PACIFIC LEGAL FOUNDATION

October 31, 2016

Mr. John Ainsworth
Acting Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

VIA E-MAIL marinlcp@coastal.ca.gov
AND FIRST-CLASS MAIL

Re: Marin County Local Coastal Program Amendments

Dear Executive Director Ainsworth:

Pacific Legal Foundation and the California Cattlemen's Association submit these comments on the proposed Marin County Local Coastal Program Amendments.

Pacific Legal Foundation is the nation's oldest public interest property rights foundation. Over the last several years, PLF has closely followed Marin County's Local Coastal Program Amendment process. PLF attorneys have submitted comment letters and appeared in person at Marin County and California Coastal Commission hearings to highlight constitutional and other legal infirmities in provisions of the Local Coastal Program Land Use Policy Amendments and the Implementing Program.

The California Cattlemen's Association (CCA) is the predominant organization of cattle grazers in California, with more than 1,700 producer members throughout the state. CCA members own or lease property and graze cattle on land subject to the jurisdiction of the California Coastal Commission throughout many of California's coastal counties. The Association has established a Coastal Subcommittee with the express purpose of "help[ing] members located in this state's coastal zone with land use issues." CCA has closely followed Marin County's Local Coastal Amendment and Implementing Program at the behest of affected Marin County members, submitting detailed comments at every phase of the process, and appearing on numerous occasions before both this Commission and the Marin County Board of Supervisors.

Several provisions remain within the final Implementing Program that are especially concerning to PLF and CCA. These provisions could have substantial negative consequences for ranchers and farmers in Marin County. First, the Program's mandatory merger of legal lots into larger "farm

HEADQUARTERS: 930 G Street | Sacramento, CA 95814 | (916) 419-7111 | Fax: (916) 419-7747
ATLANTIC: 8645 N. Military Trail, Suite 511 | Palm Beach Gardens, FL 33410 | (561) 691-5000 | Fax: (561) 691-5006
DC: 3033 Wilson Boulevard, Suite 700 | Arlington, VA 22201 | (202) 888-6881 | FAX (202) 888-6855
HAWAII: P.O. Box 3619 | Honolulu, HI 96811 | (808) 733-3373 | Fax: (808) 733-3374
NORTHWEST: 10940 NE 33rd Place, Suite 210 | Bellevue, WA 98004 | (425) 576-0484 | Fax: (425) 576-9565
LIBERTY CLINIC: Chapman University, Fowler School of Law | 1 University Drive | Orange, CA 95866 | (714) 591-0490
ALASKA: (907) 278-1731 | **OREGON**: (503) 241-8179

E-MAIL: plf@pacificlegal.org
WEB SITE: http://www.pacificlegal.org

tracts" would significantly limit—and potentially eliminate—landowners' development rights on agricultural land without providing just compensation as required by the Takings Clauses of the United States and California Constitutions. Second, the Program requirements imposing affirmative agricultural easements and restrictive covenants on the division of land as conditions to development permits would likely constitute unconstitutional exactions.

Limitation of Development Rights

As we have previously pointed out to the Coastal Commission, the final Implementing Program contains provisions that significantly reduce landowners' development rights. The existing certified Local Coastal Program allows landowners to seek approval through a Conditional Use Permit or Master Plan process in order to build additional residential units beyond a primary dwelling unit. The currently established C-APZ-60 zoning allows for the development of one additional residential house per 60 acres. Under the new Land Use Plan, no single-family residential use will be allowed within the C-APZ zone, only agricultural dwelling units. Section 22.32.024(B) of the proposed Implementing Program limits the number of total structures to three agricultural dwelling units per "farm tract." Section 22.130.030 in turn defines "farm tract" as "all contiguous legal lots under common ownership."

This merger of legal lots will result in a substantial reduction in the development rights for landowners in the coastal agricultural zone of Marin County. For example, within a single large farm tract, an owner could be left with one or more legal lots deprived of all economically viable use. Regulations that deprive property owners of all economically viable use are a per se taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

Worse, Section C-AG-5(A) of the Local Coastal Program Land Use Plan caps additional permissible intergenerational homes at 27 for the entire Coastal Agricultural Zone. Once those 27 homes have been permitted, remaining farm tracts and legal lots will necessarily be deprived of all development rights. This increases the risk that Marin County will be subject to future claims of *Lucas*-type takings.

Even for lots that retain some economically viable use, the destruction of previously held development rights may require compensation under *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). The California Court of Appeal has recognized that such a significant downzoning of property rights may effect a compensable taking. *See Avenida San Juan Partnership v. City of San Clemente*, 201 Cal. App. 4th 1256 (2011) (finding a regulatory taking where a change in zoning definition reduced development rights of a 2.85-acre parcel from four dwellings per acre to one dwelling per twenty acres).

The act of merging legal lots into farm tracts for the purposes of determining development rights is itself constitutionally suspect. The issue of what constitutes the "parcel as a whole" within a takings

analysis is docketed for review before the United States Supreme Court in the case of *Murr v. Wisconsin*, 859 N.W.2d 628, *review denied*, 862 N.W.2d 899, *cert. granted*, 136 S. Ct. 890 (2016) (determining whether two legally distinct but commonly owned and contiguous parcels must be taken as a whole for the purposes of takings analysis). The outcome of *Murr* could potentially render this provision of the Program unconstitutional before it is even enacted.

This county-wide diminution of development rights is not only constitutionally questionable, it is unnecessary. Many ranchers and farmers in Marin County have voluntarily transferred conservation easements that protect agriculture and restrict development while preserving the value of their development rights. However, the Program's definition of farm tract, combined with its unit cap on development, will extinguish these rights for other landowners without providing compensation. We urge the Commission to reconsider this wholesale unsettling of the property rights expectations of ranchers and farmers in Marin County.

Affirmative Agricultural Easements and Restrictive Covenants on Division of Land

Section 22.32.024(A) of the final Implementing Program also contains a requirement that each "agricultural dwelling unit" be "owned by a farmer or operator" that is "directly engaged in agriculture on the property." This will require property owners to remain in a commercial agricultural market forever, even if continued commercial agricultural use becomes impracticable.

The Program defines "actively and directly engaged" as "making day-to-day management decisions and being directly engaged in production . . . for commercial purposes," or "maintaining a lease to a bona fide commercial agricultural producer." Section 22.130.030(A). This provision affirmatively requires landowners to participate in commercial agricultural markets in perpetuity—either personally or by forced association with a commercial agricultural producer. The requirement prevents the landowners, as well as their successors, from ever exiting the commercial agricultural market, even if temporarily fallowing the land were necessary to prevent significant economic hardship.

PLF has already successfully challenged a less onerous affirmative easement permit condition. *See Sterling v. California Coastal Commission*, No. CIV 482448 (Cal. Sup. Ct. June 18, 2010). In *Sterling*, Judge George A. Miram of the San Mateo County Superior Court held that an affirmative agricultural easement on 142 acres, imposed as a permit condition for the development of a single acre, violated *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The proposed Marin County affirmative easement requirement goes even further than that in *Sterling*, requiring perpetual *commercial* agricultural use.

Nollan and *Dolan* require an essential nexus and rough proportionality between the permitting condition and the public impact of a proposed development. Conditioning a permit for a single dwelling on the perpetual use of the property for commercial agricultural purposes fails the essential

nexus test, because a requirement for perpetual commercial agricultural use is not closely related to the impact of building a single dwelling. This is especially true where potential dwellings might be desired on sites that are not currently in agricultural use, or that may not even be suitable for such use. Similarly, the affirmative easement condition demands far more concessions than those needed to relieve the public impact emanating from the construction of a single dwelling, falling afoul of *Dolan*'s rough proportionality test. The proposed agricultural easement requirement will not survive the heightened scrutiny of permitting conditions applied under *Nollan* and *Dolan*.

Restrictive covenants against further division of legal lots also will be required as a condition of development. *See* Sections 22.32.024(J)(4) & 22.32.025(B)(4). A permanent restrictive covenant against subdivision of land placed on a large legal lot as a condition for construction of a single dwelling will run afoul of the same nexus and proportionality requirements of *Nollan* and *Dolan*. Much like the affirmative agricultural easement—and especially in conjunction with it—this requirement likely constitutes an unconstitutional exaction.

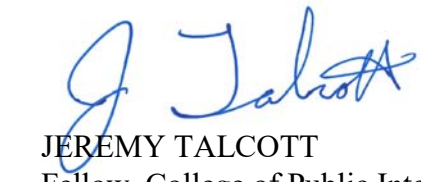
If the City of Marin County wants to encourage agricultural use, other means are available, such as the use of tax incentives. *See, e.g.*, *Williamson v. Commissioner*, 974 F.2d 1525, 1531-33 (9th Cir. 1992) (discussing provisions of estate tax law providing special benefits to property used as a family farm). Placing unconstitutional conditions on the ranchers and farmers of Marin County only serves to open the City of Marin County and the California Coastal Commission to potential litigation for takings claims.

Conclusion

PLF has fought for the property rights of all Americans for over four decades, and CCA has faithfully represented rancher interests in California for almost 100 years. Both organizations request this Commission to give close consideration to the objections raised in this comment letter. The proposed Coastal Program amendment and Implementing Program place severe—and potentially unconstitutional—burdens on the property rights of Marin County landowners, with many of these burdens acutely directed toward the agricultural community. PLF and the CCA urge

the Commission to consider these burdens when voting on certification of the proposed LCP amendments.

Sincerely,



JEREMY TALCOTT
Fellow, College of Public Interest Law
Pacific Legal Foundation

KIRK WILBUR
Director of Government Affairs
California Cattlemen's Association

cc: Marin County Board of Supervisors: BOS@marincounty.org
Marin County Planning Commission: planningcommission@marincounty.org
Marin County Farm Bureau: marincfb@svn.net
Sam Dolcini: slcdiverse@yahoo.com
Dominic Grossi: dgrossi73@att.net
Christian Scheuring, California Farm Bureau Federation: cscheuring@CFBF.com
Tito Sasaki, Sonoma County Farm Bureau: tito@att.net
John Azevedo, Sonoma County Farm Bureau: john.azevedo@kjmail.com
Stacy Carlsen, Marin County Agriculture Commissioner: Scarlsen@co.marin.ca.us
kirk@calcattlemen.org

J. DAVID BREEMER, No. 215039
E-mail: jdb@pacificlegal.org
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, California 95834
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

DAVID J. BYERS, No. 83388
E-mail: dbyers@landuselaw.com
McCracken, Byers & Richardson, LLP
870 Mitten Road
Burlingame, California 94010
Telephone: (650) 697-4890
Facsimile: (650) 697-4895

Attorneys for Plaintiffs and Petitioners

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

DAN STERLING and DENISE STERLING, Plaintiffs and Petitioners, v. CALIFORNIA COASTAL COMMISSION, Defendant and Respondent.	No. CIV 482448 Dept. 28 **[SECOND REVISED PROPOSED] STATEMENT OF DECISION**

INTRODUCTION

This case involves the California Coastal Commission's (CCC) attempt to require applicants (Sterlings) for a coastal development permit for one home to dedicate the remainder of their land—about 140 acres—to active agricultural use, forever. This condition demands that the Sterlings deed an easement to this effect to the People of the State of California. The Sterlings seek judgment on a motion for writ of mandate, invalidating the condition under Code of Civil Procedure § 1094.5.

Oral argument was held on February 25, 2010. Mr. J. David Breemer, of Pacific Legal Foundation, appeared on behalf of Petitioners Dan and Denise Sterling. Deputy Attorney General

Hayley Peterson appeared on behalf of Respondent California Coastal Commission. The Court has considered the pleadings and arguments, and now issues the following decision:

I

BACKGROUND

A. Facts and Local Administrative Process

Dan and Denise Sterling live in San Mateo County (County) with their four children. In 1997, the Sterlings purchased a largely unimproved 143-acre parcel of land (the Property) in El Granada, California, in the unincorporated area of the County.

The Property is comprised of sloping, dry, and sparsely vegetated land. Only small pockets of flat land near a creek, amounting to 10 acres in total, are considered prime agricultural soil. Neither this area nor any other part of the Property was used for crops at the time the Sterlings acquired it. There is evidence in the record that the Property cannot be viably farmed.

Recent owners, including the Sterlings, have leased upland areas of the Property to nearby ranchers for grazing 10 head of cattle. This arrangement is not for profit, but merely a mutually beneficial agreement by which the cattle owners get pasture, while the owner receives grazing that reduces fire hazards on the property.

The Sterlings bought the Property with the intent to build a permanent family home. Soon after acquiring the land, the family moved into a small, preexisting mobile home. The mobile had been placed on the lower, flatter portions of the Property by some unknown person who owned the land prior to the Sterlings. The Sterlings planned on using the mobile home as temporary quarters as they built a larger house.

Under the County's land use code, the Property is zoned for Planned Agricultural Development (PAD). This zoning classification conditionally permits residential homes, the allowable number depending on amount of acreage. Due to its size, the Sterlings' Property is entitled to two density credits; *i.e.*, two homes.

In 2000, the Sterlings applied to the County to subdivide their land into two parcels, one large and one small, and to build a 6,456-square-foot home on the larger proposed parcel. Five

///

years later, the Planning Commission denied the project, based primarily on objections to subdivision of the Property.

The Sterlings then abandoned their planned subdivision and simply sought approval of one home. They proposed the home on a flat area south of, and set back from, the creek. This area was and is not used for agriculture. As part of their application, the Sterlings submitted an agricultural management plan. Their plan stated that they desired to continue voluntarily grazing 10 head of cattle on about 1/3 of the Property, through a lease arrangement with a nearby rancher. The County unanimously approved this revised plan, finding it was consistent with the Local Coastal Program. Although approval was conditional, the County did not require the Sterlings to dedicate any kind of agricultural easement.

B. Coastal Commission Proceedings

Soon after the County approved the Sterlings' home plans, the CCC appealed the County decision to itself. No hearing was set on the issue for two years. During this time, the Sterlings continued to live in the small, preexisting mobile home. While discussing the project with the CCC staff, the Sterlings offered two potential 9,515-square-foot sites, rather than one, for their proposed home. The Sterlings specifically proposed an alternative to the County- approved "South Site." This new "North Site" was located on the mobile home pad north of the creek, in an area characterized by prime soil.

When the CCC refused to hold a hearing after two years, the Sterlings threatened to file a suit to compel one. The CCC staff subsequently set a final hearing on February 5, 2009. In so doing, the staff recommended that the CCC not consider the new North Site. The CCC staff report and hearing thus focused solely on the County-approved "South Site."

The staff recommended that the CCC approve the Sterlings' proposed home on the South Site, subject to approximately 11 new conditions, and 32 conditions previously required by the County. One of the new conditions recommended by CCC staff was that the Sterlings dedicate to the public an "affirmative" agricultural use easement on all of the Property lying outside a 10,000-square-foot home building area. This condition specifically provided, in part:

///

"All areas of the Property [except for the 10,000 square foot development area and driveway] shall at all times be maintained in active agricultural use;"

the Sterlings must, as permittees, "either personally conduct agriculture on all their land or enter into a lease with a third party willing to engage in agricultural use on the land;"

"[Prior to issuance of the coastal development permit], the applicants [the Sterlings] shall dedicate an agricultural conservation easement to a public agency or private association approved by the [Commission] Executive Director:"

the "easement deed shall run with the land in favor of the People of the State of California . . . and shall be irrevocable."

After hearing and considering the staff recommendation, the CCC unanimously voted to approve the Sterlings' permit according to staff recommendation and conditions, including the foregoing affirmative agricultural condition. The CCC found that the condition was justified under the County LCP as an alternative to denying the Sterlings' permit. It also made legal conclusions that the agricultural easement condition was consistent with the constitutional standards of *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

On March 25, 2009, the Sterlings filed a verified Petition for Writ of Administrative Mandate under Code of Civil Procedure § 1094.5 and Complaint for Declaratory Relief. The petition for mandate alleges that CCC lacks jurisdiction and authority to impose the affirmative agricultural easement condition under the LCP and that the condition is unconstitutional as a taking of private property. The parties subsequently stipulated to hearing the mandate cause of action first.

II

STANDARD OF REVIEW

This Court interprets regulations and ordinances on a *de novo* basis. *Schneider v. Calif. Coastal Comm'n*, 140 Cal. App. 4th 1339, 1343-44 (2006) ("Where jurisdiction involves the interpretation of a statute, regulation, or ordinance, the issue of whether the agency proceeded in excess of its jurisdiction is a question of law."); *Burke v. Cal. Coastal Comm'n*, 168 Cal. App. 4th 1098, 1105-06 (2008).

///

A claim that an administrative decision amounts to an unconstitutional taking of property is typically a mixed question of law and fact. *Ali v. City of Los Angeles*, 77 Cal. App. 4th 246 (1999). When a constitutional issue hinges on undisputed findings, the questions are legal and reviewed de novo. *Aries Dev. Co. v. Calif. Coastal Zone Conservation Comm'n*, 48 Cal. App. 3d 534, 546 (1975); *Liberty v. Cal. Coastal Comm'n*, 113 Cal. App. 3d 491, 502 (1980).

III

THE AFFIRMATIVE AGRICULTURAL EASEMENT IS AN UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY

The parties disagree as to whether the CCC has authority and jurisdiction under the County LCP—whose rules the CCC must apply here—to impose the agricultural easement condition on the Sterlings. The Court believes the CCC may have jurisdiction. However, the Court need not conclusively decide this issue, because even if the active agriculture easement is authorized by the LCP, the condition is invalid as an unconstitutional taking of private property.

A. The *Nollan* and *Dolan* Takings Tests

In the land use permitting arena, the controlling constitutional "takings" decisions are *Nollan* and *Dolan*. Together, this Supreme Court jurisprudence requires "proof by the local permitting authority of both [1] an "*essential nexus*" or relationship between the permit condition and the public impact of the proposed development, and of [2] a "*rough proportionality*" between the magnitude of the [] exaction and the effects of the proposed development.'" *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 860 (1996) (emphasis added). The affirmative agricultural easement condition fails both prongs.

1. The *Nollan* "Nexus" Test

In *Nollan*, the Supreme Court held that land use agencies may not use their permitting powers as an opportunity to exploit property owners by demanding concessions from them in exchange for development permits. *See Nollan*, 483 U.S. at 836-37; *Surfside Colony, Ltd. v. Cal. Coastal Comm'n*, 226 Cal. App. 3d 1260, 1269 (1991). *Nollan* held that a permitting authority can require a property owner to dedicate real property to public use in exchange for a permit only when the condition serves the same purpose, and remedies the same harm, as outright denial of the

permit. *Ehrlich*, 12 Cal. 4th at 860. This standard requires the government to show a direct "relationship between the permit condition and the public impact of the proposed development." *Id.* at 860.

Nollan emphasized that conditioning a permit on property owner concessions unrelated to the proposed project is problematic and unconstitutional because it suggests "'an out-and-out plan of extortion.'" *Id.* (citation omitted).

In *Ehrlich*, 12 Cal. 4th 854, the California Supreme Court accepted *Nollan*'s rationale and adopted the "nexus" test as a limit on permitting authorities in California. *Ehrlich*, 12 Cal. 4th at 860 (requiring a "relationship between the permit condition and the public impact of the proposed development"). *Ehrlich* emphasized that the *Nollan* "nexus" test imposes a heightened level of constitutional scrutiny. *Id.* at 866, 868, 871 n.7; *Surfside Colony*, 226 Cal. App. 3d at 378.

Here, the CCC imposed the affirmative agricultural easement condition on the Sterlings as an alternative to permit denial. It is not clear, however, that the easement condition substantially serves the same purpose as denial.

The Sterling home site is not in active agricultural use. Therefore, if a permit were denied, the homesite would remain in a raw state that would *potentially* allow future agricultural use. Permit denial would not cause any actual agricultural use to occur. On the other hand, the CCC's affirmative agricultural easement condition does. It imposes *actual* agricultural activity, rather than simply ensuring agricultural potential. The condition therefore serves a different public purpose from permit denial; while denial might advance preservation of agriculturally suitable land, the condition institutes actual agricultural use. The disconnect between the public interests served by permit denial and those served by the affirmative agricultural easement suggests the condition unconstitutional. *Nollan*, 483 U.S. at 837, 841-42.

Put differently, the affirmative agricultural easement condition fails the Nollan test because it is not related to the impact of the Sterling home. Because the Sterlings' home is to be built on a small area of their land that is not in active agricultural use, it will not take away any active agriculture. The affirmative easement does not mitigate the actual impact of the home, which is simply that the one acre of land would be taken out of potential, not actual, agricultural use. There

is no "relationship between the permit condition [requiring active agricultural activity] and the public impact of the proposed development [no loss of agricultural activity]." *Id.* at 860. Since there is insufficient evidence of a "close connection between the burden [caused by the development] and the condition," as required by *Nollan*, the condition is therefore unconstitutional. *Surfside Colony*, 226 Cal. App. 3d at 378; *Nollan*, 583 U.S. at 838; *Rohn v. City of Visalia*, 214 Cal. App. 3d 1463, 1475-76 (1989).

2. The *Dolan* "Rough Proportionality" Test

Even if the affirmative agricultural easement condition could satisfy *Nollan*, it fails the *Dolan* test. Under *Dolan*, the government must show its condition bears "rough proportionality" in both "*nature and extent* to the impact of the proposed development." *Dolan*, 512 U.S. at, 391 (emphasis added); *Ehrlich*, 12 Cal. 4th at 879-80.

A permit condition fails *Dolan*'s "roughly proportionality" standard if it demands more concessions (in nature or extent) from a property owner than needed to alleviate the public impact emanating from a project. *Dolan*, 512 U.S. at 393; *Liberty*, 113 Cal. App. 3d at 502. Here, the easement runs afoul of *Dolan* because it imposes demands that go beyond addressing the only arguable impact of the Sterlings' home—taking away a small area of idle land that could be potentially used for agriculture. The CCC demanded permanent institution of actual agricultural uses to mitigate a purported loss of potential agricultural land. The easement is not proportional in nature. *Dolan*, 512 U.S. at 393; *Liberty*, 113 Cal. App. 3d at 502.

The affirmative agricultural easement also fails *Dolan*'s rough proportionality test in scope and extent. The Sterlings' home takes up less than an acre. The CCC's easement condition takes 142 acres, requiring agricultural activity forever on behalf of the public, and transferring all the Sterlings' development rights to the public. It is flat out unconstitutional to require 142 acres to mitigate a perceived loss of one acre.

The CCC nevertheless argues that the agricultural easement condition is constitutionally justified because the Sterlings already engage in voluntary and limited cattle grazing. This contention is off point.

///

The Sterlings' current grazing plan—allowing 10 head of cattle on 1/3 their land—is entirely voluntary and could be terminated at any time by either the Sterlings or the rancher to whom they lease the grazing rights. The CCC cites no authority holding that a property owner's decision to *voluntarily* engage in an activity allows the government to impose a permit condition making the use mandatory, especially when the mandatory use is unrelated to the proposed development. There is a major difference between a voluntary use of land and one that is made mandatory by the government for a public purpose, forever. The added burden on the Sterlings is irreconcilable with *Nollan* and *Dolan*.

Further, CCC affirmative agricultural easement condition is much more burdensome in substantive scope than the Sterlings' voluntary grazing plan. The CCC condition grants an interest in the Sterlings' real property[1] to the People of the State of California; one that wipes out the Sterlings' development right. Conversely, the Sterlings' voluntary grazing plan leaves their development rights—including the possibility of another home for the Sterlings' children—in the Sterlings' hands. And because the CCC easement grants an interest in the Sterlings' real property to another—a public or quasi-public entity—that outside entity acquires the right to "monitor" the Sterlings and their property. Under the voluntary plan, they keep their privacy. The CCC's permanent affirmative agricultural easement condition is not a proxy for, or related to the Sterlings' voluntary grazing of 10 head of cattle.

The CCC repeatedly suggests that the easement condition is justifiable as a means to protect agriculture. This misses the point of *Nollan* and *Dolan*. When a condition is not properly tailored to the development, the general interest it purportedly advances cannot preserve it. *Dolan*, 512 U.S. at 387; *Ehrlich*, 12 Cal. 4th at 868; *Surfside Colony, Ltd. v. California Coastal Comm'n*, 226 Cal. App. 3d 1260 ("While general studies may be sufficient to establish a mere rational relationship between [a legitimate interest and condition], Nollan requires a 'close connection' between the burden and the condition.").

---

[1] An easement is a real property interest. 12 Witkin, Summary 10th Real Property, § 382, at 446 (2005).

Protecting agriculture is a valid governmental goal. But the means chosen here by the CCC to achieve that goal—imposing the affirmative agricultural easement on the Sterlings—cannot pass constitutional muster because they are neither (1) clearly nor (2) proportionately connected to the impact of the Sterlings' home. The easement condition is irreconcilable with *Nollan, Dolan* and the Constitution, and must be set aside. The petition for writ of mandate is granted.

DATED: 6/17/10.

GEORGE A. MIRAM

HONORABLE GEORGE A. MIRAM

DECLARATION OF SERVICE BY MAIL

I, Laurie E. White, 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 3900 Lennane Drive, Suite 200, Sacramento, California 95834.

On June 11, 2010, a true copy of [SECOND REVISED PROPOSED] STATEMENT OF DECISION was placed in an envelope addressed to:

Hayley Peterson
Deputy Attorney General
Office of the Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

which envelope, with postage thereon fully prepaid, was then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 11th day of June, 2010, at Sacramento, California.

LAURIE E. WHITE