



# PACIFIC LEGAL FOUNDATION

July 29, 2013

President Judy Arnold and  
The Marin County Board of Supervisors  
3501 Civic Center Drive, Room 329  
San Rafael, CA 94903

**VIA EMAIL: c/o Kristin Drumm  
kdrumm@marincounty.org**

Re: "Categorical Exclusions" for Agricultural Lands Along the Coast

Dear Supervisors:

We wanted to draw your attention to an issue that has been discussed via email between Jack Liebster and others. Namely, the extent to which the Coastal Act authorizes you to extend categorical exclusions for agriculture in the Coastal Zone. Mr. Liebster has argued that the Board cannot adopt geographical exclusions for agricultural lots located directly on the coast. That is because Section 30610.5(b) states in relevant part:

Tide and submerged lands, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (e) of Section 30610.

Section 30610(e) provides:

Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

Hence, Mr. Liebster maintains that under the Coastal Act, the Commission may only have authority to grant categorical exclusion orders for agricultural lands that are not tide or submerged lands, beaches, or lots immediately along the coast.

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Whether or not an exclusion based on *geography* may be prohibited, an exclusion based on the *nature of a project*—like agriculture-related development—is not. That is because Section 30610.5(b)'s limitation does not apply to Section 30610(e)'s provision allowing the exclusion of “[a]ny category of development.” Thus, the County has a legal way of obtaining an important goal for its agricultural constituents by requesting, by way of an LCP amendment, that the Coastal Commission exclude agriculture-based projects (including all those projects listed in the existing Agricultural Exclusions in the Categorical Exclusion Orders) from the costly and burdensome CDP process. We would note that the County’s LCP (C-AG-2.a) already contemplates the possibility of using this legal strategy of obtaining relief for the agricultural community. That section provides for “review [of] aspects of agricultural operations that are not currently excluded from coastal permit requirements to determine if there are additional categories of agricultural developments that do not cause adverse environmental impacts and, hence, could be eligible additions to the categorical exclusion.”

In addition, the County could consider other amendments to its LCP to accommodate the pressing needs of the agricultural community. One such proposed amendment that would be consistent with the Coastal Act, for example, could specifically define the term “lot” in the last sentence of Section 30610.5(b)—a term that is undefined in the Coastal Act. The term “lot” in this context could be defined to mean a “a buffer that runs inland from the beach/mean high tide line (MHTL) by X feet.” This would substantially alleviate the present inequity of designating certain inland lots that are not adjacent to the beach/MHTL as Excludable Areas, while *not* excluding large portions of agricultural lots that happen to be adjacent to the beach/MHTL, but that may run inland to the same extent as those excluded lots.

We hope that you will seriously consider these options as tools to support sustainable agriculture in Marin County.

Sincerely,



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JENNIFER F. THOMPSON  
PACIFIC LEGAL FOUNDATION

Attorneys

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