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8 STATE OF CALIFORNIA

9 COUNTY OF MARIN

11 WILLIE BENEDETTI,

12 Petitioner and Plaintiff,

13 v.

14 COUNTY OF MARIN, and BOARD OF
15 SUPERVISORS OF THE COUNTY OF
MARIN,

16 Respondents and Defendants,

17 and

18 CALIFORNIA COASTAL COMMISSION,

19 Real Party in Interest.
20

Case No. _____

**VERIFIED PETITION FOR
WRIT OF MANDATE (CCP § 1085),
WRIT OF ADMINISTRATIVE
MANDATE (CCP § 1094.5), AND
COMPLAINT FOR DECLARATORY
RELIEF (CCP § 1060)**

1 **INTRODUCTION**

2 Petitioner and Plaintiff Willie Benedetti seeks a writ of mandate and declaration invalidating
3 Respondents and Defendants County of Marin, et al.’s unlawful and unconstitutional imposition of
4 an affirmative requirement that landowners in Marin County be “actively and directly engaged” in
5 agricultural use of their property in perpetuity as a condition on permitting for any dwelling units
6 in the County’s agricultural zone. This action is brought under Code of Civil Procedure (CCP)
7 §§ 1060, 1085, and 1094.5, Public Resources Code § 30802, and Government Code § 65009. By
8 this verified petition and complaint, Plaintiff and Petitioner alleges:

9 **THE PARTIES**

10 1. Petitioner and Plaintiff Willie Benedetti has a property interest in two parcels of land
11 located in Valley Ford, California, in Marin County. Mr. Benedetti’s property is located within the
12 coastal zone, and in an area classified as the Coastal Agricultural Production Zone (C-APZ) and is
13 subject to the provisions of the Land Use Plan that regulates that zone.

14 2. Respondent and Defendant County of Marin is a political subdivision of the State
15 of California, created February 18, 1850, and organized and existing under the laws and
16 Constitution of the State of California. The County is responsible for enforcing and defending its
17 laws, including the policies of the Land Use Plan challenged herein.

18 3. Respondent and Defendant Board of Supervisors of the County of Marin is the
19 County’s executive and legislative body and is responsible for adopting resolutions, ordinances,
20 and other laws, including the policies described herein.

21 4. Respondents and Defendants (hereinafter, “County”) have the duty to adopt and
22 enforce laws, including the County’s Land Use Plan (LUP) and the policies contained therein,
23 consistent with federal and state statutory and constitutional requirements.

24 5. Real party in interest California Coastal Commission (Commission) is a state
25 administrative body operating under the California Coastal Act (Act), Pub. Res. Code § 30000, *et*
26 *seq.* The Commission is responsible for enforcing and defending the policies of the LUP challenged
27 herein, when it asserts original or appellate jurisdiction over a Coastal Development Permit
28 application for development in the County.

1 **JURISDICTION AND VENUE**

2 6. The Court has jurisdiction of this petition for writ of mandate and complaint for
3 declaratory relief under Sections 1060, 1085, and 1094.5 of the Code of Civil Procedure,
4 Sections 30802 and 30803 of the Public Resources Code, and Section 65009 of the Government
5 Code.

6 7. Venue lies in the Superior Court for the County of Marin under Code of Civil
7 Procedure sections 393 through 395, in that the County is located here, and enforcement of the
8 challenged LUP will occur in the County as well.

9 **APPLICABLE LAW**

10 8. The Coastal Act requires local governments with jurisdiction over “coastal zone”
11 lands to adopt a Local Coastal Program (LCP), which in turn must be certified by the California
12 Coastal Commission. Pub. Res. Code § 30500. An LCP has two parts: a Land Use Plan (LUP) and
13 a Local Implementation Plan (LIP). The LUP is a general policy document that sets forth policies
14 for coastal development and has the force of law. The LIP is the collection of implementing
15 ordinances that carry out LUP policies. Both the LUP and LIP—together, the Local Coastal
16 Program—must be consistent with the Coastal Act, as well as with the California and United States
17 Constitutions.

18 9. The Act provides that each local government shall prepare and determine the precise
19 content of its own LUP. Pub. Res. Code § 30500(a), (c). The California Coastal Commission must
20 then review the proposed LUP to determine whether the plan does, or does not, conform to the
21 requirements of Chapter 3 of the Coastal Act. *Id.* § 30512. Once the Commission certifies an LUP,
22 the local government must then decide whether to adopt it as certified. If the local government
23 elects to adopt the certified LUP, the Commission’s Executive Director then makes a final
24 determination as to whether the local government’s adoption of the LUP satisfies the Coastal Act.
25 Cal. Code Regs. tit. 14, § 13537(d).

26 10. LUP policies must satisfy the constitutional requirement that the permitting
27 authority make an individualized determination that permit conditions bear an “essential nexus”
28 and “rough proportionality” to the alleged impacts of a proposed project. U.S. Const. amend. V

1 (Takings Clause); *id.* amend. XIV (incorporating the Takings Clause as against state and local
2 governments); *see also Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 837 (1987) (applying the
3 unconstitutional conditions doctrine in the context of the Takings Clause of the Fifth Amendment
4 to the U.S. Constitution to require an “essential nexus”); *Dolan v. City of Tigard*, 512 U.S. 374,
5 391 (1994) (applying the unconstitutional conditions doctrine in the context of the Takings Clause
6 to require “rough proportionality” between permit conditions and a project’s alleged impacts, and
7 establishing the procedural rule that the burden is on the permitting authority to make the
8 individualized determination that a nexus and rough proportionality exist).

9 11. Section 65009 of the Government Code allows a person to bring an action to set
10 aside planning or land use actions taken by a public agency at a public hearing.

11 **FACTUAL ALLEGATIONS**

12 *The County of Marin Adopts a New Land Use Plan*

13 12. In 2008, Marin County began the process of comprehensive updates to its Local
14 Coastal Program.

15 13. After several years of negotiations with Commission staff, the County of Marin
16 adopted an LUP for submission to the Commission for certification.

17 14. At its hearing on November 2, 2016, the Commission certified a version of the
18 County’s LUP with modifications proposed by Commission staff.

19 15. The Board of Supervisors of the County of Marin held a public hearing on May 16,
20 2017, when it adopted the LUP as certified by the Commission.

21 *The LUP Policies Challenged by Petitioner & Plaintiff Willie Benedetti*

22 16. The LUP contains Policy C-AG-2, which establishes permitted uses within the
23 Agricultural Production Zone (C-APZ). These uses include the permitting of Agricultural Dwelling
24 Units, which may be Farmhouses, Intergenerational Housing, or Agricultural Worker Housing.

25 17. Under Policy C-AG-2(B), the County (and the Commission on appeal) “shall
26 include all contiguous properties under the same ownership when reviewing a Coastal Permit
27 application that includes agricultural dwelling units.” Accordingly, all commonly owned and
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1 contiguous properties in the C-APZ zone are treated as one parcel for the purposes of development
2 under the Land Use Plan.

3 18. The LUP also contains Policy C-AG-5(A), which requires that—once permitted—
4 any Agricultural Dwelling Unit “must be owned by a farmer or operator actively and directly
5 engaged in agricultural use of the property” in perpetuity.

6 *Mr. Benedetti’s Future Plans for Development of a Dwelling and Eventual Retirement*

7 19. Mr. Benedetti has a property interest in two parcels of land within Marin County,
8 totaling 267 acres. One of the two parcels currently has one residential structure in which Mr.
9 Benedetti resides, along with his wife.

10 20. Mr. Benedetti currently oversees the day-to-day operations of his companies as
11 owner and president of Benedetti Farms and Willie Bird Turkeys.

12 21. Mr. Benedetti has two sons, Arthur and Arron Benedetti. Arron is involved in the
13 daily operations of Benedetti Farms and Willie Bird Turkeys, Arthur is not.

14 22. Mr. Benedetti would like to build a dwelling unit on the 267-acre parcel as a home
15 for his son Arthur and his daughter-in-law.

16 23. Building a dwelling unit on Mr. Benedetti’s property will trigger the requirement
17 that the property be owned by someone actively and directly engaged in agricultural use of the
18 property.

19 24. Eventually, Mr. Benedetti would like to retire from his role as president of Benedetti
20 Farms and Willie Bird Turkeys.

21 25. Even once Mr. Benedetti finally steps down from day-to-day operations of his farm,
22 he would like to maintain ownership of both companies and the 267-acre parcel, and would like to
23 continue living on the 267-acre parcel, which has been his home for 45 years, even though he would
24 no longer be actively and directly engaged in agricultural use of the property.

25 26. Mr. Benedetti does not believe that the County can or should require that landowners
26 within the Agricultural Production Zone such as himself remain “actively and directly engaged in
27 agricultural use” of their property in perpetuity.

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1 home—on the requirement that the property owner remain “actively and directly engaged in
2 agriculture in perpetuity.”

3 33. All people have a constitutionally protected interest in their own liberty.

4 34. Section one of the Fourteenth Amendment to the United States Constitution
5 provides that no state may “deprive any person of . . . liberty . . . without due process of law.” U.S.
6 Const. amend. XIV, § 1.

7 35. Section 1, Article I, of the California Constitution’s Declaration of Rights
8 establishes that “[a]ll people are by nature free and independent and have inalienable rights,”
9 including “enjoying and defending life and liberty.” Section 7 of Article I states that “[a] person
10 may not be deprived of life, liberty, or property without due process of law.”

11 36. This liberty interest includes the basic liberty to pursue and obtain happiness by
12 engaging in the common occupations of the community.

13 37. Using state power to force an individual into a career chosen by the state similarly
14 infringes on this basic liberty, preventing an individual from changing or choosing to refrain from
15 engaging in the state-chosen occupation. *See Nash v. City of Santa Monica*, 37 Cal. 3d 97, 103
16 (1984) (“The exercise of state power to force upon an individual a career chosen by the state would
17 surely raise substantial questions of constitutional dimension.”).

18 38. The unconstitutional conditions doctrine prevents the government from coercing
19 people into giving up constitutionally protected rights. *Koontz v. St. Johns River Water Mgmt. Dist.*,
20 133 S. Ct. 2586, 2594 (2013).

21 39. If the County had simply demanded that Plaintiff engage in agriculture, it would
22 have been liable for a deprivation of Plaintiff’s liberty without due process of law. The
23 unconstitutional conditions doctrine forbids the County from achieving indirectly that same
24 impermissible end through the permitting process.

25 **B. Violation of the Unconstitutional Conditions Doctrine as Applied to the**
26 **Takings Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution**

27 40. Under *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987), *Dolan v. City of*
28 *Tigard*, 512 U.S. 374 (1994), and *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586

1 (2013), government may not exact any property interest from property owners as a condition on
2 the exercise of a property right unless:

- 3 a. The exaction directly mitigates a public impact directly arising from the property
4 owners' exercise of their property right; and
- 5 b. The exaction is roughly proportional in both nature and degree to the public
6 impact arising from the property owners' exercise of the property right.

7 41. The requirement that property owners remain "actively and directly engaged in
8 agriculture" on their property in perpetuity is not related to, and does not address, any impact arising
9 from the property owners' exercise of their right to use some portion of their property for the
10 construction of a dwelling unit, such as a family home.

11 42. The requirement that the current landowner—as well as all subsequent
12 landowners—remain "actively and directly engaged in agriculture" in perpetuity is not, and can
13 never be, proportional in either nature or degree to any impact arising from property owners'
14 exercise of their right to use some portion of their property for the construction of a dwelling unit,
15 such as a family home.

16 43. Upon information and belief, Mr. Benedetti believes that the foregoing requirement
17 will be satisfied only through the granting and recording of an affirmative easement that the current
18 landowner—and all subsequent landowners—will be actively and directly engaged in commercial
19 agricultural use of the property in perpetuity.

20 44. Requiring the recording of a covenant or affirmative easement containing such
21 language as a condition of permitting Agricultural Dwelling Units—as contemplated by the LUP—
22 constitutes an exaction of a recognized common law property interest.

23 45. If the County had simply demanded that Mr. Benedetti issue a recorded covenant or
24 affirmative easement containing such language, it would have been liable for a taking of property
25 for a public use without payment of just compensation.

26 46. The County may not exact a recognized property interest as a condition on the
27 otherwise lawful and principally permitted use of constructing a dwelling unless that requirement
28 satisfies the nexus and proportionality requirements of *Nollan* and *Dolan*.

1 47. In adopting Policy C-AG-2, the County took legislative action in violation of the
2 law and/or in excess of their authority.

3 48. An actual and justiciable controversy exists between the parties concerning the
4 legality of Policy C-AG-2. Plaintiff Willie Benedetti contends that the policy is unconstitutional,
5 as specified above. Plaintiff is informed and believes, and on that basis alleges, that the County
6 disputes the Plaintiff's contention. A judicial determination of rights and responsibilities arising
7 from this actual controversy is necessary and appropriate at this time.

8 **SECOND CAUSE OF ACTION FOR PEREMPTORY WRIT OF MANDATE**
9 **(Code Civ. Proc. § 1085)**

10 49. All of the preceding paragraphs are reincorporated as if set forth fully herein.

11 50. The County's adoption of a Land Use Plan is a quasi-legislative action.

12 51. Section 65009 of the Government Code allows a person to bring an action to set
13 aside an action taken by a public agency at a public hearing.

14 52. All issues raised within this verified petition were raised in public hearings before
15 the County Board of Supervisors, or were raised in written correspondence delivered to the County
16 Board of Supervisors at or prior to the public hearing of May 16, 2017.

17 53. For the reasons set forth in the First Cause of Action, the County's adoption of the
18 Land Use Plan is in violation of the Constitutions of the United States and the State of California.

19 54. An actual and justiciable controversy exists between the parties concerning the
20 legality of Policy C-AG-2. Plaintiff Willie Benedetti contends that the policy is unconstitutional,
21 as specified above. Plaintiff is informed and believes, and on that basis alleges, that the County
22 disputes the Plaintiff's contention.

23 55. Plaintiff Willie Benedetti has no plain, speedy, or adequate remedy at law. Pecuniary
24 compensation to Mr. Benedetti would not afford adequate relief, or it would be extremely difficult
25 to ascertain the amount of compensation that would afford adequate relief.

26 **THIRD CAUSE OF ACTION FOR WRIT OF ADMINISTRATIVE MANDATE**
27 **(Code Civ. Proc. § 1094.5)**

28 56. All of the preceding paragraphs are reincorporated as if set forth fully herein.

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burdensome requirements on coastal agricultural landowners that are not roughly proportional to any harm caused by the development of dwelling units;

3. For costs of suit, including reasonable attorneys' fees; and for such other and further relief as the Court may deem proper.

DATED: July 14, 2017.

Respectfully submitted,
DAMIEN M. SCHIFF
JOSHUA P. THOMPSON
JEREMY TALCOTT
Pacific Legal Foundation

By _____
JEREMY TALCOTT

Attorneys for Petitioner and Plaintiff
Willie Benedetti

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VERIFICATION

I, Willie Benedetti, declare:

I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and, except for matters stated on information and belief, the facts stated therein are true on my own knowledge, and as to those matters stated on information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 13th day of July, 2017, at San Rafael, California.

WILLIE BENEDETTI