



MEMORANDUM

**TO: Marin County Planning Commission**

**FROM: Kristin Drumm, Senior Planner  
Jack Liebster, Planning Manager**

**DATE: October 9, 2018**

**RE: Response to Pacific Legal Foundation letter dated October 1, 2018**

Staff provides the following in response to the Pacific Legal Foundation letter addressing the Marin County Local Coastal Program Amendments.

Definition of Existing Structure

Staff proposes to delete the definition of “existing structure” from Amendment 7. However, this definition will be addressed as part of discussions regarding the Amendment to the Environmental Hazards section since it includes references to shoreline protective devices.

Farm Tract

Land Use Policy C-AG-2 was certified as part of Amendment 2 by the California Coastal Commission staff on June 6, 2018, and thus is not before the Planning Commission. This policy defines allowable land use within the Coastal Agricultural Production Zone (C-APZ) and provides for Agricultural Dwelling Units consisting of “one farmhouse or a combination of one farmhouse and one intergenerational home per farm tract, defined in this LCP as all contiguous legal lots under common ownership within a C-APZ zoning district.” Important to this policy is the implementing zoning provision in Development Code Section 22.32.024(D) (Agricultural Dwelling Units) of the proposed Implementation Plan, which allows the sale of any legal lot comprising the farm tract without the imposition of any restrictive covenants (other than a covenant for the legal lot upon which a farmhouse is permitted). Under this provision, contiguous legal lots within a farm tract may be sold and developed as separate farm tracts, of course subject to applicable LCP policies and standards. By removing regulatory barriers to the future sale and development of legal lots within a farm tract, this provision avoids de facto mergers and takings of property. Additionally, Land Use Policy C-AG-5 supports the preservation of family farms by facilitating multi-generational operation and succession through the development of agricultural dwelling units. Both policies are now certified and are not under discussion.

As mentioned by the Pacific Legal Foundation, Implementation Program Section 22.32.024(B) limits the number of agricultural dwelling units within an Agricultural Dwelling Cluster per “farm tract.” Both the current C-APZ standards and proposed LCP amendments allow one single family residence and agricultural worker housing subject to a restrictive covenant ensuring the

remainder of the land is preserved for agricultural production. However, the proposed LCP amendments include a new provision allowing for up to two additional intergeneration homes per farm tract that are primarily intended for family members (hence the term “intergenerational”) not necessarily involved in day-to-day agricultural production activities. The proposed amendments thus provide greater flexibility for farmers and ranchers both in terms of the number and types of dwelling units on their property. As pointed out above, Section 22.130.030 defines farm tract as “all contiguous legal lots under common ownership” while maintaining the ability of property owners to sell legal lots comprising the farm tract without covenants restricting future development subject to the land use regulations that would otherwise apply through the LCP and the Countywide Plan. The standards in these sections are consistent with the certified policy language in Amendment 2 and also subject to the provisions in Section 22.32.024 (D) noted above. Thus, no revisions are proposed for these sections.

#### Affirmative Agricultural Easements and Restrictive Covenants on the Division of Land

The certified Land Use Plan includes Program C-AG-2.b to evaluate the efficacy of permitting limited non-agricultural residential development within the C-APZ zone through permanent affirmative agricultural easements. The details of such a program would need to be fleshed out through a combination of additional community meetings and public hearings before the Planning Commission and Board of Supervisors and would have no effect until certified as an LCP Amendment by the Coastal Commission.

A permanent conservation easement is required per Land Use Policy C-AG-7 for permissible land divisions and other non-agricultural conditional uses, where consistent with state and federal laws. Only agricultural and compatible uses are allowed under the easement, and the policy requires the execution of a covenant not to divide for the parcels created under this division so that each will be retained as a single unit and will not be further subdivided.

PLF also contends that LCP Amendment provisions that “each ‘agricultural dwelling unit’ be ‘owned by a farmer or operator ’who is ‘actively and directly engaged in agricultural use on the property’” will force property owners to remain in a commercial agricultural market permanently, even if such agricultural use becomes impracticable. The County disagrees with PLF’s legal argument that the subject provisions represent “unconstitutional conditions.” PLF, representing the estate of Willie Benedetti, has a pending lawsuit against the County and the Coastal Commission advancing these arguments of unconstitutionality. If that lawsuit should move forward, the County and the Commission will more specifically address PLF’s legal arguments in the course of the litigation.

#### Definition of Ongoing Agriculture

PLF contends that the provision for the Director of the Community Development Agency to require a CDP for any activity that he determines “will have significant impacts to coastal resources” constitutes unlimited discretion that invites arbitrary enforcement and creates the potential for future abuse.

On the contrary, the LCP overall is committed to the protection of agriculture as required by the Coastal Act. The clear intent of the Ongoing Agriculture is to allow ranchers and farmers to undertake routine agricultural production activities and to respond to market

requirements in a timely manner without the delay and expense of obtaining a coastal permit. The Director of CDA will act consistent with that context and intent, and will only require a permit when truly unusual circumstances arise that will have *significant impacts* to coastal resources.