cutting and grading wherever possible. All such development shall be clustered with existing structures and development on the farm, pursuant to C-AG-7 (Development Standards for the Agricultural Production Zone), and shall be sited and designed to protect significant public views.

When considering proposed agricultural dwelling units, other than principally permitted agricultural dwelling units, the reviewing authority shall exercise its discretion in light of some or all of the following criteria for the purpose of ensuring that the land does not de facto convert to residential use:

1. The applicant's history of production agriculture.
2. How long term agricultural use of the property will be preserved – for example, whether there is an existing or proposed dedication or sale of permanent agricultural easements or other similar protective agricultural restrictions such as Williamson Act contract or farmland security zone.
3. Whether long term capital investment in agriculture and related infrastructure, such as fencing, processing facilities, market mechanisms, agricultural worker housing or agricultural leasing opportunities have been established or are proposed to be established.
4. Whether sound land stewardship practices, such as organic certification, riparian habitat restoration, water recharge projects, fish-friendly farming practices, or erosion control measures, have been or will be implemented.
5. Whether the proposed development will facilitate the ongoing viability of agriculture such as through the intergenerational transfer or lease of existing agricultural operations.

C. In no event shall agricultural dwellings subject to these provisions exceed 7,000 square feet in size. Where a farmhouse and one or two intergenerational residence units are allowed in the C-APZ zone, the aggregate development of all homes on the subject farm tract shall not exceed 7,000 square feet.

D. However, agricultural worker housing, up to 540 square feet of garage space for each

farmhouse, agricultural accessory structures, and up to 500 square feet of office space in the farmhouse used in connection with the agricultural operation on the property shall be excluded from the 7,000 square foot limitation.

E. The square footage limitations noted in the above criteria represent maximum agricultural dwelling unit sizes and do not establish a mandatory entitlement or guaranteed right to development; rather, site constraints and resource protection standards may require reduced size limits in any particular case.

F. Agricultural homestays, bed & breakfasts, home occupations, care facilities, group homes and similar uses allowed in the C-APZ zone may only occur within otherwise allowable agricultural dwelling units and not within additional separate structures.

C-AG-10 Marin Agricultural Land Trust (MALT) and Other Methods of Preserving Agriculture. Support the objectives of the Marin Agricultural Land Trust (MALT) to protect agricultural lands through the transfer, purchase, or donation of development rights or agricultural conservation easements on agricultural lands. Support and encourage action by MALT in the Coastal Zone to preserve agricultural land for productive uses. Support the use of the County's adopted model agricultural easement, implementation of Transfer of Development Rights (TDR) programs and similar innovative techniques to permanently preserve agricultural lands.

* * * * *

LOCAL COASTAL PROGRAM –
IMPLEMENTATION PLAN
TITLE 20 – Coastal Zoning Code
*** * * * ***

20.32.024 – Agricultural Dwellings Units

The standards of this Section shall apply in the C-APZ Zone to Farmhouses, Intergenerational Homes, and agricultural worker housing, defined in Chapter 20.130. (Coastal Zoning Code Definitions).

A. An Agricultural Dwelling Cluster consists of a farmhouse or a combination of one farmhouse and up to two intergenerational homes with the combined total of 7,000 square feet, up to an additional 540 square feet of garage space, and up to 500 square feet of office space in the farmhouse used in connection with the agricultural operation. Each agricultural dwelling unit must be owned by a farmer or operator actively and directly engaged in agricultural use on the property. See Chapter 20.130. (Coastal Zoning Code Definitions) for definition of "Actively and directly engaged."

B. No more than one Agricultural Dwelling Cluster may be permitted per farm tract, whether it contains a single farmhouse or in a combination of a farmhouse and one or two intergenerational homes, including existing homes.

C. An application for a farmhouse or intergenerational home shall identify all legal lots owned by the same owner of the property upon which the proposed farmhouse or intergenerational home is located including all contiguous legal lots under common ownership (the "farm tract"). The

application shall identify all existing agricultural dwellings on the identified legal lots and shall demonstrate that the proposed farmhouse or intergenerational house is located on a legal lot.

D. Nothing in this subsection shall be construed to prohibit the sale of any legal lot comprising the farm tract, nor require the imposition of any restrictive covenant on any legal lot comprising the farm tract other than the legal lot upon which development of one farmhouse and up to two intergenerational homes is approved. Future development of other legal lots comprising the farm tract shall be subject to the provisions of the LCP and Title 20 (Coastal Zoning Code), including but not limited to Section 20.65.040 (C-APZ Zoning District Standards).

E. No allowable farmhouse or intergenerational home may be divided from the rest of the legal lot. As a condition of permit approval for a farmhouse and/or intergenerational home, future land division of the legal lot containing the farmhouse and/or intergenerational home(s) is prohibited except that lease of the rest of the legal lot at a level of agricultural use that will sustain the agricultural capacity of the site is not prohibited. See restrictive covenant requirements specified in Sections 20.32.025 (Intergenerational Homes) and 20.32.026 (Farmhouse).

F. A density of 60 acres per unit shall be required for each farmhouse and intergenerational house (i.e., a legal lot must be at least 60 acres for a farmhouse, 120 acres for a farmhouse and intergenerational house, and at least 180 acres for a farmhouse and two intergenerational homes).

G. Agricultural dwelling units shall not be placed on land designated as prime agricultural land and shall be placed within the mapped clustered development area required in subsection 20.65.040.C.1.d (Standards for all development in the C-APZ).

H. Agricultural dwelling units may be permitted only if they do not require any Variance.

20.32.025 – Intergenerational Homes

The standards of this Section shall apply in the C-APZ Zone to intergenerational homes defined in Chapter 20.130. (Coastal Zoning Code Definitions).

In addition to the provisions of Section 20.32.024 (Agricultural Dwelling Units) pertaining to Agricultural Dwelling Units, the standards of this Section shall apply to intergenerational homes. Intergenerational Homes shall be accessory and incidental to, in support of, and compatible with agricultural production. The intent of these provisions is to allow intergenerational homes in order to support agricultural operations, ensure the viability of agriculture in the Coastal Zone and facilitate multigenerational family farm operation and succession.

A. Permitted use, zoning districts. Up to two intergenerational homes in addition to the farmhouse may be permitted in the C-APZ, consistent with Table 5-1-a in Chapter 20.62 (Coastal Zoning Districts and Allowable Land Uses).

B. Permit Requirements. Intergenerational homes are allowable in the C-APZ zoning district with the permit requirements determined by Title 20 (Coastal Zoning Code),

including the development standards specified in Chapter 20.65.040 (C-APZ Zoning District Standards), and subsections 3 and 4 below.

C. Location. Intergenerational homes shall be placed on the same legal lot of record as the legally permitted farmhouse, and shall be located immediately adjacent (i.e., within 100 feet) to an existing farmhouse within the Agricultural Dwelling Cluster. When immediately adjacent placement would be inconsistent with applicable LCP standards (such as placement within an Environmentally Sensitive Habitat Area buffer) the intergenerational home shall be placed as close as possible to the farmhouse in a way that also meets applicable LCP standards.

D. Restrictive Covenant. Intergenerational housing requires the preparation and recordation of a restrictive covenant running with the land for the benefit of the County. The covenant must include, at a minimum, the following:

1. A detailed description of the intergenerational home or homes.
2. Assurance that any use will be in conformance with applicable zoning, building and other ordinances and noting that all appropriate permits must be issued and completed prior to any change in use.
3. Assurance that the intergenerational housing will not be divided or sold separately from the rest of the agriculturally zoned legal lot. As a condition of permit approval for an intergenerational home,

future land division of the legal lot containing the intergenerational home is prohibited except that lease of the rest of the legal lot at a level of agricultural use that will sustain the agricultural capacity of the site is not prohibited.

4. Language demonstrating that the restriction shall run with the land and shall be binding on all heirs, successors and assigns to the property, and its provisions shall be enforced by the County of Marin.
5. Assurance that the owner of the intergenerational home shall be actively and directly engaged in agricultural use of the agriculturally zoned legal lot and that the use of the agriculturally zoned legal lot shall remain confined to agriculture. See Section 20.130.030 for definition of "Actively and directly engaged" and "Agricultural use."

E. **Development limit**. No more than 27 intergenerational homes may be allowed in the County's coastal zone.

20.32.026 – Farmhouse

The standards of this Section shall apply in the C-APZ Zone to farmhouses defined in Chapter 20.130 (Coastal Zoning Definitions).

In addition to the provisions of Section 20.32.024 (Agricultural Dwelling Units) pertaining to Agricultural Dwelling Units, the standards of this Section shall apply to farmhouses. Farmhouses shall be accessory and incidental to, in support of, and compatible with agricultural production. The intent of these provisions is to facilitate farmhouses that are

integral with and necessary to support agricultural operations and that are consistent with the provisions of the Marin County Local Coastal Program (LCP). In the C-APZ, farmhouses also shall be considered necessary for agricultural production.

A. Principal permitted use, zoning districts. A farmhouse is a type of agricultural dwelling unit that may be allowed by Section 20.62.060, Table 5-1 (Coastal Agricultural and Resource-Related Districts), and subject to development standards, including those set forth in Sections 20.32.024 (Agricultural Dwelling Units) and 20.65.040 (C-APZ Zoning District Standards) in the C-APZ zone.

B. Restrictive Covenant. Development of a farmhouse requires recording a restrictive covenant running with the land for the benefit of the County ensuring that the agricultural farmhouse will continuously be maintained as such. The covenant must include, at a minimum, the following:

1. A description of the farmhouse.
2. Assurance that any use will be in conformance with applicable zoning, building and other ordinances and noting that all appropriate permits must be issued and completed prior to any change in use.
3. Language demonstrating that the restriction shall run with the land and shall be binding on all heirs, successors and assigns to the property, and its provisions shall be enforced by the County of Marin.
4. Assurance that the farmhouse will not be divided or sold separately from the rest of

the agriculturally zoned legal lot. As a condition of permit approval for a farmhouse, future land division of the legal lot containing the farmhouse is prohibited except that lease of the rest of the legal lot at a level of agricultural use that will sustain the agricultural capacity of the site is not prohibited.

5. Assurance that the owner of the farmhouse shall be actively and directly engaged in agricultural use of the agriculturally zoned legal lot and that the use of the agriculturally zoned legal lot remains confined to agriculture. See Chapter 20.130 (Coastal Zoning Code Definitions) for definition of "Actively and directly engaged" and "Agricultural use."

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20.32.028 – Agricultural Processing Uses

The standards of this Section shall apply to agricultural processing defined in Chapter 20.130. (Coastal Zoning Code Definitions).

A. Agricultural processing is allowed as a Principal Permitted Use in the C-APZ zoning district provided it meets all of the standards set forth below.

1. The building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet;
2. With the exception of incidental additives or ingredients, agricultural products to be processed are produced within the farmshed, defined as the same farm as the proposed

processing facility or on other agricultural properties located in Marin County or Sonoma County.

3. The operator of the processing facility is directly involved in the agricultural production on the property on which the processing facility is located. For the purposes of this Section, "directly involved" means actively and directly engaged in making day-to-day management decisions for the agricultural operation and being directly engaged in the production of agricultural commodities for commercial purposes on the property.

B. All Agricultural Processing Facilities shall meet the following standards:

1. Sufficient parking, ingress, and egress is provided. In addition, conditions as to the time, place, and manner of use of the processing facility may be applied as necessary through the Coastal Development Permit process to ensure consistency with provisions of the LCP.

A Coastal Development Permit appealable to the Coastal Commission and Use Permit approval is required for an agricultural processing use which does not comply with one or more of the standards in Section 20.32.028.A.1 to A.3 listed above.

C. Coastal Development Permit and Design Review for a processing facility.

1. Any processing facility, regardless of size, shall require a Coastal Development Permit.
2. Any processing facility shall require Design Review independent of and in addition to the Coastal Development Permit, unless it satisfies all the following conditions:

(a) It will be developed and operated wholly within an existing permitted, legal nonconforming, or categorically excluded structure; and

(b) Its development will not include any significant alteration of the exterior appearance of the existing structure.

20.32.029 – Agricultural Retail Sales Facilities/ Farm Stands

The standards of this Section shall apply to the sale of agricultural products as defined in Section 20.130.030 ("Agricultural Retail Sales Facility/Farm Stand").

A. The sale of agricultural products is allowed as a Principal Permitted Use in the C-APZ zoning district provided it meets all of the development standards set forth below:

1. The building(s) or structure(s) or outdoor areas used for retail sales do not exceed an aggregate floor area of 500 square feet;
2. Agricultural products to be sold are produced by the operator on the same farm as the proposed sales facility, or on the operator's other agricultural properties located in Marin County or Sonoma County;
3. The operator of the sales facility is directly involved in the agricultural production on the property on which the sales facility is located, and other properties located in the farmshed which provide agricultural products to the retail sales facility. For the purposes of this Section, "directly involved" means actively and directly engaged in making day-to-day management decisions for the agricultural operation

and being directly engaged in the production of agricultural commodities for commercial purposes on the property.

B. All Agricultural Retail Sales Facilities and Farm Stands shall meet the following standards:

1. Sufficient parking, ingress, and egress is provided. In addition, conditions as to the time, place, and manner of use of the sales facility may be applied as necessary through the Coastal Development Permit process to ensure consistency with provisions of the LCP.
2. The sales-facility and the building(s) or structure(s) or outdoor areas used for retail sales are not placed on land designated as prime agricultural land.

A Coastal Development Permit appealable to the Coastal Commission and Use Permit approval is required for agricultural retail sales which does not comply with one or more of the standards in Section 20.32.027.A.1 to A.3 listed above.

20.32.030 – Agricultural Worker Housing

In addition to the provisions of Section 20.32.024 (Agricultural Dwelling Units) pertaining to Agricultural Dwelling Units, the standards of this Section shall apply to agricultural worker housing as defined in Chapter 20.130 (Coastal Zoning Code Definitions). The intent of these provisions is to permit and encourage the development and use of sufficient numbers and types of agricultural worker housing units necessary to support agricultural operations and in conformance with the applicable provisions of state law. Agricultural worker housing is a type of agricultural dwelling unit.

A. Permitted use, zoning districts. Agricultural worker housing may be a permitted agricultural land use when allowed by Section 20.62.060, Table 5-1 (Coastal Agricultural and Resource Related Districts), and when found consistent with required development standards, including those specified in Section 20.65.040 (Allowable Land Uses and Coastal Development Permit Requirements) in the C-APZ zoning district. Agricultural worker housing providing accommodations consisting of no more than 36 beds in group living quarter or 12 units or spaces for agricultural workers and their households shall not be included in the calculation of residential density in the following zoning districts: C-ARP, C-APZ, C-RA, and C-OA.

Up to and including 36 beds or 12 units of agricultural worker housing is allowed per legal lot. In the C-APZ Zone, agricultural worker housing above 36 beds or 12 units per legal lot shall be subject to the density limits of one unit per 60 acres and the application shall include a worker housing needs assessment and plan, including evaluation of other available worker housing in the area. The amount of worker housing approved shall be commensurate with the demonstrated need in the surrounding area. Agricultural worker housing requires 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 non-dwelling agricultural production related uses.

B. Limitations on use:

1. **Referrals.** Prior to making a determination that agricultural worker housing, which exceeds the 36 beds or 12 units per legal lot for a specific site, is necessary to support agriculture, the review authority may consult with such individuals or groups with agricultural expertise as appropriate for a recommendation.
2. **Temporary mobile home.** Temporary mobile homes not on a permanent foundation and used as living quarters for five or more farmworkers and their households that are otherwise LCP consistent are also permitted subject to the requirements of the State Department of Housing and Community Development.
3. **Annual Verification.** All agricultural worker housing shall require the submittal of an annual verification form to the County.
4. **Licensing.** Licensing by the Department of Housing and Community Development and compliance with the Employee Housing Act are required for all Agricultural Worker Housing for five or more farmworkers and their households.
5. **Restrictive Covenant.** Agricultural Worker housing requires 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 non-dwelling agricultural production related uses. The covenant must include, at a minimum, the following:

(a) A detailed description of the dwelling units or spaces.

(b) Assurance that any change in use will be in conformance with applicable zoning, building and other ordinances and noting that all appropriate permits must be issued and completed prior to any change in use.

(c) Language demonstrating that the restriction shall run with the land and shall be binding on all heirs, successors and assigns to the property, and its provisions shall be enforced by the County of Marin.

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20.130.030 – Definitions of Specialized Terms and Phrases

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Actively and directly engaged. means making day-to-day management decisions for the agricultural operation and being directly engaged in production of agricultural commodities for commercial purposes on the property or maintaining a lease to a bona fide commercial agricultural producer.

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Agricultural Dwelling Unit. A farmhouse, intergenerational house, or agricultural worker housing located in the C-APZ district.

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Agricultural Worker Housing. Any attached or detached dwelling unit required to house agricultural workers and their family members, including temporary mobile homes. For the purpose of calculating density, no more than one food preparation area shall be provided for each agricultural worker housing unit.

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Farm tract. All contiguous legal lots under a common ownership within a C-APZ zoning district. No more than one Agricultural Dwelling Cluster may be permitted per farm tract, whether it contains a single farmhouse or in a combination of a farmhouse and one or two intergenerational homes.

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Farmhouse. A farmhouse consists of a building owned by the farm owner or operator actively and directly engaged in agricultural use of the property. Such buildings may include factory built, modular housing units, constructed in compliance with the

Uniform Building Code (UBC), and mobile homes/ manufactured housing on permanent foundations.

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Intergenerational Home. In the C-APZ land use designation and zoning district, a type of agricultural dwelling unit allowed subject to certain criteria and which may only be occupied by occupants authorized by the farm owner or operator actively and directly engaged in agricultural use of the property.

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