IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

Division 4

No. A170403

ARRON BENEDETTI, et al.,
Plaintiffs and Appellants,

v.

COUNTY OF MARIN,
Defendant and Respondent,

and

CALIFORNIA COASTAL COMMISSION,
Real Party in Interest.

On Appeal from the Superior Court of Marin County
(Case No. CIV2103128, Honorable Andrew E. Sweet, Judge)

APPELLANTS' OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL First APPELLATE DISTRICT, DIVISION 4	COURT OF APPEAL CASE NUMBER: A170403
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APPELLANT/ PETITIONER: Arron Benedetti, Arthur Benedetti, Estate of Willie Benedetti RESPONDENT/ REAL PARTY IN INTEREST: County of Marin; California Coastal Commission	

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INTRODUCTION

The fundamental right to choose one's occupation lies at the heart of personal liberty. Yet Marin County has enacted an unprecedented land-use restriction that strips agricultural zone landowners of this basic freedom. Through amendments to its Local Coastal Program (LCP), the County now demands that anyone seeking to build a home on their agricultural property must first agree to become—and forever remain—a commercial farmer. These amendments are unprecedented in both nature and scope. Though purportedly part of the land-use plan of the County, they target not the property, but the *landowner*.

Brothers Arron and Arthur Benedetti are landowners in the Agricultural Zone of Marin County. The land was previously owned by their late father, Willie Benedetti. Though their father was a lifelong farmer and agricultural business owner in Marin County, the brothers are not. But under new amendments to the Marin County Local Coastal Program, the Benedettis will be forced into commercial agriculture as a condition of building that single additional house.

This coercive choice—either forgo development rights or submit to permanent conscription into commercial farming—violates fundamental constitutional principles. The County's requirement bears no relationship to any impacts caused by residential development, failing both the "essential nexus" and "rough proportionality" tests required for development exactions under longstanding Supreme Court precedent. More fundamentally, by forcing landowners to enter and remain in a

government-chosen profession, the amendments violate substantive due process protections for occupational liberty.

While local governments have broad authority to regulate land use, that power cannot extend to dictating the careers of property owners. The County's novel attempt to compel commercial farming through permit conditions is an enormous—and unconstitutional—expansion of traditional zoning authority. Neither the California Coastal Act nor general police powers authorize local governments to force citizens into specific occupations as the price of developing their land. The Court should invalidate these unprecedented provisions and reaffirm that the fundamental right to choose one's occupation stands well beyond the reach of local land-use regulation.

These constitutional violations cannot be cured through creative implementation or case-by-case review. The very existence of a perpetual commercial farming mandate—applicable to all residential development in the agricultural zone—creates an impermissible condition that chills the exercise of lawful, constitutional property rights and undermines individual liberty. Because the LCP Amendments facially violate multiple constitutional guarantees, they must be invalidated in their entirety.

STATEMENT OF THE CASE

This appeal stems from a traditional mandamus action under Code of Civil Procedure Section 1085, as well as a complaint for declaratory and injunctive relief under 42 U.S.C. § 1983 and Code of Civil Procedure Section 1060. After a decade-

long process, the challenged amendments to the Marin County Local Coastal Program were adopted by the Marin County Board of Supervisors on July 13, 2021. On September 13, 2021, the Benedettis filed a Verified Complaint and Petition for Writ of Mandate, asserting that the LCP Amendments were unconstitutional under two independent theories: (1) that forcing a landowner into an occupation of the government's choosing was a violation of Due Process under the U.S. and California Constitutions; and (2) that an exaction requiring a landowner to record a covenant agreeing to remain actively engaged in commercial agriculture could never satisfy the nexus and proportionality requirements of the exactions doctrine. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013).

The Superior Court of Marin County denied the Benedettis' petition on February 23, 2024. The Benedettis timely filed their Notice of Appeal on April 18, 2024.

STATEMENT OF APPEALABILITY

This is an appeal from a final judgment (*see* Clerk's Transcript at 647–72 (Notice of Entry of Order)) resolving all issues between the parties, pursuant to Code of Civil Procedure Section 904.1(a)(1).

LEGAL AND FACTUAL BACKGROUND

I. The Benedettis' Interest in the Marin County LCP Amendments

The Benedetti brothers, Arron and Arthur Benedetti, own two parcels of land in Valley Ford, California, in Marin County. Clerk's Transcript at 6 (Compl. ¶ 2). Their parcels are located within the Coastal Agricultural Production Zone and therefore

subject to any Marin County LCP provisions that regulate that zone. *Id.* One of the two parcels was developed many years ago with a single residential structure by the original owner, their father Willie Benedetti. *Id.* at 14 (Compl. ¶ 53). Until his death, Willie Benedetti lived in the home and oversaw the day-to-day operations of agricultural activity that took place on both properties. *Id.* (Compl. ¶ 54). Willie long planned to build another home on the vacant lot. *Id.* at 15 (Compl. ¶ 60). And in his will, Benedetti evidenced a clear intent to devise ownership of the two properties to his sons, Arron and Arthur. *Id.* at 14 (Compl. ¶ 53). Arthur Benedetti now wishes to see his father's plans through and build a single-family residence on the vacant lot. *Id.* at 15 (Compl. ¶ 61).

Arron and Arthur Benedetti are both full-time plumbers. *Id.* at 6 (Compl. ¶ 3). At present, neither brother is engaged in the day-to-day operations of any agricultural business, and they are not actively and directly engaged in agricultural use of the property. *Id.* at 14–15 (Compl. ¶ 57). The Benedetti brothers have no desire to actively and directly engage in commercial agriculture, and do not believe that the County can or should require them—or anyone else within the Coastal Zone—to engage in commercial agriculture in perpetuity as a condition of development. *Id.*at 15 (Compl. ¶¶ 63–64).

Willie and his sons participated throughout the LCP Amendment process. *See, e.g.*, AR29005 (public comments of Willie Benedetti); *and* AR29521–27 (April 13, 2018, letter from Willie Benedetti). Because of this, the Benedettis are well-

positioned to represent the public's interest in ensuring that the County does not adopt and enforce unconstitutional regulations. Clerk's Transcript at 6 (Compl. ¶ 5). Without this action brought by the Benedettis, important public rights would be left unprotected, and the constitutional violations on personal liberty represented by the LCP Amendments would go unchallenged. *Id.* Vindicating those rights confers a broad and important benefit on the public by establishing important constitutional limitations on the scope of LCPs and safeguards the public from government overreach. *Id.*

II. Marin County's LCP Amendments

In 2008, Marin County began the process of comprehensively updating its LCP. Clerk's Transcript at 9 (Compl. ¶ 19). The County ultimately adopted seven proposed Amendments, numbered 1 through 7, and submitted them to the California Coastal Commission (Commission) for certification. AR13965–72. Amendments 2 and 3 contain the LUP and implementing ordinances for the agricultural zone. *Id.* Amendments 2 and 3 also contain the provisions at issue in this action, which require that landowners submit a covenant to the County that will require the landowner to remain "actively and directly engaged in agricultural use of the property" in perpetuity. AR31366; AR31469–71. Specifically, the County's LUP contains a general policy within its Agricultural section, which states: Agricultural dwelling units must be owned by a farmer or operator actively and directly engaged in agricultural use of the property. AR31366; Marin County Land Use Plan § C-

AG-5(A) (LUP). The Marin County Local Implementation Plan (LIP) contains the more specific implementing ordinances to effectuate that general policy. First, the LIP states that all agricultural units "must be owned by a farmer or operator actively and directly engaged in agricultural use on the property." AR31469; LIP § 22.32.024(A). Next, the provisions require that landowners record restrictive covenants to provide "[a]ssurance that the owner . . . shall be actively and directly engaged in agricultural use" of the property. AR31470–71; LIP §§ 22.32.02x(D)(5), 22.32.025(B)(5). Finally, the ordinances define "actively and directly engaged" 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 maintaining a lease to a bona fide commercial agricultural producer." AR31600; LIP § 22.130.030(A).

At a hearing on November 2, 2016, the Commission certified 5 of the 7 Amendments (including Amendments 2 and 3). AR21980–22266. On May 16, 2017, the County Board of Supervisors adopted Amendments 1 and 2, based on a conditional understanding of the interpretation of certain provisions. AR22277–328. On April 24, 2018, the Board of Supervisors again adopted Amendments 1 and 2, as well as Amendment 6, without any limiting language regarding interpretations of the Amendments. AR29044–59. On June 6, 2018, the Executive Director of the Commission reported that the County's April 2018 adoption of Amendments 1 and 2 constituted final provisions of

the LCP, but noted that they would not be effective until the remaining amendments were certified. AR29833–30063. The Commission voted to concur with the Executive Director's determination. *Id.* On December 11, 2018, the County Board of Supervisors voted to adopt Amendments 3 and 7 and to submit the same to the Commission for certification. AR30692–705. On February 6, 2019, the Commission certified Amendments 3 and 7 as submitted by the County. AR32254–80.

On July 13, 2021, the County Board of Supervisors, after a public hearing, unanimously adopted a resolution placing the entire updated provisions of the LCP Amendments into effect on August 12, 2021. AR32281.

III. Procedural Background

On July 14, 2017 (within 60 days after the Board of Supervisors' action adopting Amendments 1 and 2), Willie Benedetti filed a petition for writ of mandate and a complaint for declaratory relief against the County, naming the Commission as a real party in interest. Clerk's Transcript at 10 (Compl. ¶ 25). On June 13, 2018 (within 60 days after the Board of Supervisors' second action again adopting Amendments 1 and 2, as well as Amendment 6), Willie Benedetti filed a second petition for writ of mandate and a complaint for declaratory relief against the County, naming the Commission as a real party in interest. *Id.* at 11 (Compl. ¶ 33). On April 5, 2019 (within 60 days after the Commission's final certification of the LCP Amendments), Willie Benedetti filed a third petition for writ of mandate and a complaint for declaratory relief against the County, naming the

Commission as a real party in interest. *Id.* at 12 (Compl. ¶¶ 38–40).

Ultimately, the parties stipulated to the dismissal of all three previously filed lawsuits. Compl. ¶ 41. The stipulated dismissals agreed to toll any statute of limitations as to the Benedettis for "any action" filed against the challenged LCP Amendments until 60 days from the date when either: (1) the Commission certified the remaining LCP Amendments, or (2) the County's Board of Supervisors took further action through a public hearing and resolution to make the challenged amendments enforceable. *Id.* (Compl. ¶ 41).

On September 13, 2021 (within 60 days of the Board of Supervisors' resolution placing the challenged amendments into effect), the Benedettis timely filed a petition for writ of mandate and complaint for declaratory relief against the County, naming the Commission as a real party in interest. *Id.* at 5 (Pet. and Compl.).

The Benedettis' First Cause of Action alleged violations of the Constitution under two theories: (1) that forcing a landowner into an occupation of the government's choosing was a violation of Due Process under the U.S. and California Constitutions; and (2) that an exaction requiring a landowner to record a covenant agreeing to remain actively engaged in commercial agriculture could never satisfy the nexus and proportionality requirements delineated in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and *Koontz*, 570 U.S. 595; *see also* U.S. Const. amend. V.; Clerk's Transcript

at 15–16 (Compl. ¶¶ 70–93. The Second Cause of Action sought relief under Code of Civil Procedure Section 1085, *id.* at 18 (Compl. ¶¶ 94–98), and the Third Cause of Action sought relief under Code of Civil Procedure Section 1094.5. *id.* at 18–19 (Compl. ¶¶ 99–103).

The County and Commission demurred as to the Benedettis' Complaint and Petition. *See* Clerk's Transcript at 68–73 (D & RPI Demurrer and Mot. to Strike). On July 7, 2023, the superior court denied the demurrer as to the First and Second Causes of Action and sustained as to the Third Cause of Action.[1] Clerk's Transcript at 492–509 (Order Overruling and Sustaining Demurrer).

While the superior court denied the demurrer in its entirety as to the First Cause of Action, it expressed skepticism as to whether the takings-based unconstitutional conditions argument could be raised facially, and ultimately held that it would be unripe before a landowner sought a permit application to develop, urging the Benedettis to refrain from briefing that issue. Clerk's Transcript at 505 (Order Overruling and Sustaining Demurrer at 14 n.1). The Benedettis complied with the court's request, but expressly preserved those arguments for appeal, and partially briefed those issues in response to the Joint Parties' raising of those issues in their Opposition Brief. Clerk's Transcript at 558–59 (Opening Brief at 9–10 n.1); Clerk's Transcript at 623–25 (Reply Brief at 16–18). The superior court

[1] The Benedettis do not appeal the denial of their Third Cause of Action.

acknowledged that it accepted the Benedettis' preservation of those claims. Clerk's Transcript at 662 (Order Denying PWM at 12); Transcript of January 5, 2024, at 55–56.

On February 1, 2024, the Court issued its opinion denying Petitioners' Writ of Mandate in its entirety. Clerk's Transcript at 629–46 (Order Denying PWM). Final judgment was issued on February 23, 2024. Clerk's Transcript at 647–72 (Notice of Entry of Order). The Benedettis timely filed their Notice of Appeal on April 18, 2024. Clerk's Transcript at 673 (Notice of Appeal).

IV. Local Coastal Programs Under the Coastal Act

The California Coastal Act (Pub. Res. Code § 30000, *et seq.*) is a state statutory scheme that balances state interests in the coastal zone of California against a strong preference for local control of land use. *City of Malibu v. California Coastal Comm'n*, 206 Cal. App. 4th 549, 563 (2012), *as modified on denial of reh'g* (June 5, 2012). Under the Coastal Act, all local governments within the coastal zone must prepare a Local Coastal Program for their area. Pub. Res. Code § 30500(a). The LCP consists of a Land Use Plan (LUP), zoning ordinances, zoning district maps, and other implementing actions. *Id.* §§ 30512, 30513. Local governments must prepare and determine the precise contents of its own LCP. *Id.* § 30500(a), (c). The Commission itself is prohibited from drafting LCPs or LCP Amendments. *City of Chula Vista v. Superior Court*, 133 Cal. App. 3d 472, 488 (1982) ("[I]n approving or disapproving an LCP [the Commission] does not create or originate any land use rules and regulations. It can approve or disapprove but it cannot itself draft any part of the

coastal plan."). The Commission must review each proposed LUP, but *only* for conformance with the Act. Pub. Res. Code § 30512. If the LUP meets the requirements of the Act and is in conformance with it, the Commission "shall certify" the LUP. *Id.* The local government must also implement the LUP by preparing zoning ordinances, zoning district maps, and other implementing actions. *Id.* § 30513(a). The Commission must then certify the zoning ordinances, zoning district maps, and other implementing actions, and may only reject them if they do not conform with, or are inadequate to carry out, the provisions of the certified LUP. *Id.* § 30513. LCPs—including any implementing ordinances or actions—may be amended, but only by the "appropriate local government." *Id.* § 30514. The Commission certifies LCP amendments, but only for consistency with the Coastal Act. *Id.*

STATEMENT OF THE LAW

The Benedettis facially challenge the County's agricultural covenant LCP provisions under 42 U.S.C. Section 1983 and California Code of Civil Procedure (CCP) Section 1085. Traditional mandamus under CCP Section 1085 and actions for declaratory and injunctive relief are appropriate vehicles to facially challenge the legislative adoption of unconstitutional LUPs. *Cf. DeVita v. Cnty. of Napa*, 9 Cal. 4th 763, 771 (1995).

"The determination of the constitutionality of a statute and a regulation is a question of law," triggering the "de novo standard of review." *Sanchez v. State*, 179 Cal. App. 4th 467, 486 (2009). A statute is facially unconstitutional when it "inevitably pose[s] a present total and fatal conflict with applicable

constitutional provisions." *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1102 (1995) (internal citations and quotation marks omitted). Alternatively, a statute is facially unconstitutional when, in the generality or vast majority of applications, it would violate an individual's liberties. *Today's Fresh Start, Inc. v. L.A. Cnty. Office of Educ.*, 57 Cal. 4th 197, 218 (2013).

To determine whether a person's liberty interest for purposes of substantive due process has been violated, the court must balance his or her liberty interest against the relevant state interests. *Love v. State Dep't of Educ.*, 29 Cal. App. 5th 980, 989 (2018). Infringements of the right to work[2] are reviewed under the strict scrutiny standard of review. *Sail'er Inn, Inc. v. Kirby*, 5 Cal. 3d 1, 17 (1971); *Nash v. City of Santa Monica*, 37 Cal. 3d 97, 102–03 (1984).[3] To survive strict scrutiny, a regulation must be narrowly tailored to achieve a compelling government interest. *Perez v. City of San Bruno*, 27 Cal. 3d 875, 890 n.11 (1980).

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[2] Legislative enactments that are deemed "occupational regulation" are generally subjected to the less-stringent rational relation test. *See, e.g.*, *Graham v. Kirkwood Meadows Pub. Util. Dist.*, 21 Cal. App. 4th 1631, 1645 (1994). This is distinct from regulations that implicate the fundamental right to work, which triggers strict scrutiny analysis. *Lucchesi v. City of San Jose*, 104 Cal. App. 3d 323, 332 n.7 (1980).

[3] In response to the holding in *Nash*, the legislature passed the Ellis Act, with the express intent of superseding the portions of the holding that *did not* find a constitutional violation, so as to ensure that landlords would be able to withdraw units from the market and go out of business. *See Drouet v. Superior Ct.*, 31 Cal. 4th 583, 589–90 (2003). But this does not invalidate the portions identifying the constitutional concerns raised by forcing landowners into a profession, and the reasoning of *Nash* remains persuasive in that regard.

While facial challenges may be "difficult," they are not categorically barred or disfavored. *City of Los Angeles v. Patel*, 576 U.S. 409, 415 (2015). While the "most exacting standard" applied in facial challenges requires that a plaintiff establish that a law is "unconstitutional in all of its applications," that inquiry ignores factual circumstances in which the law is not actually applied. *Id.* at 418 (citation omitted).

STANDARD OF REVIEW

On appeal from a denial of a petition for writ of mandate challenging the constitutionality of statutes, this Court exercises de novo review. *Bernardo v. Planned Parenthood Fed'n of Am.*, 115 Cal. App. 4th 322, 360 (2004). Further, this Court must exercise its independent judgment in questions of statutory and constitutional interpretation, without deference to the trial court's conclusions. *Id.*

ARGUMENT

The County's LCP Amendments force an unconstitutional choice on landowners like the Benedettis who seek to develop private property within the Agricultural Zone of Marin County. Before they may make lawful use of their private property, they are required to agree that they will remain "actively and directly engaged" in commercial agriculture. This agreement must be recorded as a perpetual restriction against the property—in other words, all future landowners will be bound by this requirement.

The County's forced farming condition violates both the United States and California Constitutions. First, it is an unconstitutional exaction of property rights as expressly

proscribed by *Nolla*n and *Dolan*. The requirement bears no relation to any harm caused by the development of a single-family dwelling, and—even assuming *arguendo* that it could be tied to such a harm—the requirement is exceedingly disproportionate to that harm. Second, the forced farming requirement unconstitutionally burdens landowners' Due Process rights, leaving them with a choice between forfeiting lawful property rights or being forced into an occupation of the County's choosing. Under either theory, the requirement is an unconstitutional condition—landowners must choose to forego exercising their constitutional right to use and develop their private property or be subjected to a condition that the County unquestionably could not impose directly on its residents.

The superior court below held that it could not address the *Nollan/Dolan* claim, finding it unripe until after the Benedettis had sought a permit to develop and been subjected to the requirement. As to the second claim, it rejected the due process concerns, largely on the basis that a landowner could forego development, lease the property to a third party, or sell the property outright. But such "choices" strike at the very heart of the Unconstitutional Conditions Doctrine, which prevents governments from indirectly imposing restrictions that would be constitutionally prohibited if imposed directly.

The superior court erred in failing to review the merits of the Benedettis' *Nollan*/*Dolan* claims. Similar claims have succeeded in California courts, and the Benedettis are entitled to full judicial review. The forced farming restrictive covenant

requirement in the LCP Amendments cannot survive constitutional scrutiny. First, the agricultural covenant requirement exacts a recognizable property interest that is unrelated to, and disproportionate to, any harms caused by the development of a residential dwelling. Second, it impermissibly restricts the fundamental rights of the landowner by forcing them to enter a profession chosen by the County. Accordingly, the opinion of the superior court must be reversed.

I. The LCP Amendments Are an Unconstitutional Condition on Landowners' Lawful Development Rights

The unconstitutional conditions doctrine is a bulwark against governments coercing individuals into surrendering their constitutional rights in exchange for discretionary benefits. As the Supreme Court has explained, "the controlling influence of the Constitution may not be destroyed by doing indirectly that which it prohibits from being done directly." *Pullman Co. v. Kansas ex rel. Coleman*, 216 U.S. 56, 70 (1910). While this doctrine extends far beyond the exactions context, it is particularly salient in the land-use permitting context, where governments routinely condition discretionary permits on the willingness of landowners to hand over valuable property rights.

The unconstitutional conditions doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz*, 570 U.S. at 604. As the California Supreme Court emphasized in *California Building Industry Association v. City of San Jose*, the 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." 61 Cal. 4th 435, 457 (2015).

The doctrine applies broadly to all constitutional rights. *See, e.g.*, *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 74 (1990) (First Amendment); *Mem'l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 256 (1974) (right to travel). In each context, courts analyze whether the challenged restriction "could be constitutionally imposed directly." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 59–60 (2006). If not, it cannot be imposed indirectly through conditions on government benefits. *See Nollan*, 483 U.S. at 836.

Whether viewed in the exactions context or under substantive due process, the LCP Amendments place an unconstitutional condition on the lawful development of property. The unconstitutional conditions doctrine provides that the "government may not require a person to give up a constitutional right . . . in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property." *Dolan*, 512 U.S. at 385.

Importantly, the doctrine is far broader than the exactions context. *See Ballinger v. City of Oakland*, 24 F.4th 1287, 1299 (9th Cir. 2022), *cert. denied*, 142 S. Ct. 2777 (2022). While some permit conditions constitute exactions under the Fifth Amendment Takings Clause, others may infringe on entirely distinct constitutional protections. *See Beach & Bluff*

Conservancy v. City of Solana Beach, 28 Cal. App. 5th 244, 266 (2018) (distinguishing between general unconstitutional conditions and takings-specific analyses).

The chilling effect of the LCP Amendments on lawful land use is analogous to restrictions that courts deemed unconstitutional in other contexts. Just as the government cannot condition benefits on the surrender of First Amendment rights, *Rumsfeld*, 547 U.S. at 59–60, it cannot condition development rights on perpetual engagement in a government-chosen occupation. The constitutional injury occurs regardless of whether landowners ultimately choose to develop their property—the very existence of the condition impermissibly burdens the exercise of constitutional rights. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

Under either of the Benedettis' constitutional theories, the injury is the choice foisted upon them: waive your constitutional right to develop, or be subjected to an unconstitutional restriction. Whether framed as the exaction of a property interest unrelated to the impacts of development or as a deprivation of the Benedettis' right to not be forced into a government-chosen occupation, the result is the same—the LCP Amendments are facially unconstitutional.

II. Unconstitutional Condition Exactions Claims May Be Raised Facially

The superior court incorrectly held that the Benedettis' takings-based unconstitutional conditions claims could not proceed because they were improperly raised as facial challenges. The court fundamentally misunderstood both the nature of facial

challenges in the exactions context and the distinct analyses required for claims seeking invalidation versus just compensation. These errors led the court to incorrectly conclude that such claims must only be raised as-applied, following a permit denial.

a. Facial unconstitutional conditions challenges are permissible in the exactions context

The superior court's reliance on *Beach & Bluff Conservancy*, 28 Cal. App. 5th 244, for the proposition that *Nollan*/*Dolan* scrutiny "generally is not applied to *facial* challenges" is misplaced. *See* Clerk's Transcript at 502–04 (Order Overruling and Sustaining Demurrer at 11–13). That conclusion was based on the now abrogated premise that "generally applicable legislative general zoning decisions" were exempt from the *Nollan*/*Dolan* test. *Beach & Bluff Conservancy*, 28 Cal. App. 5th at 267. The Supreme Court has now decisively resolved the question of whether legislatively-imposed conditions on development are subject to the exactions analysis outlined in *Nollan* and *Dolan*. *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 279 (2024) ("The Takings Clause . . . prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits."). The mode of exaction—whether through "regulation, (or statute, or ordinance, or miscellaneous decree)"—is irrelevant to the constitutional analysis. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021).

The superior court's skepticism of facial challenges in the exactions context is also directly contradicted by California precedent. In *Alliance for Responsible Planning v. Taylor*, 63 Cal.

App. 5th 1072 (2021), the Court of Appeal applied *Nollan/Dolan* to affirm the facial invalidation of traffic mitigation provisions where the challenged measures could never satisfy rough proportionality regardless of the specific project proposed. *Id.* at 1085. The *Alliance* court held that facial invalidation was not just permitted but *preferable* where provisions are "not susceptible to a constitutional interpretation," because "delaying consideration could only serve to impose unconstitutional conditions or delay on developers and spur unnecessary litigation." *Id.* at 1082–83.

The *Alliance* court affirmed invalidation of several general plan provisions as facially unconstitutional because the challenged requirements could never satisfy "rough proportionality" regardless of project specifics. *Id.* at 1085. Critically, the court noted that "because the challenged amendments are not susceptible to a constitutional interpretation, delaying consideration could only serve to impose unconstitutional conditions or delay on developers and spur unnecessary litigation." *Id.* at 1082–83.

This approach aligns with facial challenge principles. Although facial challenges can prove "difficult," they are by no means categorically barred or disfavored. *Patel*, 576 U.S. at 415. The Supreme Court has clarified that while facial challenges require showing a law is "unconstitutional in all of its applications," that inquiry should ignore any circumstances where the law is not actually applied. *Id.* at 418.

When facially challenged provisions exact property interests in exchange for permits, courts must look to whether

the exaction could *ever* satisfy the essential nexus and rough proportionality requirements. *See Levin v. City & Cnty. of San Francisco*, 71 F. Supp. 3d 1072, 1084 (N.D. Cal. 2014) ("The Ordinance on its face fails both the essential nexus and rough proportionality tests."). This is because *Nollan*/*Dolan*'s requirements focus on the relationship between the exaction and development impacts—often requiring close scrutiny of the impacts of a particular development. But if the ordinance on its face bears no nexus to *any* possible impacts of development—or will *always* exact an amount that far exceeds those impacts—that relationship can be analyzed without reviewing specific applications. *See Alliance*, 63 Cal. App. 5th at 1082.

Here, the challenged provisions are applied *only* to individuals who seek to develop property with a residential dwelling unit, and *all* such development is subject to the forced farming requirement. And as fully explained below in Part III, that requirement bears no nexus to any harms caused by, and is disproportionate to any potential impacts that are caused by, residential development. Accordingly, the LCP Amendments are appropriate for a facial challenge.

b. Facial exactions challenges do not require a permit application to be ripe for judicial review

Unlike as-applied takings claims that seek just compensation, facial challenges to permit conditions under the unconstitutional conditions doctrine require no permit application to ripen the claim. This is because facial claims challenge whether the very enactment of the restriction violates

constitutional principles, rather than how it impacts any specific property.

The Supreme Court has recognized that facial takings claims generally ripen "the moment [a] challenged regulation or ordinance is passed . . . ." *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 736 n.10 (1997). Such claims do not "depend on the extent to which [plaintiffs] are deprived of the economic use of their particular pieces of property or the extent to which these particular [plaintiffs] are compensated." *San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 545 U.S. 323, 340 n.23 (2005). Rather, such challenges examine whether the "mere enactment" of the regulation effected a taking of property. *See NJD, Ltd. v. City of San Dimas*, 110 Cal. App. 4th 1428, 1442 (2003); *see also Hodel v. Virginia Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 295 (1981); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 320 (2002).

This approach reflects the fundamental distinction between facial challenges seeking invalidation and as-applied challenges seeking just compensation. When a facial challenge requests "relief distinct from the provision of 'just compensation,'" it is immediately ripe. *San Remo Hotel*, 545 U.S. at 345–46. The operative event for the purpose of ripeness is the adoption of the challenged provision itself. *See Bronco Wine Co. v. Jolly*, 129 Cal. App. 4th 988, 1034 (2005) ("[A] facial challenge is generally ripe the moment the challenged regulation is passed[.]").

It is irrelevant to the constitutional analysis that the challenged restrictions are not triggered until a development

permit is sought. This is because the question is whether government has the power to request the waiver of the right at all. *See Koontz*, 570 U.S. at 603–05; *see also Ballinger*, 24 F.4th at 1299; *and Perry*, 408 U.S. at 597 (finding a First Amendment violation using the unconstitutional conditions doctrine). In other words, government may not condition the exercise of a lawful right, or the receipt of a public benefit, upon the voluntary waiver of constitutional rights. As the Supreme Court of California has explained:

> When, as in the present case, the conditions annexed to the enjoyment of a publicly conferred benefit require a waiver of rights secured by the Constitution, however well-informed and voluntary that waiver, the governmental entity seeking to impose those conditions must establish: (1) that the conditions reasonably relate to the purposes sought by the legislation which confers the benefit; (2) that the value accruing to the public from imposition of those conditions manifestly outweighs any resulting impairment of constitutional rights; and (3) that there are available no alternative means less subversive of constitutional right, narrowly drawn so as to correlate more closely with the purposes contemplated by conferring the benefit.

Parrish v. Civ. Serv. Comm'n of Alameda Cnty., 66 Cal. 2d 260, 271 (1967). Further, it is government that "bears a heavy burden of demonstrating the practical necessity for the limitation." *San Diego Cnty. Water Auth. v. Metro. Water Dist. of S. California*, 12 Cal. App. 5th 1124, 1159 (2017), *as modified on denial of reh'g* (July 18, 2017) (citation omitted).

The Benedettis' challenge falls squarely within this framework. They do not seek compensation for individual harm

to their property but rather challenge the fundamental constitutionality of the requirement that all agricultural zone landowners surrender property interests unrelated to development impacts. Like the traffic mitigation measures in *Alliance*, these provisions cannot be constitutionally applied in any instance.

The superior court below suggested that the LCP Amendments may "vary depending on the landowner's specific circumstances . . . ." Clerk's Transcript at 668 (Order Denying PWM at 18). But this misunderstands both the ordinance's text and the nature of facial challenges. The LIP provides no discretion to vary or waive the forced farming requirement—C-AG-5 states that agricultural units "must be owned by a farmer or operator actively or directly engaged in agricultural use on the property," AR31366, while Section 22.32.024(I) provides that "Agricultural dwelling units may be permitted only if they do not require any Coastal Zone Variance." AR31470. Without exception, once a dwelling is built, the County will hold a covenant requiring the landowner, and any successors in interest, to remain "actively and directly engaged" in commercial agriculture. AR31469–71 (requiring a recordation of a restrictive covenant including language that the "owner of the [dwelling] shall be actively and directly engaged in agricultural use of the agriculturally zoned legal lot").

As explained in *Alliance*, courts also should not speculate about hypothetical constitutional applications when permit conditions are fundamentally defective. 63 Cal. App. 5th at 1082–

83. The agricultural covenant requirement's fundamental constitutional defects cannot be cured through creative implementation.

This aligns with broader principles governing facial challenges. While facial invalidation requires showing a law is "unconstitutional in all of its applications," that inquiry ignores circumstances where the law is not actually applied. *Patel*, 576 U.S. at 418 (citation omitted). In other words, it is irrelevant if some landowners may not object to the requirement, because facial challenges consider only the situations in which the regulation will affect individuals' conduct, "not [those] for whom it is irrelevant." *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 837–38 (1992), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022); *see also Patel*, 576 U.S. at 418 ("[T]he proper focus of the constitutional inquiry is searches that the law actually authorizes, not those for which it is irrelevant."). Here, every application of the agricultural covenant requirement is unconstitutional, because it lacks a nexus and proportionality to any potential development, and because it unconstitutionally restricts the landowners' fundamental right to work.

The superior court's conclusion that the Benedettis must first apply for a permit misunderstands ripeness requirements for facial challenges. While as-applied takings claims generally require a "final decision" showing how regulations will be applied to a specific property, *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 686 (9th Cir. 1993), facial claims challenging the

essential validity of exactions do not. This is because the constitutional defect inheres in the provisions themselves, not their particular application. And because the Benedettis challenge the constitutionality of the LCP Amendments in *all* instances, there are no facts that could be developed through a single permit application that would alter the unconstitutional conditions analysis.

c. Requiring a permit application to ripen a challenge insulates the challenged provisions entirely from facial judicial review

Requiring permit applications before facial challenges of land-use ordinances insulates unconstitutional ordinances from meaningful judicial review. California law requires that facial constitutional challenges to land-use ordinances be brought within strict time limits. As explained in *616 Croft Ave., LLC v. City of West Hollywood*, most facial constitutional challenges seeking to invalidate land-use ordinances must be brought within a 90-day statute of limitations. 3 Cal. App. 5th 621, 627–28 (2016). Critically, this limitation bars facial challenges even when brought as part of a later as-applied challenge. *Id.* But under the Coastal Act, timelines are even shorter: challenges must be brought within just 60 days of adoption. Pub. Res. Code § 30801.

The practical effect of requiring landowners to first apply for permits before raising constitutional objections is to entirely foreclose facial review. By the time any permit application could be processed and denied, the window for facial challenges would have long since closed. *616 Croft Ave.*, 3 Cal. App. 5th at 627–28. In other words, while it is understandable to require timely

challenges to land-use ordinances to ensure certainty and stability of those laws, such strict statutes of limitations cannot be used as a procedural trap to subvert the protections of the United States Constitution. That cannot be what the Legislature intended in establishing strict time limits for challenging land-use ordinances.

The *Alliance* court recognized this precise danger, noting that where ordinance provisions are facially unconstitutional, requiring individual permit applications would only "spur unnecessary litigation" as individual landowners were each required to challenge an unconstitutional ordinance in a piecemeal, as-applied fashion, hamstringing judges from addressing a fundamental constitutional defect. 63 Cal. App. 5th at 1082–83. This waste of both private and judicial resources is avoidable by allowing facial challenges at the time of adoption, when the constitutional infirmity is already apparent.

This case perfectly illustrates why immediate facial review is appropriate. The LCP Amendments require identical agricultural covenants from all landowners seeking to build residential structures, notwithstanding individual circumstances. There are no discretionary determinations to be made during the permitting process that could alter the fundamental constitutional analysis. Forcing landowners to permanently engage in commercial agriculture is either justifiable by residential construction impacts or it is not. No amount of permit processing changes that equation.

The superior court's ripeness holding would require every landowner in Marin County's agricultural zone to separately challenge the provisions through individual permit applications, despite the identical constitutional defects in every application, while leaving the facially unconstitutional LCP Amendments in place. This inefficient approach would waste resources while insulating the provisions from the very facial review that the Supreme Court recognizes as appropriate for legislative exactions.

III. The Agricultural Covenant Requirement Is Facially Unconstitutional Under *Nollan/Dolan*

The County's requirement that any landowner who develops in the Agricultural Zone must enter a covenant to remain perpetually engaged in commercial agriculture facially fails the unconstitutional conditions test established in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. Because there is *never* an essential nexus between residential development impacts and forced commercial farming, and because such requirements are *never* roughly proportional to development impacts, the challenged provisions are "not susceptible to a constitutional interpretation," and therefore facially unconstitutional. *Alliance*, 63 Cal. App. 5th at 1082.

a. The LCP Amendments exact a property interest subject to *Nollan/Dolan* scrutiny

The County's demand that landowners record restrictive covenants ensuring perpetual engagement in commercial agriculture exacts a protected property interest. Under California law, restrictive covenants are recognized property interests

subject to constitutional protection. *S. Cal. Edison Co. v. Bourgerie*, 9 Cal. 3d 169, 172 (1973). The Supreme Court has confirmed that the form of the exaction—whether by "regulation, (or statute, or ordinance, or miscellaneous decree)"—is irrelevant to the constitutional analysis. *Cedar Point Nursery*, 594 U.S. at 149, 155 (2021) (adopting an "intuitive approach" to takings analysis that focuses on the rights taken under state property law).

The LCP Amendments require that before any residential construction, landowners must record covenants ensuring that "the owner of the property shall be actively and directly engaged in agricultural use" in perpetuity. Had the County directly demanded that landowners record covenants requiring perpetual commercial farming running to the benefit of the County, it would be required to pay just compensation. *S. Cal. Edison Co.*, 9 Cal. 3d at 172. The County cannot avoid this constitutional obligation by instead demanding the covenant as a condition of development permits. Rather, acquiring a property interest in this fashion triggers heightened scrutiny under *Nollan*/*Dolan*. As the Supreme Court has explained, the unconstitutional conditions doctrine exists precisely to prevent government from leveraging its permit authority to "coerc[e] people into giving [rights] up." *Koontz*, 570 U.S. at 604.

b. The agricultural covenant requirement can never satisfy the essential nexus and rough proportionality tests

Under *Nollan*, permit conditions must have an "essential nexus" between the exaction imposed and the legitimate state interest the government claims to advance. 483 U.S. at 837. This nexus must be more than theoretical—there must be a direct connection between the public impacts caused by development and the concessions demanded by government. *Id.* When there is no such connection, the condition is simply a disguised taking of property. *Id.* But even where there is an identifiable direct connection, the exaction sought must also be roughly proportional to impacts directly caused by the proposed development. *Dolan*, 512 U.S. 374. Under *Dolan*, the government must make an "individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Id.* at 391.

The County's agricultural covenant requirement facially fails these tests. There can never be a sufficient nexus between the impacts of residential development and a requirement that property owners perpetually engage in commercial agriculture. The construction of a residential dwelling may have various localized impacts on traffic, utilities, or environmental resources. But none of these impacts can logically be mitigated by forcing the landowner to become a commercial farmer or rancher.

The County's forced farming covenant requirement necessarily lacks any nexus to the impacts caused by residential development. Here, for example, the Benedettis would seek only

to construct an additional residential dwelling on their already-developed 267-acre property. Such development would impact, at most, a small portion of the total acreage. It would not, however, alter the underlying zoning of the property, or the uses to which land within the Agricultural Zone is *already* limited. Nor would the construction of a dwelling impact the ability of individuals in the agricultural zone to engage in commercial agriculture.[4] Yet the County's exaction would require the Benedettis—and all future owners—to permanently engage in commercial agriculture, or be forced to lease their land to a commercial agricultural producer in perpetuity.

The disconnect between the exaction and the development's impacts is analogous to that in *Nollan* itself. In *Nollan*, the California Coastal Commission attempted to require beachfront property owners to dedicate a public access easement across their otherwise private beach as a condition of rebuilding their home. 483 U.S. at 827–28. But the asserted justification by the Commission was impacts to "visual access" caused by the construction of a taller home. *Id.* at 838. The Supreme Court struck down this condition because there was no logical "nexus" between the exaction's purpose and the development's impact. *Id.* at 838–39.

Below, the County argued that the forced farming restrictive covenant serves a general interest in preserving

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[4] If anything, attaching onerous conditions to the construction of new dwellings on agricultural land *disincentivizes* the expansion of agricultural operations in the County, and could prevent the creation of new commercial agricultural opportunities.

agricultural *use* within the Coastal Zone. Clerk's Transcript at 539 (Joint Parties' Opposition at 19). However, this type of generalized connection between an exaction and broader social goals is precisely what *Nollan* rejected. 483 U.S. at 837. The Supreme Court has emphasized that there must be a direct and individualized connection between the *specific* development's impacts and the exaction imposed. *Dolan*, 512 U.S. at 391. Here, however, there is no direct connection between the development of a small portion of property for a single-family residential dwelling and the ability (or inability) of individuals to engage in commercial agriculture. Indeed, since the *only* permissible developments are "agricultural dwelling units," the development of such buildings is far more likely to *increase* the number of individuals available to engage in such activity.

Moreover, the property in question is already zoned for agriculture, with strict limitations on non-agricultural uses. AR31363–64. The Benedettis' proposed residential development would not alter this underlying zoning or enable conversion of the remainder of the land to non-agricultural uses. The addition of a dwelling that would *support* agricultural operations cannot rationally be viewed as harming agricultural preservation in a way that would justify demanding that *individuals* agree to engage in permanent commercial agricultural activity.

The agricultural covenant requirement also fails *Dolan*'s "rough proportionality" test on its face for several reasons. First, it applies uniformly regardless of the size, location, or characteristics of the proposed residential development. A small

single-family home triggers the same perpetual farming mandate as a larger dwelling. There is no mechanism within the LCP Amendments to determine or distinguish whether the proposed development is agricultural worker housing, Farmhouses, or Intergenerational Homes—and the restrictive covenant requirement applies equally to all three. AR31747–48; LIP § 22.32.024. This categorical approach will never satisfy *Dolan*'s requirement for individualized determinations.

Second, the requirement that landowners personally engage in commercial farming is grossly disproportional to any conceivable development impacts. Residential construction may justify requirements for general community improvements only where such improvements are proportional to the development's scope. *Alliance*, 63 Cal. App. 5th at 1086 (holding that an ordinance demanding traffic improvements that exceed the extent of any single developer's impacts are facially unconstitutional). But compelling the *landowner* to enter a specific commercial occupation in perpetuity bears no rational relationship to development impacts, let alone rough proportionality.

Third, the covenant's perpetual nature renders it facially disproportional. Even if some temporary agricultural use requirement could theoretically be justified, mandating commercial farming "in perpetuity" can never be roughly proportional to the relatively minor impacts of residential construction.

Alliance for Responsible Planning v. Taylor is instructive. In *Alliance*, the court analyzed whether amendments to El Dorado County's general plan could survive constitutional scrutiny under the *Nollan*/*Dolan* framework. 63 Cal. App. 5th at 1084–85. The challenged amendments sought to end the practice of "paper roads," where developers could secure project approval by simply contributing to a 10 or 20-year improvement fund without guaranteeing actual road construction. *Id.* at 1075. Policy TC-Xa 3 modified existing policy to require that "[a]ll necessary road capacity improvements shall be fully completed to prevent . . . cumulative traffic impacts from new development from reaching Level of Service F during peak hours upon any highways, arterial roads and their intersections . . . before any form of discretionary approval can be given to a project." *Id.* at 1075–76.

The County memo analyzing the amendments identified two possible interpretations: either all programmed traffic mitigation projects (over $400 million worth) must be completed before any discretionary approval, creating a "de facto moratorium," or developers would have to complete improvements addressing traffic from their development combined with other future cumulative development. *Id.* at 1076–77. Under either interpretation, the court found the policy facially unconstitutional because it would require developers to construct improvements benefiting other developments, violating the "rough proportionality" requirement that demands "some sort of individualized determination that the required dedication is

related both in nature and extent to the impact of the proposed development." *Id.* at 1085 (quoting *Dolan*, 512 U.S. at 391).

The court found that both interpretations of Policy TC-Xa 3 failed these tests. The first interpretation required completion of all necessary road improvements before any discretionary approval, which lacked both nexus and proportionality to individual project impacts. *Id.* The second interpretation, requiring only improvements addressing traffic from the project plus cumulative impacts, still failed the proportionality test by requiring developers to "complete improvements addressing impacts beyond its own." *Id.* The court rejected arguments that potential reimbursement agreements could save the provisions, noting they could not "uphold the law simply because in some hypothetical situation it might lead to a permissible result." *Id.* at 1086 (quoting *Larson v. City & Cnty. of San Francisco*, 192 Cal. App. 4th 1263, 1280 (2011)).

The court also rejected claims that denying projects until others completed improvements could satisfy constitutional requirements, explaining that principles underlying *Nollan* and *Dolan* "do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so." *Id.* (quoting *Koontz*, 570 U.S. at 606).

Applying these principles to Marin County's LCP Amendments, the provisions requiring perpetual engagement in commercial agriculture similarly fail. The Amendments mandate that landowners make "day-to-day management decisions" and

be "directly engaged in production of agricultural commodities for commercial purposes." AR31600. This requirement applies regardless of the development's size or impact, and continues indefinitely through a recorded covenant that runs with the land. AR31469–71. As in *Alliance*, this requirement "cast[s] a wider net than the harm resulting from an individual project." *Alliance*, 63 Cal. App. 5th at 1085.

Moreover, the LCP Amendments cannot be saved by allowing landowners to satisfy the requirement through leasing to commercial producers. AR31600. This alternative still requires the landowner to maintain a commercial agricultural operation in perpetuity, far exceeding any reasonable relationship to residential development impacts. Further, in all instances the County would still be forcing *someone* to remain always engaged in commercial agriculture. And as to the landowner, the requirement simply creates a choice between two unconstitutional conditions: (1) be forced into commercial agriculture, or (2) be forced to associate with a "bona fide commercial agricultural producer." Under the First Amendment, freedom of association "plainly presupposes a freedom not to associate." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984); *see* U.S. Const. amend. I. Such forced associations must be also justified by "compelling state interests . . . that cannot be achieved through means significantly less restrictive of associational freedoms." 468 U.S. at 623.

The County's true purpose is to leverage its permit authority to compel property owners to engage in a specific

commercial enterprise of the County's choosing. But as the California Court of Appeal recently recognized in a similar context, local land use conditions cannot be used to compel specific commercial activity where there is no connection between the condition and the development's impacts. *See Coyne v. City & Cnty. of San Francisco*, 9 Cal. App. 5th 1215, 1230 (2017) (finding that broader economic conditions "had no relationship to the adverse impacts caused by a landlord's decision" regarding property use).

While the County may have legitimate interests in preserving agricultural *land*—a point the Benedettis do not dispute—forcing *individuals* to conduct commercial agriculture is an entirely different matter. The LCP Amendments go far beyond merely preserving the agricultural character or capability of the land; they commandeer private citizens into a government-chosen occupation.

c. The agricultural covenant requirement's constitutional defects mandate facial invalidation

Because the agricultural covenant requirement can never satisfy *Nollan/Dolan*'s constitutional standards, facial invalidation is appropriate. As explained in *CMR D.N. Corp. v. City of Philadelphia*, when "the claimed constitutional violation inheres in the terms of the statute, not its application . . . [t]he remedy is necessarily directed at the statute itself and *must* be injunctive and declaratory." 703 F.3d 612, 624 (3d Cir. 2013)

(quoting *Ezell v. City of Chicago*, 651 F.3d 684, 698 (7th Cir. 2011)).

The Seventh Circuit has similarly emphasized that successful facial challenges require invalidation of the offending provisions: "The remedy is necessarily directed at the statute itself and *must* be injunctive and declaratory; a successful facial attack means the statute is wholly invalid and cannot be applied *to anyone*." *Ezell*, 651 F.3d at 698.

This approach makes sense for unconstitutional permit conditions. Allowing continued enforcement would force landowners to either submit to unconstitutional exactions or forgo development entirely. This is precisely the type of coercive choice the unconstitutional conditions doctrine aims to prevent. *See White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 203 (4th Cir. 2022).

The California Court of Appeal has confirmed that facial invalidation is proper for permit conditions that can never satisfy constitutional requirements. In *Alliance for Responsible Planning*, the court affirmed invalidation of traffic impact fees that would "never satisfy" rough proportionality standards. 63 Cal. App. 5th at 1085. The same principle applies here—the agricultural covenant requirement's fundamental defects mandate invalidation.

IV. The Agricultural Covenant Requirement Unconstitutionally Forces Landowners Into a Government-Chosen Occupation

The superior court's ruling fundamentally misunderstands both the nature of the constitutional right at stake and the

unprecedented scope of the County's LCP Amendments. While purporting to be a mere land-use restriction, the LCP Amendments go far beyond traditional zoning by forcing *landowners* to either personally engage in commercial agriculture or enter commercial relationships with those who will. This unprecedented restriction—which commands perpetual engagement in a government-chosen occupation—violates the fundamental constitutional rights of the landowner and cannot survive under any level of scrutiny.

a. The LCP Amendments infringe landowners' fundamental due process right to work

All individuals hold a "basic liberty to pursue and obtain happiness" by choosing to engage in the common occupations of the community. *Nash*, 37 Cal. 3d at 103. And as the California Supreme Court has recognized, "forc[ing] upon an individual a career chosen by [government]" raises serious constitutional concerns. *Id.* There are constitutional "limitations upon the power of the state to compel a person to pursue a particular business or occupation against his will." *Id.* at 102–03.[5] This is because the "liberty" protected by the Constitution includes far more than the absence of physical restraint, and includes those rights "implicit in the concept of ordered liberty . . . ." *Washington v. Glucksberg*, 521 U.S. 702, 719, 721 (1997) (citation omitted). Further, it prohibits certain government actions "regardless of

[5] In addition to the Due Process concerns, the *Nash* court noted that forcing an individual into a particular profession implicates the Thirteenth Amendment prohibition on involuntary servitude. 37 Cal. 3d at 103; *see* U.S. Const. amend. XIII.

the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Due Process prevents government entirely from using its power for the purposes of oppressing individuals. *Id.* And constitutional concerns are raised when an individual is left with no choice but to work or be subject to legal sanction. *United States v. Kozminski*, 487 U.S. 931, 943 (1988). Yet the County has passed LCP Amendments that do just that: harness the coercive power of the state to exact a promise that an individual will remain perpetually engaged in commercial agriculture as a condition of exercising the lawful use of his property.

While it is relatively common for land-use restrictions to impose limits on the available uses of *land*, it appears to be novel to these challenged provisions to attempt to affirmatively place restrictions directly on the occupation of the *landowner*. In the closest California case on point, *Nash v. City of Santa Monica*, the Supreme Court of California addressed an ordinance that required a landowner to obtain a permit for the demolition of an occupied apartment building. 37 Cal. 3d at 101. The court recognized that this had the incidental effect of imposing "landlordly obligations" on the landowner. *Id.* at 105. The court emphasized that one's choice whether to remain in a particular business or occupation was entitled to "a high degree of constitutional protection . . . ." *Id.* at 100. Ultimately, the court upheld the challenged restrictions as "minimal" and "not significantly different from other, constitutionally permissible" land-use restrictions. *Id.* Importantly, the court noted that the

landowner had specifically acquired that type of property, and that he remained free to withhold units as they became vacant, eventually allowing him to withdraw from the occupation entirely. *Id.* at 103, 105. As Justice Bird noted in her concurrence and dissent in *Nash*, the freedom to *not* engage in a particular career is "a corollary of the basic liberty to pursue and obtain happiness by engaging in the common occupations of the community." *Id.* at 110 (Bird, C.J., concurring and dissenting) (citing *Sail'er Inn, Inc.*, 5 Cal. 3d at 17).

Under the County's LCP Amendments, however, landowners in the Marin County agricultural zone are effectively impressed forever into the County's chosen profession—commercial agriculture—regardless of whether they are currently engaged or wish to be engaged in such activity.[6] Nor is the requirement a mere formality or job title, the provisions expressly require that the landowner make "day-to-day management decisions *and* be[ ] directly engaged in production" of commercial agricultural goods. AR31600; LIP § 22.130.030(A) (emphasis added).[7] Existing landowners are left with but one exit strategy: sale of their property. Importantly—and unlike in *Nash*—there are no exceptions for the potential scenario where commercial agriculture on the property becomes unprofitable. *See*

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[6] Indeed, the Benedettis are not currently engaged in agricultural activity on their property, and do not wish to be. Clerk's Transcript at 10–11 (Pet. and Compl. ¶¶ 57, 63–64).

[7] By contrast, the landowner in *Nash* could "minimize his personal involvement" by "delegating responsibility" for virtually all decisions and obligations required. 37 Cal. 3d at 103.

Nash, 37 Cal. 3d at 101 (noting that the ordinance allowed demolition if the owner could not receive a fair return on investment). Either the landowner must remain actively engaged in commercial agriculture, sell the property to someone who is, or refrain entirely from exercising their lawful right to develop their private property.

The Superior Court's assertion that "the LCPA does not force a landowner into an occupation of commercial agriculture" because they can "lease the property to a third party" does not avoid the constitutional injury. Clerk's Transcript at 695 (Order Denying PWM at 17). First, the County will still be forcing *someone* to remain actively engaged in the profession of its choosing at all times. But—as to the landowner—the requirement simply creates the choice of an alternative unconstitutional condition: (1) be forced into commercial agriculture, or (2) be forced to associate with a "bona fide commercial agricultural producer." Under the First Amendment, freedom of association "plainly presupposes a freedom not to associate." *U.S. Jaycees*, 468 U.S. at 623; *see* U.S. Const. amend. I. Such forced associations must be also justified by "compelling state interests . . . that cannot be achieved through means significantly less restrictive of associational freedoms." 468 U.S. at 623.

The County has forced an unprecedented new choice upon landowners in the agricultural zone: if you wish to build a dwelling, you must be engaged in commercial agriculture *forever*—or be forced to associate with someone who will. Because the right to work (or refrain from working) and the right to

associate (or refrain from associating) are fundamental rights protected by the U.S. and California Constitutions, they must be analyzed under the strictest level of scrutiny.

b. The LCP Amendments should be analyzed under strict scrutiny review

When a land-use restriction infringes upon a fundamental right, it is subject to strict scrutiny review. *Breneric Assocs. v. City of Del Mar*, 69 Cal. App. 4th 166, 186 n.7 (1998) ("We apply . . . 'strict scrutiny' . . . [when] a restriction on land use interferes with a 'fundamental right.'" (citation omitted)). To survive strict scrutiny, a regulation must be justified only by a "compelling state interest, and . . . legislative enactments must be narrowly drawn to express only the legitimate state interests at stake." *Perez*, 27 Cal. 3d at 890 n.11 (cleaned up); *see also Jonathan L. v. Superior Ct.*, 165 Cal. App. 4th 1074, 1102–03 (2008) ("To satisfy the test of strict scrutiny, a state must establish: (1) that the law in question is supported by a compelling governmental interest and; (2) that the law is narrowly tailored to meet that end."). And in the substantive due process context, an action is narrowly tailored if "it is the least restrictive and least harmful means of satisfying the government's goal . . . ." *People v. Valencia*, 240 Cal. App. 4th Supp. 11, 23 (2015) (quoting *United States v. Brandon*, 158 F.3d 947, 960 (6th Cir. 1998)).

The Benedettis have found no cases within California that identify forced farming as a compelling state interest.[8] To be sure, there are cases that have acknowledged the vital role of the agricultural industry in California and acknowledged a government interest in preserving it. *See, e.g.*, *Hess Collection Winery v. Agric. Lab. Rels. Bd.*, 140 Cal. App. 4th 1584, 1591 (2006) (noting the legislature's stated desire to protect the state's economic well-being by ensuring stability within the agricultural industry). But no court in California has identified a compelling interest in creating *new members* to the agricultural industry, nor in *prohibiting existing members from exiting* the industry. Notably, there is a complete absence of case law to support the notion that forcing individuals into the County's chosen career is even a legitimate interest. Any remaining interests available to the County are not sufficiently compelling to justify a restriction on liberty under the Due Process Clause.

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[8] At best, the Benedettis have identified a single case that considered, but did not decide, that *preservation* of agriculture might be a substantial enough interest to justify "extensive promotion and regulation" of an *already existing* sector of the economy. *See Gerawan Farming, Inc. v. Lyons*, 114 Cal. Rptr. 2d 657, 665 (2001), *review granted and opinion superseded*, 43 P.3d 130 (Cal. 2002), *and aff'd in part, rev'd in part sub nom. Gerawan Farming, Inc. v. Kawamura*, 33 Cal. 4th 1 (2004). However, that opinion involved the forced funding of compelled speech under the First Amendment, and was superseded by the California Supreme Court. *See Gerawan Farming, Inc. v. Kawamura*, 33 Cal. 4th at 11. Additionally, *Gerawan Farming, Inc.*, is arguably overruled following the Supreme Court's opinion in *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018).

But even assuming that the County's interest could be classified as compelling, it cannot satisfy strict scrutiny, because the restrictions are not narrowly tailored. In the due process context, narrow tailoring requires that the statute "represent the 'least restrictive means' of achieving the [compelling] interest." *Jonathan L.*, 165 Cal. App. 4th at 1103 (citation omitted). Here, the County has chosen a decidedly blunt tool to accomplish its aims. *Every* landowner in the agricultural zone is required to issue a covenant to the County promising to remain "actively and directly engaged" in commercial agriculture. The LCP Amendments apply regardless of whether the particular landowner is—or has ever been—engaged in commercial agriculture on the property. They do not take account of whether the particular property at issue is suitable for commercial agriculture. Nor do they seek to preserve a particular aspect of an existing industry. Rather, *any* agriculture is sufficient, so long as it is *commercial*. AR31600; LIP § 22.130.030(A) (defining "actively and directly engaged" as requiring "production of agricultural commodities" or leasing the property to a "bona fide commercial agricultural producer"). Finally, the restrictions completely disregard whether agricultural activity on the particular property is economically feasible or profitable, meaning a landowner could be forced into commercial agricultural activity at a financial loss.

Less restrictive means are unquestionably available. At bare minimum, the County could provide mechanisms for an individual to exit commercial agriculture if desired—especially

where such activity was no longer profitable. *See Nash*, 37 Cal. 3d at 101 (noting that the regulations allowed for the issuance of a demolition permit if the property could no longer provide a reasonable return on investment). Further, if the County is concerned about some potential loss of farmland, it may constitutionally seek to obtain agricultural conservation easements to offset the loss of that land. *See, e.g.*, *Masonite Corp. v. Cnty. of Mendocino*, 218 Cal. App. 4th 230, 233 (2013) (upholding agricultural conservation easements as mitigation for farmland converted to quarries).

Finally, it is hard to classify the County's agricultural covenant requirements as the "least restrictive" means available, especially in light of the *other measures it has already taken*. In the Coastal Agricultural Production Zone (C-APZ), every available principally permitted use is limited to an agricultural use of the land. *See* AR31363–64. In other words, it is impossible for the County to assert that it is addressing a compelling interest in preserving the agricultural nature of the agricultural zone, because there are no non-agricultural uses available within the now-controlling zoning categories. Tellingly, the *only* "non-agricultural" use that is contemplated within the LCP Amendments is a policy statement that such development may be evaluated "as a means of securing permanent affirmative

agricultural easements over the balance of the farm tract." AR31365.[9]

In sum, any legitimate interest that could be asserted by the County has already been successfully addressed. Accordingly, the agricultural covenant requirement is *per se* not the least restrictive means of addressing the County's concerns, and cannot survive strict scrutiny.

c. Even under lesser review, the LCP Amendments are unconstitutional

Even if this Court disagrees with the Benedettis' contention that this case requires a strict scrutiny analysis, it requires a level of scrutiny beyond the reasonable relation review that is applied in more typical land-use cases. As noted above, the County's requirement that landowners be "actively and directly engaged" in commercial agriculture unquestionably impacts a liberty interest in the right to exit (or refrain from entering) a profession, even if this Court is not persuaded that the interest is sufficiently fundamental to warrant strict scrutiny.

In *Nash*, the court appeared to weigh the magnitude of the barriers placed in front of the landowner's exit from his profession against the interests of the city in determining whether or not the interest rose to the level of "fundamental." *Nash*, 37 Cal. 3d at 109 ("[T]he majority employ the distinction between 'direct' and 'indirect' burdens on constitutional rights as a means of avoiding Nash's personal liberty claim.") (Bird, C.J.,

[9] The policy statement appears to be one of intent, but at present has "no effect" until certified as a further LCP Amendment by the Commission. AR31365.

concurring and dissenting). The Benedettis contend that fundamental rights are just that, and any balancing must take place following the classification of the right (in this case, the right to not be forced into a commercial agriculture). However, even applying *Nash*'s balancing framework, the challenged provisions are facially unconstitutional.

Nash was predicated on two critical distinctions: (1) the landowner voluntarily entered the profession in which they were currently engaged; and (2) even if it was not immediate, there was a clear avenue out of the profession *at some point*.

As to the first point, the landowner (and landlord) in *Nash* had obtained a property that was *already* in use as an apartment building and had therefore voluntarily entered the business of being a landlord. *Nash*, 37 Cal. 3d at 101. By contrast, landowners applying to develop in the agricultural zone may or may not be currently engaged in commercial agriculture—indeed, the Benedettis are not. Rather than merely delaying the exit of a profession, the LCP Amendments would potentially force individuals *into* a profession and keep them there. As to the second point, even those individuals who are already engaged in commercial agriculture may, at some point in the future, wish to retire. But the LCP Amendments have *no* mechanism for such an eventual exit.

Further, in the landlord-tenant context, where land-use restrictions incidentally impact the individual's occupation (such as in *Nash*), the competing interest is the relatively strong desire to provide stability to tenants. *Id.* at 105 (noting that in the

"arena of landlord-tenant law" restrictions on eviction have generally been upheld because the interest of the landlord in curtailing his function as landlord may be offset by the interest of a tenant in keeping their home).[10] But the County cannot point to any such competing interests here. The challenged provisions do not seek to preserve a particular type, quantity, or quality of agricultural activity. Accordingly, at best, the County may assert a general interest in having *every* landowner engaged in *some* form of commercial agriculture. Balancing that against the strong liberty interests of the landowner, the provisions cannot be justified.

The LCP Amendments are blunt, and not tailored to whatever interest the County might assert. They also entirely lack provisions that would allow landowners—once a restrictive covenant had been granted—from exiting the agricultural covenant restrictions. To the contrary, they will be applied to all landowners, without regard to changed circumstances, financial non-viability, or the simple desire to retire (without losing ownership of the land). Such "take it or leave it" restrictions are precisely why the unconstitutional conditions doctrine exists. Thus, under either test, the LCP provisions are unconstitutional.

CONCLUSION

The Superior Court's ruling, if allowed to stand, would give local governments unprecedented power to condition development

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[10] Indeed, Justice Bird would have found that the restrictions satisfied strict scrutiny, arguing that the provision of housing served as a compelling governmental objective. *Id.* at 110 (Bird, C.J., concurring and dissenting).

rights on promises to engage in government-chosen occupations forever. The Constitution forbids this. This Court should reverse the Superior Court's ruling and invalidate the LCP Amendments' unconstitutional provisions requiring perpetual engagement in commercial agriculture.

DATED: November 20, 2024.

Respectfully submitted,

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/s/ Jeremy Talcott
JEREMY TALCOTT
Attorneys for Plaintiffs and Appellants Arron Benedetti, et al.

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPELLANTS' OPENING BRIEF is proportionately spaced, has a typeface of 13 points or more, and contains 11,547 words.

DATED: November 20, 2024.

/s/ Jeremy Talcott
JEREMY TALCOTT

DECLARATION OF SERVICE

I, Tawnda Dyer, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 555 Capitol Mall, Suite 1290, Sacramento, California 95814.

On November 20, 2024, a true copy of APPELLANTS' OPENING BRIEF was electronically filed with the Court through Truefiling.com. Notice of this filing will be sent to counsel below if registered with the Court's efiling system. If counsel is not registered, counsel will receive a hard copy via first-class U.S. Mail, postage thereon fully prepaid, and deposited in a mailbox regularly maintained by the United States Postal Service in Roseville, California.

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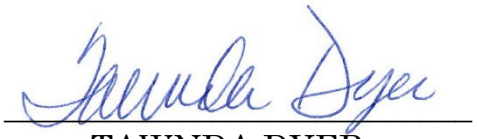
I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 20th day of November, 2024, at Roseville, California.



TAWNDA DYER