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November 9, 2016
 Agenda Item 9

November 9, 2016 (Agenda)

Contra Costa Local Agency Formation Commission
 651 Pine Street, Sixth Floor
 Martinez, CA 94553

LAFCO Agricultural & Open Space Preservation Policy

Dear Commissioners:

BACKGROUND: Development of a LAFCO AOSPP was identified years ago as part of the Commission’s ongoing efforts to update its Policies & Procedures. The discussion was elevated in March 2015, in conjunction with a report from LAFCO’s Policies & Procedures Committee (“Committee”).

Following a LAFCO hosted Agriculture & Open Space Preservation Workshop (July 2015), and extensive stakeholder outreach and engagement, the Committee presented a draft Agricultural & Open Space Preservation Policy (AOSPP) to the Commission in March 2016; and subsequently, a revised draft policy to the Commission in July 2016.

As directed by the Commission, the Committee returned to the Commission in September 2016 with two versions of the draft AOSPP - *Version 1* (applicant proposed mitigation) and *Version 2* (required mitigation), which reflects the Commission’s prior comments, along with feedback received from interested parties.

Throughout the development of the AOSPP, LAFCO has received valuable input from agriculture, building, environmental, legal, ranching, local government and other interest groups, along with members of the general public (for a chronology of the AOSPP progression, please refer to the July 13, 2016 Committee report).

DISCUSSION: This report from the Committee transmits an updated version of the draft AOSPP titled “Version 3” along with a legal opinion regarding whether or not the LAFCO AOSPP is considered a “project” under the California Environmental Quality Act (CEQA).

At the September 14, 2016 meeting, LAFCO discussed two versions of the AOSPP. These versions differ primarily in the following ways (as shown on the table below):

Version 1	Version 2
<ul style="list-style-type: none"> • Applicant proposes mitigations when an application converts prime ag, ag, and/or open space lands to other uses. • Applicant provides an analysis of the effectiveness of the proposed mitigations in preserving prime ag, ag, and open space lands and sustaining ag related businesses. 	<ul style="list-style-type: none"> • LAFCO describes conditions that an applicant should fulfill when an application converts prime ag, ag, and/or open space lands to other uses. A goal is to mitigate impacts to ag, prime ag and open space lands to at least the degree specific in the policy. • Applicant may suggest mitigations that meet the conditions outlined by LAFCO or may suggest alternative mitigations. • Applicant assesses the effectiveness of the proposed mitigations in preserving prime ag, ag, and open space lands and sustaining ag related businesses. • Applicants are encouraged to provide mitigations that are at least as effective as those outlined by LAFCO.

During the Commission’s discussion in September, the Commission received valuable public input regarding the two versions. Commissioners appeared to be almost equally split between preferring Version 1 and Version 2. The Commission continued the matter to the November 9th LAFCO meeting to allow the Policy Committee to make further refinements based on comments provided in September, and to allow LAFCO staff to further analyze any potential CEQA implications associated with the policy.

Based on the feedback, the Committee created a new version of the AOSPP – *Version 3* – that blends what the public and Commission said were the best features of *Versions 1 and 2*, while addressing other concerns.

A summary of the *Version 3* approach to the same considerations outlined in *Versions 1 and 2* appears below. Compared with earlier versions, *Version 3* is intended to provide applicants with more flexibility to propose conditions while outlining an example set of conditions that LAFCO will generally find to be sufficient for the purposes of preserving prime agricultural, agricultural, and open space lands.

Version 3
<ul style="list-style-type: none"> • The AOSPP includes an example set of mitigations which are the same as those outlined in Version 2. Version 3 does not require applicants to meet these examples. • Applicant proposes mitigations when an application converts prime ag, ag, and/or open space lands to other uses. • Applicant provides an analysis of the effectiveness of the proposed mitigations in preserving prime ag, ag, and open space lands and sustaining ag related businesses, and compares this effectiveness to what would be achieved if the example conditions were implemented. If the effectiveness of the proposed mitigations is less than that of the example, the applicant can explain why the proposed mitigations are sufficient.

The Committee believes that Version 3 provides the applicant and local land use authorities with more flexibility than Version 2. Version 3 is clearer about the expectations that LAFCO has for the effectiveness of mitigations than is Version 1, which reduces uncertainty for applicants. Version 3 also provides the Commission with greater flexibility to modify conditions from one application to another based on the local situation.

There are three other key changes: 1) Version 3 incorporates suggestions from the Building Industry Association presented in September that are consistent with CKH law; 2) the example mitigation for conversion of open space land is amended to be more sensitive to the nature of the open space land being converted; and 3) as requested by the Commission, Version 3 also includes a provision that LAFCO shall review the policy one year after adoption. These modifications can be added to Version 1 or 2 should the Commission prefer one of these versions.

In addition, there are several minor changes that the Committee believes will not be controversial. See attached tracked (Attachment 1a) and clean (Attachment 1b) copies of Version 3. The tracked copy of Version 3 (attached) uses Version 1 as a basis for comparison. For copies of Versions 1 and 2, please refer to the September 14, 2016 LAFCO meeting agenda packet online at http://www.contracostalafco.org/view_agenda/09142016.

All three versions provide that the Commission will consider the application and all relevant information, and make its decision regarding the application and appropriate conditions.

The LAFCO Executive Officer has worked closely with the Committee on these matters and concurs with the Committee's recommendations.

CEQA and LAFCO's Proposed AOSPP

LAFCO's legal staff has prepared a CEQA analysis of LAFCO's proposed AOSPP (Attachment 2). The analysis applies primarily to Version 3, but is also relevant to Versions 1 and 2. The legal analysis concludes that Version 3 is not a project under CEQA because the policy only provides a framework for satisfying LAFCO's existing obligations under state law. The policy does not commit to, influence, determine, or promote any proposal in a way that could result in a direct, or reasonably foreseeable indirect, physical change in the environment. The policy does not portend any particular future actions affecting the environment.

The legal analysis also notes that if the policy is revised to require specific mitigation for impacts to agricultural and open space lands, additional CEQA environmental review may be needed before the policy is adopted. The legal analysis additionally notes that although adoption of the recommended policy is not a project, the Commission may still choose to direct LAFCO staff to file a CEQA Notice of Exemption resulting in a reduced (35-day) statute of limitations for challenging the adoption of the policy on CEQA grounds.

RECOMMENDATIONS:

The Committee and LAFCO staff recommend that the Commission:

1. Adopt Version 3 as presented and direct LAFCO staff to file a Notice of Exemption; or
2. Adopt Version 3 with changes as desired; or
3. Adopt either Version 1 or 2, with changes as desired, and take the appropriate CEQA action.

Respectfully submitted,

Sharon Burke and Don Tatzin

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Attachment 1a – Version 3 - Tracked Draft LAFCO AOSPP

Attachment 1b – Version 3 – Clean Draft LAFCO AOSPP

Attachment 2 – CEQA Analysis

Attachment 3 – Frequently Asked Questions

Attachment 4 - Comments Received Since September 15, 2016 to Draft LAFCO Agricultural & Open Space Preservation Policy

4.1 DRAFT AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY – VERSION 31

PREFACE

LAFCO’s enabling and guiding legislation, the Cortese Knox Hertzberg (CKH) Act, begins with the following statement.

“The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.” (§56001)

Beginning in the late 1800s, farmers and ranchers made Contra Costa County an important source of agricultural products. Much of the County has good soils, a mild climate, and adequate water. Western and central Contra Costa were used for agriculture well into the twentieth century. John Muir farmed and ranched approximately 2,600 acres in what is now Martinez, Concord, and the Alhambra Valley. While the County’s population was increasing, by current standards, the County’s population was small. The 1910 census recorded 31,764 residents, less than the 2015 population of Pleasant Hill.

Development, which began in earnest after World War II, transformed Contra Costa County. As urban and suburban development occurred, Contra Costa County experienced significant reduction in the amount and [relative](#) economic importance of agricultural lands. Simultaneously, critical open space habitat for sensitive species declined. By 2010, the Census reported that Contra Costa had 1,049,025 people, representing 3,300% growth since 1910. Contra Costa County’s 2040 population is forecast to be 1,338,400.

As a result of population and job growth, agricultural land was converted to houses, schools, commercial centers, job centers, and transportation corridors. In 2015, there were about 30,000 acres of active agricultural land in Contra Costa County, excluding rangeland and pastureland, most of it located in the eastern portion of the County. There are approximately 175,000 acres of rangeland and pastureland in the County.¹

Agriculture in Contra Costa County is worth approximately \$128.5 million (farm production [value](#)) in 2015 and is an important economic sector. The value of agricultural production has risen in recent years.² However, some worry that Contra Costa’s agricultural industry may approach a tipping point beyond which agriculture becomes less viable due to a lack of labor, suppliers, and processors located nearby.³

The pressure on agricultural land also extends to wildlife and riparian areas. In some cases, conversion of these lands through development disrupts an ecosystem that used to depend on the now developed land as a travel route, or a seasonal or permanent source of food and water.

The County and some cities are active in efforts to preserve agricultural and open space lands. For example, in the 1970s, the County created a County Agricultural Core to the east and south of Brentwood.

¹ 2015 Crop and Livestock Report, Contra Costa County Agricultural Commissioner

² 2008-2015 Crop and Livestock Reports, Contra Costa County Agricultural Commissioner

³ Sustaining our Agricultural Bounty: An Assessment of the Current State of Farming and Ranching in the San Francisco Bay Area – A white paper by the American Farmland Trust, Greenbelt Alliance and Sustainable Agriculture Education (SAGE), January 2011

The City of Brentwood has an agricultural mitigation program that collected more than \$12 million in mitigation fees; and through conservation organizations, ~~and~~ acquired the development rights over approximately 1,000 acres of agricultural lands. In 2006, the voters adopted Urban Limit Lines (ULLs) for the County and each municipality, and these actions helped protect undeveloped land outside the ULLs. Furthermore, the County adopted the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP) that protects sensitive habitat for plants and animals in East Contra Costa.

LAFCO embraces its objectives of encouraging orderly growth and development while discouraging urban sprawl, efficiently extending government services, and preserving open space and prime agricultural lands. Through the review and approval or denial process of boundary changes and other applications, LAFCO has considerable authority to provide for the preservation of open space and agricultural land, and impose terms and conditions. (§§56885 -56890).

While LAFCO has authority to achieve the objectives of the CKH Act, there are things that LAFCO cannot do, for example, directly regulate land use.⁴ [LAFCO defers to agencies that have land use planning authority.](#) Therefore, successful preservation of prime agricultural, agricultural and open space lands and of agriculture as a business requires that both applicants and other agencies also lead. At the end of this policy are observations about other opportunities facing residents, advocacy organizations, and governmental agencies that could also strengthen and preserve agriculture and open space lands.

[Contra Costa LAFCO adopted this policy on \[November 9, 2016\] and agreed to review the policy in one year.](#)

AUTHORITY OF LAFCO

LAFCO's authority derives from the CKH Act. Among the purposes of LAFCO are to encourage planned, orderly, and efficient urban development while at the same time giving appropriate consideration to the preservation of prime agricultural, agricultural and open space lands (§56300). The CKH Act includes provisions that grant LAFCO the authority to consider and provide for the preservation of open space and agricultural lands. Among these provisions is §56377 which describes the intent of the legislation with regard to agricultural lands:

“**56377.** In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space lands to uses other than open space uses, the commission shall consider all of the following policies and priorities:
(a) Development or use of land for other than open space uses shall be guided away from existing prime agricultural lands in open space use toward areas containing non-prime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.
(b) Development of existing vacant or non-prime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the SOI of a local agency should be encouraged before any proposal is approved that would allow for or lead to the development of existing open space lands for non-open space uses that are outside of the existing jurisdiction of the local agency or outside of the existing SOI of the local agency.”

⁴“A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements” [§§56375(6), 56886].

LAFCO is specifically charged in some instances with protecting open space and agricultural land. For example, an island annexation may not be approved if the island consists of prime agricultural land [§56375.3(b)(5)]. LAFCO may not approve a change to an SOI where the affected territory is subject to a Williamson Act contract or farmland security zone unless certain conditions exist (§§56426 and 56426.5).

When making a decision, LAFCO must consider whether an application and its effects conform to both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Sections 56377 and 56668(d). Finally, LAFCO must consider the effect of an application on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].

An application for a change of organization, reorganization, the establishment of or change to a sphere of influence (SOI), the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act will be evaluated in accordance with LAFCO's adopted Agricultural and Open Space Preservation Policy.

PURPOSE OF THE POLICY

The purpose of this policy is threefold: 1) to provide guidance to the applicant on how to assess the impacts on prime agricultural, agricultural and open space lands of applications submitted to LAFCO, and enable the applicant to explain how the applicant intends to mitigate those impacts [and how the effectiveness of the measures proposed in the application compares to the mitigation example outlined in this policy](#); 2) to provide a framework for LAFCO to evaluate and process in a consistent manner, applications before LAFCO that involve or impact prime agricultural, agricultural and/or open space lands; and 3) to explain to the public how LAFCO will evaluate and assess applications that affect prime agricultural, agricultural and/or open space lands.

DEFINITIONS

Several terms are important in understanding LAFCO's responsibility and authority to preserve prime agricultural, agricultural and open space lands. These terms and definitions are found below and are applicable throughout these policies. The CKH Act contains the following definitions for agricultural land, prime agricultural land and open space:

56016. "Agricultural lands" means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.

56064. "Prime agricultural land" means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

- (a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
- (b) Land that qualifies for rating 80 through 100 Storie Index Rating.
- (c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.
- (d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

(e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

56059. "Open space" means any parcel or area of land or water which is substantially unimproved and devoted to an open-space use, as defined in Section 65560.

65560. (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional, or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, greenways, as defined in Section 816.52 of the Civil Code, and watershed lands.

(2) Open space used for the managed production of resources, including, but not limited to, forest lands, rangeland, agricultural lands, and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers, and streams that are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic, and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas that serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, greenways, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas that require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs, and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code (i.e., Native American Historical, Cultural and Sacred Sites).

GOALS, POLICIES AND GUIDELINES

The following Goals, Policies, and Guidelines are consistent with the legislative direction provided in the CKH Act. The Goals are intended to be the outcome LAFCO wants to achieve. The Policies provide direction with regard to how those Goals should be achieved by providing specific guidance for decision makers and proponents. Guidelines give stakeholders procedures and practical tips regarding what information LAFCO commissioners and staff need to evaluate an application that affects prime agricultural, agricultural and/or open space lands.

GOALS

Agriculture and open space are vital and essential to Contra Costa County's economy and environment. Accordingly, boundary changes for urban development should be proposed, evaluated, and approved in a manner that is consistent with the continuing growth and vitality of agriculture within the county. Open space lands provide the region with invaluable public benefits for all who visit, live and work in Contra

Costa County. The following goals will help guide LAFCO's decisions regarding prime agricultural, agricultural and open space lands.

Goal 1. Minimize the conversion of prime agricultural land and open space land to other land uses while balancing the need to ensure orderly growth and development and the efficient provision of services.⁵

Goal 2. Encourage cities, the county, special districts, property owners and other stakeholders to work together to preserve prime agricultural, agricultural and open space lands.

Goal 3. Incorporate agricultural and open space land preservation into long range planning consistent with principles of smart growth at the state, county, and municipal levels.

Goal 4. Strengthen and support the agricultural sector of the economy.

Goal 5. Fully consider the impacts an application will have on existing prime agricultural, agricultural and open space lands.

Goal 6. Preserve areas that sustain agriculture in Contra Costa County.

Goal 7. Mitigate the impacts that will result from a LAFCO approval that will lead to the conversion of prime agricultural, agricultural, and open space lands using the Policies and Guidelines included in this to at least the degree specified in the Agricultural and Open Space Preservation Policy as an input to defining and assessing mitigations.

POLICIES

It is the policy of Contra Costa LAFCO that, consistent with the CKH Act, an application for a change in organization, reorganization, for the establishment of or change to an SOI, the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act ("applications"), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration to preserving open space, agricultural and prime agricultural lands within those patterns. LAFCO's Agricultural and Open Space Preservation Policy provides for a mitigation hierarchy which 1) encourages avoidance of impacts to prime agricultural, agricultural and open space lands, 2) minimizes impacts to these lands, and 3) mitigates impacts that cannot be avoided while pursuing orderly growth and development.

The following policies support the goals stated above and will be used by Contra Costa LAFCO when considering an application that involves prime agricultural, agricultural and/or open space lands:

Policy 1. The Commission encourages local agencies to adopt policies that result in efficient, coterminous and logical growth patterns within their General Plan, Specific Plans and SOI areas, and that encourage preservation of prime agricultural, agricultural and open space lands in a manner that is consistent with LAFCO's policy.

Policy 2. Vacant land within urban areas should be developed before prime agricultural, agricultural and/or open space land is annexed for non-agricultural and non-open space purposes.⁶

⁵ In minimizing the conversion of open space land, the Commission may give lower priority to rangeland as defined per Public Resources Code per 65560.b.24789.2(i).

Policy 3. Land substantially surrounded by existing jurisdictional boundaries (e.g., islands) should be annexed before other lands.

Policy 4. Where feasible, and consistent with LAFCO policies, non-prime agricultural land should be annexed before prime agricultural land.

Policy 5. While annexation of prime agricultural lands, agricultural lands and open space lands is not prohibited, ~~annexation of these areas for urban development is not encouraged if there are in general, urban development should be discouraged in these areas. For example, agricultural land should not be annexed for non-agricultural or non-open space purposes when~~ feasible alternatives exist that allow for orderly and efficient growth. Large lot rural development that places pressure on a jurisdiction to provide services, and causes agricultural areas to be infeasible for farming or agricultural business, is discouraged.

Policy 6. The continued productivity and sustainability of agricultural land surrounding existing communities should be promoted by preventing the premature conversion of agricultural land to other uses and, to the extent feasible, minimizing conflicts between agricultural and other land uses. Buffers and/or local right to farm ordinances should be established to promote this policy. Contra Costa County has a Right to Farm ordinance which requires notification of ~~purchases-purchasers~~ and users of property adjacent to or near agricultural operations of the inherent potential problems ~~associates-associated~~ with such purchase or residential use.

Policy 7. Development near agricultural land should minimize adverse impacts -to agricultural operations.

Policy 8. Development near open space should minimize adverse impacts to open space uses.

Policy 9. The Commission will consider feasible mitigation (found in the following guidelines) if an application would result in the loss of prime agricultural, agricultural and/or open space lands.

Policy 10. Any mitigations that are conditions of LAFCO's approval of an application should occur close to the location of the impact and within Contra Costa County.

GUIDELINES

These Guidelines are intended to provide further direction regarding the application of LAFCO's Goals and Policies; to advise and assist the public, agencies, property owners, farmers, ranchers and other stakeholders with regard to LAFCO's expectations in reviewing an application that involves prime agricultural, agricultural and/or open space lands; and to provide sample mitigation measures.

Guideline 1. Applications submitted to LAFCO involving prime agricultural, agricultural and/or open space lands shall include an Agricultural and Open Space Impact Assessment. At a minimum the following shall be addressed as part of the assessment:

- a. An application must discuss how it balances the State's interest in preserving prime agricultural and/or open space lands against the need for orderly development (§56001).

⁶ The Commission recognizes there may be instances in which vacant land is planned to be used in a manner that is important to the orderly and efficient long-term development of the county and land use agency and that differs from the proposed use of the area in an application to LAFCO. LAFCO will consider such situations on a case-by-case basis.

- b. An application must discuss its effect on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].
- c. An application must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space land to uses other than open space uses (§56377).
- d. An application must describe whether, and if so, how it guides development away from prime agricultural, agricultural and/or open space lands.
- e. An application must describe whether, and if so, how it facilitates development of existing vacant or non-agricultural and/or non-open space lands for urban uses within the existing boundary or SOI of a local agency.
- f. An application ~~must~~ should discuss what measures it contains that will mitigate the loss of prime agricultural, agricultural, and/or open space lands and agricultural business and ~~to~~ preserve the physical and economic integrity of adjacent prime agricultural, agricultural and/or open space land uses. Applicants may consider but are not required to use the measures described in Guideline 4.
- g. An application should reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use. The land use inventory may be one that has been prepared by the applicable land use agency.
- f.h. An application should compare the effectiveness of the measures proposed by the applicant in Guideline 1, Section (f) with the example described in Guideline 3. If the applicant concludes that the proposed measures are less effective than the example, then the applicant should explain why the proposed measures are sufficient and/or describe other benefits they provide.

Guideline 2. If an application involves a loss of prime agricultural, agricultural and/or open space lands, property owners, cities and towns, the county, special districts, and other agricultural and open space conservation agencies should work together as early in the process as possible to either modify the application to avoid impacts or to adequately mitigate the impacts.

Guideline 3. ~~The following factors should be considered for an annexation of prime agricultural, agricultural and/or open space lands.~~ LAFCO expects each application that involves conversion of prime agricultural, agricultural and/or open space lands to other uses will include mitigations for such conversion. LAFCO's request for mitigations shall generally be satisfied if the proposed measures are consistent with the following:

- a. ~~The applicant should reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use. The land use inventory may be one that has been prepared by the applicable land use agency.~~
- a. The applicant should provide an evaluation of the effectiveness of measures proposed by the applicant to mitigate the loss of prime agricultural, agricultural and/or open space lands, and to preserve adjoining lands for prime agricultural, agricultural and/or open space use to prevent their premature conversion to other uses. Applications that would convert prime agricultural, agricultural, and open space land to another use, should protect land within Contra Costa County of reasonably equivalent quality and character, as defined by comparable ecological setting, topographic features, habitat quality, being unfragmented and having compatible surrounding land use activities, in the following ratios.
 1. Prime agricultural land – [three] acres protected for every acre converted
 2. Non-prime agricultural land – [two] acres protected for every acre converted

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3. Open space land – the ratio of acres protected for every acre converted shall be set by appropriate California State and federal agencies utilizing science-based impact analysis re: biological resources

b. Land may be protected through acquisition for permanent use as agricultural or open space uses, acquiring development rights that permanently preclude other uses, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.

c. Land may be protected directly by the applicant or a fee may be paid to local government agencies and/or, ~~recognized and~~ where appropriate, to ~~recognized and~~ accredited non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment must be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.

d. Applications that propose to convert prime agricultural and agricultural lands to other uses should include provisions to maintain at least a 300' buffer between the new uses and any adjacent prime agricultural and agricultural lands. Such buffers take many forms (e.g., easements, dedications, [appropriate general plan and zoning designations,] streets, parks, etc.).

e. Applications that propose to convert prime agricultural and agricultural lands to other uses and are adjacent to prime agricultural and agricultural lands should adopt a “Right to Farm” agreement that shall be included in the title of the land and in any subdivision thereof. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

b. **Guideline 4.** The following are measures an application may include to address the effects of an application on the conversion of prime agricultural, agricultural, and/or open space lands to other uses. An applicant is not limited to these measures and is not required to use any of them. Examples of such measures include, but are not limited to:

a. Acquisition or dedication of ~~prime agricultural and agricultural land (e.g., substitution ratio of at least 1:1 for the prime agricultural land annexed),~~ development rights, ~~bringing qualified land into an open space plan,~~ open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.

b. Establishing buffers between new uses and any adjacent prime agricultural and agricultural lands.

~~1.c.~~ Including a “Right to Farm” agreement in the title of the land and subdivision thereof.

~~2.d.~~ Participation in other local development programs that direct development towards urban areas in the county (such as transfer or purchase of development credits).

~~3.e.~~ Payment to local government agencies and/or recognized non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment should be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.

~~4.f.~~ Establishment of buffers of at least 300 feet to protect adjacent prime agricultural, agricultural and/or open space lands from the effects of development. Such buffers may be permanent, temporary, or

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rolling, and may take many forms (e.g., easements, dedications, appropriate zoning, streets, parks, etc.).

5-g. Where applicable, compliance with the provisions of the ECCCHCP/NCCP or a similar plan enacted by the County, cities or another regional, state or federal permitting agency.

6-h. Other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural and agricultural lands at a minimum 1:1 ratio.

7-i. Participation in an advanced mitigation plan for prime agricultural, agricultural and/or open space lands.

8-j. Participation in measures to promote and/or enhance the viability of prime agricultural and agricultural lands and the agricultural industry in Contra Costa County.

Guideline 54. Detachment of prime agricultural, agricultural and/or open space lands should be encouraged if consistent with the SOI for that agency.

Guideline 65. Annexation for land uses in conflict with an existing agricultural preserve contract shall be prohibited, unless the Commission finds that it meets all the following criteria:

- a. The area is within the annexing agency's SOI.
- b. The Commission makes findings required by Gov. Code Section 56856.5.
- c. The parcel is included in an approved city specific plan.
- d. The soil is not categorized as prime agricultural land.
- e. Mitigation for the loss of agricultural land has been secured in the form of agricultural easements to the satisfaction of the annexing agency and the county.
- f. There is a pending, or approved, cancellation for the property that has been reviewed by the local jurisdictions and the Department of Conservation.
- g. The Williamson Act contract on the property has been non-renewed and final approval of the non-renewal has been granted.

Guideline 76. Property owners of prime agricultural and agricultural lands adjacent to land that is the subject of a LAFCO application shall be notified when an application is submitted to LAFCO.

Guideline 87. Regarding the timing and fulfillment of mitigation, if the mitigation measure is not in place prior to LAFCO's approval, the responsible entity (e.g., government agency, recognized non-profit organization) should provide LAFCO with information as to how the entity will ensure that the mitigation is provided at the appropriate time. Following LAFCO's approval, the responsible entity should provide LAFCO with an annual update on the status of agricultural mitigation fulfillment until the mitigation commitment is fulfilled.

OBSERVATIONS

LAFCO identified other actions that are not within its purview but that if followed could reduce the impacts of new development on prime agricultural, agricultural, and open space lands. These are provided here so that applicants, other governmental agencies, advocacy organizations, and the public might consider them.

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Observation 1. LAFCO will evaluate all applications that are submitted and complete. However, LAFCO notes that over a period the impact of new applications is likely to be reduced if applicants adopt a hierarchy that gives preference to those projects that have no impacts on prime agricultural, agricultural and/or open space lands, followed by those that minimize impacts, and lastly those that require mitigation of their impacts.

Observation 2. Undeveloped prime agricultural, agricultural and open space lands exist primarily in east Contra Costa County, as does much of the remaining open space; however, most of the historical conversion of this land occurred elsewhere in the county. In order to preserve the remaining land, a countywide effort involving funding may be appropriate.

Observation 3. Any jurisdiction that contains prime agricultural, agricultural and/or open space land can periodically review whether its land use and other regulations strike the proper balance between discouraging development and conversion of prime agricultural, agricultural and open space lands with encouraging economically viable agriculture-based businesses that will keep agriculture production high.

October 24, 2016

DRAFT

4.1 DRAFT AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY – VERSION 3

PREFACE

LAFCO's enabling and guiding legislation, the Cortese Knox Hertzberg (CKH) Act, begins with the following statement.

“The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.” (§56001)

Beginning in the late 1800s, farmers and ranchers made Contra Costa County an important source of agricultural products. Much of the County has good soils, a mild climate, and adequate water. Western and central Contra Costa were used for agriculture well into the twentieth century. John Muir farmed and ranched approximately 2,600 acres in what is now Martinez, Concord, and the Alhambra Valley. While the County's population was increasing, by current standards, the County's population was small. The 1910 census recorded 31,764 residents, less than the 2015 population of Pleasant Hill.

Development, which began in earnest after World War II, transformed Contra Costa County. As urban and suburban development occurred, Contra Costa County experienced significant reduction in the amount and relative economic importance of agricultural lands. Simultaneously, critical open space habitat for sensitive species declined. By 2010, the Census reported that Contra Costa had 1,049,025 people, representing 3,300% growth since 1910. Contra Costa County's 2040 population is forecast to be 1,338,400.

As a result of population and job growth, agricultural land was converted to houses, schools, commercial centers, job centers, and transportation corridors. In 2015, there were about 30,000 acres of active agricultural land in Contra Costa County, excluding rangeland and pastureland, most of it located in the eastern portion of the County. There are approximately 175,000 acres of rangeland and pastureland in the County.¹

Agriculture in Contra Costa County is worth approximately \$128.5 million (farm production value) in 2015 and is an important economic sector. The value of agricultural production has risen in recent years.² However, some worry that Contra Costa's agricultural industry may approach a tipping point beyond which agriculture becomes less viable due to a lack of labor, suppliers, and processors located nearby.³

The pressure on agricultural land also extends to wildlife and riparian areas. In some cases, conversion of these lands through development disrupts an ecosystem that used to depend on the now developed land as a travel route, or a seasonal or permanent source of food and water.

The County and some cities are active in efforts to preserve agricultural and open space lands. For example, in the 1970s, the County created a County Agricultural Core to the east and south of Brentwood. The City of Brentwood has an agricultural mitigation program that collected more than \$12 million in

¹ 2015 Crop and Livestock Report, Contra Costa County Agricultural Commissioner

² 2008-2015 Crop and Livestock Reports, Contra Costa County Agricultural Commissioner

³ Sustaining our Agricultural Bounty: An Assessment of the Current State of Farming and Ranching in the San Francisco Bay Area – A white paper by the American Farmland Trust, Greenbelt Alliance and Sustainable Agriculture Education (SAGE), January 2011

mitigation fees; and through conservation organizations, acquired the development rights over approximately 1,000 acres of agricultural lands. In 2006, the voters adopted Urban Limit Lines (ULLs) for the County and each municipality, and these actions helped protect undeveloped land outside the ULLs. Furthermore, the County adopted the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP) that protects sensitive habitat for plants and animals in East Contra Costa.

LAFCO embraces its objectives of encouraging orderly growth and development while discouraging urban sprawl, efficiently extending government services, and preserving open space and prime agricultural lands. Through the review and approval or denial process of boundary changes and other applications, LAFCO has considerable authority to provide for the preservation of open space and agricultural land, and impose terms and conditions. (§§56885 -56890).

While LAFCO has authority to achieve the objectives of the CKH Act, there are things that LAFCO cannot do, for example, directly regulate land use.⁴ LAFCO defers to agencies that have land use planning authority. Therefore, successful preservation of prime agricultural, agricultural and open space lands and of agriculture as a business requires that both applicants and other agencies also lead. At the end of this policy are observations about other opportunities facing residents, advocacy organizations, and governmental agencies that could also strengthen and preserve agriculture and open space lands.

Contra Costa LAFCO adopted this policy on [November 9, 2016] and agreed to review the policy in one year.

AUTHORITY OF LAFCO

LAFCO's authority derives from the CKH Act. Among the purposes of LAFCO are to encourage planned, orderly, and efficient urban development while at the same time giving appropriate consideration to the preservation of prime agricultural, agricultural and open space lands (§56300). The CKH Act includes provisions that grant LAFCO the authority to consider and provide for the preservation of open space and agricultural lands. Among these provisions is §56377 which describes the intent of the legislation with regard to agricultural lands:

“56377. In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space lands to uses other than open space uses, the commission shall consider all of the following policies and priorities:

- (a) Development or use of land for other than open space uses shall be guided away from existing prime agricultural lands in open space use toward areas containing non-prime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.
- (b) Development of existing vacant or non-prime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the SOI of a local agency should be encouraged before any proposal is approved that would allow for or lead to the development of existing open space lands for non-open space uses that are outside of the existing jurisdiction of the local agency or outside of the existing SOI of the local agency.”

LAFCO is specifically charged in some instances with protecting open space and agricultural land. For example, an island annexation may not be approved if the island consists of prime agricultural land

⁴ “A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements” [§§56375(6), 56886].

[§56375.3(b)(5)]. LAFCO may not approve a change to an SOI where the affected territory is subject to a Williamson Act contract or farmland security zone unless certain conditions exist (§§56426 and 56426.5).

When making a decision, LAFCO must consider whether an application and its effects conform to both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Sections 56377 and 56668(d). Finally, LAFCO must consider the effect of an application on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].

An application for a change of organization, reorganization, the establishment of or change to a sphere of influence (SOI), the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act will be evaluated in accordance with LAFCO's adopted Agricultural and Open Space Preservation Policy.

PURPOSE OF THE POLICY

The purpose of this policy is threefold: 1) to provide guidance to the applicant on how to assess the impacts on prime agricultural, agricultural and open space lands of applications submitted to LAFCO, and enable the applicant to explain how the applicant intends to mitigate those impacts and how the effectiveness of the measures proposed in the application compares to the mitigation example outlined in this policy; 2) to provide a framework for LAFCO to evaluate and process in a consistent manner, applications before LAFCO that involve or impact prime agricultural, agricultural and/or open space lands; and 3) to explain to the public how LAFCO will evaluate and assess applications that affect prime agricultural, agricultural and/or open space lands.

DEFINITIONS

Several terms are important in understanding LAFCO's responsibility and authority to preserve prime agricultural, agricultural and open space lands. These terms and definitions are found below and are applicable throughout these policies. The CKH Act contains the following definitions for agricultural land, prime agricultural land and open space:

56016. "Agricultural lands" means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.

56064. "Prime agricultural land" means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

- (a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
- (b) Land that qualifies for rating 80 through 100 Storie Index Rating.
- (c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.
- (d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.
- (e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

56059. "Open space" means any parcel or area of land or water which is substantially unimproved and devoted to an open-space use, as defined in Section 65560.

65560. (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional, or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, greenways, as defined in Section 816.52 of the Civil Code, and watershed lands.

(2) Open space used for the managed production of resources, including, but not limited to, forest lands, rangeland, agricultural lands, and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers, and streams that are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic, and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas that serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, greenways, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas that require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs, and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code (i.e., Native American Historical, Cultural and Sacred Sites).

GOALS, POLICIES AND GUIDELINES

The following Goals, Policies, and Guidelines are consistent with the legislative direction provided in the CKH Act. The Goals are intended to be the outcome LAFCO wants to achieve. The Policies provide direction with regard to how those Goals should be achieved by providing specific guidance for decision makers and proponents. Guidelines give stakeholders procedures and practical tips regarding what information LAFCO commissioners and staff need to evaluate an application that affects prime agricultural, agricultural and/or open space lands.

GOALS

Agriculture and open space are vital and essential to Contra Costa County's economy and environment. Accordingly, boundary changes for urban development should be proposed, evaluated, and approved in a manner that is consistent with the continuing growth and vitality of agriculture within the county. Open space lands provide the region with invaluable public benefits for all who visit, live and work in Contra Costa County. The following goals will help guide LAFCO's decisions regarding prime agricultural, agricultural and open space lands.

Goal 1. Minimize the conversion of prime agricultural land and open space land to other land uses while balancing the need to ensure orderly growth and development and the efficient provision of services.⁵

Goal 2. Encourage cities, the county, special districts, property owners and other stakeholders to work together to preserve prime agricultural, agricultural and open space lands.

Goal 3. Incorporate agricultural and open space land preservation into long range planning consistent with principles of smart growth at the state, county, and municipal levels.

Goal 4. Strengthen and support the agricultural sector of the economy.

Goal 5. Fully consider the impacts an application will have on existing prime agricultural, agricultural and open space lands.

Goal 6. Preserve areas that sustain agriculture in Contra Costa County.

Goal 7. Mitigate the impacts that will result from a LAFCO approval that will lead to the conversion of prime agricultural, agricultural, and open space lands using the Policies and Guidelines included in this Agricultural and Open Space Preservation Policy as an input to defining and assessing mitigations.

POLICIES

It is the policy of Contra Costa LAFCO that, consistent with the CKH Act, an application for a change in organization, reorganization, for the establishment of or change to an SOI, the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act (“applications”), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration to preserving open space, agricultural and prime agricultural lands within those patterns. LAFCO’s Agricultural and Open Space Preservation Policy provides for a mitigation hierarchy which 1) encourages avoidance of impacts to prime agricultural, agricultural and open space lands, 2) minimizes impacts to these lands, and 3) mitigates impacts that cannot be avoided while pursuing orderly growth and development.

The following policies support the goals stated above and will be used by Contra Costa LAFCO when considering an application that involves prime agricultural, agricultural and/or open space lands:

Policy 1. The Commission encourages local agencies to adopt policies that result in efficient, coterminous and logical growth patterns within their General Plan, Specific Plans and SOI areas, and that encourage preservation of prime agricultural, agricultural and open space lands in a manner that is consistent with LAFCO’s policy.

Policy 2. Vacant land within urban areas should be developed before prime agricultural, agricultural and/or open space land is annexed for non-agricultural and non-open space purposes.⁶

⁵ *In minimizing the conversion of open space land, the Commission may give lower priority to rangeland as defined per Public Resources Code 4789.2(i).*

⁶ *The Commission recognizes there may be instances in which vacant land is planned to be used in a manner that is important to the orderly and efficient long-term development of the county and land use agency and that differs from the proposed use of the area in an application to LAFCO. LAFCO will consider such situations on a case-by-case basis.*

Policy 3. Land substantially surrounded by existing jurisdictional boundaries (e.g., islands) should be annexed before other lands.

Policy 4. Where feasible, and consistent with LAFCO policies, non-prime agricultural land should be annexed before prime agricultural land.

Policy 5. While annexation of prime agricultural lands, agricultural lands and open space lands is not prohibited, annexation of these areas for urban development is not encouraged if there are feasible alternatives that allow for orderly and efficient growth. Large lot rural development that places pressure on a jurisdiction to provide services, and causes agricultural areas to be infeasible for farming or agricultural business, is discouraged.

Policy 6. The continued productivity and sustainability of agricultural land surrounding existing communities should be promoted by preventing the premature conversion of agricultural land to other uses and, to the extent feasible, minimizing conflicts between agricultural and other land uses. Buffers and/or local right to farm ordinances should be established to promote this policy. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

Policy 7. Development near agricultural land should minimize adverse impacts to agricultural operations.

Policy 8. Development near open space should minimize adverse impacts to open space uses.

Policy 9. The Commission will consider feasible mitigation (found in the following guidelines) if an application would result in the loss of prime agricultural, agricultural and/or open space lands.

Policy 10. Any mitigations that are conditions of LAFCO's approval of an application should occur close to the location of the impact and within Contra Costa County.

GUIDELINES

These Guidelines are intended to provide further direction regarding the application of LAFCO's Goals and Policies; to advise and assist the public, agencies, property owners, farmers, ranchers and other stakeholders with regard to LAFCO's expectations in reviewing an application that involves prime agricultural, agricultural and/or open space lands; and to provide sample mitigation measures.

Guideline 1. Applications submitted to LAFCO involving prime agricultural, agricultural and/or open space lands shall include an Agricultural and Open Space Impact Assessment. At a minimum the following shall be addressed as part of the assessment:

- a. An application must discuss how it balances the State's interest in preserving prime agricultural and/or open space lands against the need for orderly development (§56001).
- b. An application must discuss its effect on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].
- c. An application must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space land to uses other than open space uses (§56377).

- d. An application must describe whether, and if so, how it guides development away from prime agricultural, agricultural and/or open space lands.
- e. An application must describe whether, and if so, how it facilitates development of existing vacant or non-agricultural and/or non-open space lands for urban uses within the existing boundary or SOI of a local agency.
- f. An application should discuss what measures it contains that will mitigate the loss of prime agricultural, agricultural, and/or open space lands and agricultural business and preserve the physical and economic integrity of adjacent prime agricultural, agricultural and/or open space land uses. Applicants may consider but are not required to use the measures described in Guideline 4.
- g. An application should reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use. The land use inventory may be one that has been prepared by the applicable land use agency.
- h. An application should compare the effectiveness of the measures proposed by the applicant in Guideline 1, Section (f) with the example described in Guideline 3. If the applicant concludes that the proposed measures are less effective than the example, then the applicant should explain why the proposed measures are sufficient and/or describe other benefits they provide.

Guideline 2. If an application involves a loss of prime agricultural, agricultural and/or open space lands, property owners, cities and towns, the county, special districts, and other agricultural and open space conservation agencies should work together as early in the process as possible to either modify the application to avoid impacts or to adequately mitigate the impacts.

Guideline 3. LAFCO expects each application that involves conversion of prime agricultural, agricultural and/or open space lands to other uses will include mitigations for such conversion. LAFCO's request for mitigations shall generally be satisfied if the proposed measures are consistent with the following:

- a. Applications that would convert prime agricultural, agricultural, and open space land to another use, should protect land within Contra Costa County of reasonably equivalent quality and character, as defined by comparable ecological setting, topographic features, habitat quality, being unfragmented and having compatible surrounding land use activities, in the following ratios.
 - 1. Prime agricultural land – [three] acres protected for every acre converted
 - 2. Non-prime agricultural land – [two] acres protected for every acre converted
 - 3. Open space land – the ratio of acres protected for every acre converted shall be set by appropriate California State and federal agencies utilizing science-based impact analysis re: biological resources
- b. Land may be protected through acquisition for permanent use as agricultural or open space uses, acquiring development rights that permanently preclude other uses, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.
- c. Land may be protected directly by the applicant or a fee may be paid to local government agencies and/or, where appropriate, to recognized and accredited non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment must be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.

- d. Applications that propose to convert prime agricultural and agricultural lands to other uses should include provisions to maintain at least a 300' buffer between the new uses and any adjacent prime agricultural and agricultural lands. Such buffers take many forms (e.g., easements, dedications, [appropriate general plan and zoning designations,] streets, parks, etc.).
- e. Applications that propose to convert prime agricultural and agricultural lands to other uses and are adjacent to prime agricultural and agricultural lands should adopt a "Right to Farm" agreement that shall be included in the title of the land and in any subdivision thereof. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

Guideline 4. The following are measures an application may include to address the effects of an application on the conversion of prime agricultural, agricultural, and/or open space lands to other uses. An applicant is not limited to these measures and is not required to use any of them.

- a. Acquisition or dedication of prime agricultural and agricultural land development rights, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.
- b. Establishing buffers between new uses and any adjacent prime agricultural and agricultural lands.
- c. Including a "Right to Farm" agreement in the title of the land and subdivision thereof.
- d. Participation in other local development programs that direct development towards urban areas in the county (such as transfer or purchase of development credits).
- e. Payment to local government agencies and/or recognized non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment should be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.
- f. Establishment of buffers of at least 300 feet to protect adjacent prime agricultural, agricultural and/or open space lands from the effects of development. Such buffers may be permanent, temporary, or rolling, and may take many forms (e.g., easements, dedications, appropriate zoning, streets, parks, etc.).
- g. Where applicable, compliance with the provisions of the ECCCHCP/NCCP or a similar plan enacted by the County, cities or another regional, state or federal permitting agency.
- h. Other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural and agricultural lands.
- i. Participation in an advanced mitigation plan for prime agricultural, agricultural and/or open space lands.
- j. Participation in measures to promote and/or enhance the viability of prime agricultural and agricultural lands and the agricultural industry in Contra Costa County.

Guideline 5. Detachment of prime agricultural, agricultural and/or open space lands should be encouraged if consistent with the SOI for that agency.

Guideline 6. Annexation for land uses in conflict with an existing agricultural preserve contract shall be prohibited, unless the Commission finds that it meets all the following criteria:

- a. The area is within the annexing agency's SOI.
- b. The Commission makes findings required by Gov. Code Section 56856.5.

- c. The parcel is included in an approved city specific plan.
- d. The soil is not categorized as prime agricultural land.
- e. Mitigation for the loss of agricultural land has been secured in the form of agricultural easements to the satisfaction of the annexing agency and the county.
- f. There is a pending, or approved, cancelation for the property that has been reviewed by the local jurisdictions and the Department of Conservation.
- g. The Williamson Act contract on the property has been non-renewed and final approval of the non-renewal has been granted.

Guideline 7. Property owners of prime agricultural and agricultural lands adjacent to land that is the subject of a LAFCO application shall be notified when an application is submitted to LAFCO.

Guideline 8. Regarding the timing and fulfillment of mitigation, if the mitigation measure is not in place prior to LAFCO's approval, the responsible entity (e.g., government agency, recognized non-profit organization) should provide LAFCO with information as to how the entity will ensure that the mitigation is provided at the appropriate time. Following LAFCO's approval, the responsible entity should provide LAFCO with an annual update on the status of agricultural mitigation fulfillment until the mitigation commitment is fulfilled.

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Observation 3. Any jurisdiction that contains prime agricultural, agricultural and/or open space land can periodically review whether its land use and other regulations strike the proper balance between discouraging development and conversion of prime agricultural, agricultural and open space lands with encouraging economically viable agriculture-based businesses that will keep agriculture production high.

October 24, 2016

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Contra Costa County

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Date: November 2, 2016

To: LAFCO Board of Commissioners

From: Sharon L. Anderson, LAFCO Legal Counsel
By: Stephen M. Siptroth, Deputy 

Re: **CEQA ANALYSIS OF LAFCO'S PROPOSED AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY**

SUMMARY

The proposed "Agricultural and Open Space Preservation Policy" recommended by the LAFCO Policies and Procedures Committee – the third version of the policy – is scheduled for consideration by the LAFCO Commissioners on November 9, 2016. The recommended policy directs applicants to provide the Commission with information to enable LAFCO to satisfy its statutory powers and obligations concerning the preservation of prime agricultural, agricultural, and open space land and orderly development. The policy does not require that proposals incorporate specific measures to mitigate impacts to prime agricultural, agricultural, and open space lands. Rather, the policy provides a framework for determining, on a case by case basis, appropriate mitigation measures that LAFCO may require when it evaluates proposals as a responsible agency, or as a lead agency, under the California Environmental Quality Act ("CEQA").

The adoption of the recommended policy is not a project under CEQA because the policy only provides a framework for satisfying LAFCO's existing obligations under state law.¹ The policy does not commit to, influence, determine, or promote any proposal in a way that could result in a direct, or reasonably foreseeable indirect, physical change in the environment.² The policy does not portend any particular future actions affecting the environment. Even though adoption of the recommended policy is not a project, the Commission may direct staff to file a CEQA notice of exemption to trigger a shortened 35-day statute of limitations for challenging the adoption of the policy on CEQA grounds.

The same analysis also can be used in relation to the first version of the policy considered by the LAFCO Commissioners. For CEQA purposes, a policy that resembles or expands upon the second version of the policy could be distinguished from the first and third versions because it would include what could be described as discretionary mitigation requirements. If the LAFCO Commissioners desire to adopt a policy that resembles or expands upon the second version of the policy, we would first need to evaluate whether an exemption applies or whether an initial study would be needed before the policy is adopted.

¹ See *Northwood Homes, Inc., v. Town of Moraga* (1989) 216 Cal.App.3d 1197, 1206.

² See *City of Livermore v. Local Agency Formation Commission of Alameda County* (1986) 184 Cal.App.3d 531, 538.

RELEVANT FACTUAL AND LEGAL BACKGROUND

Contra Costa Local Agency Formation Commission (“LAFCO”) is considering whether to adopt an “Agricultural and Open Space Preservation Policy” that has been recommended by LAFCO’s Policies and Procedures Committee. This office has been asked to analyze what level of CEQA review is required prior to adopting the recommended policy. This analysis pertains to the version of the policy recommended by LAFCO’s Policies and Procedures Committee and included in the Commission’s November 9, 2016, agenda packet. This analysis also applies to the first version of the policy, which contains applicant-proposed mitigation. For the reasons described in Section B, for CEQA purposes, the second version of the policy potentially involves a slightly different CEQA analysis.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH”) delineates LAFCO’s statutory authority and obligations. CKH is to be “liberally construed to effectuate its purposes.”³ CKH requires LAFCO to establish written policies and procedures to enable it to carry out its statutory powers.⁴ Under CKH, LAFCO’s purposes include “discouraging urban sprawl,” “preserving open-space and prime agricultural lands,” and obtaining and furnishing “information which will contribute to the logical and reasonable development of local agencies” in Contra Costa County.⁵ LAFCO is authorized to consider and act on proposals for changes in organization, and for reorganization, in accordance with LAFCO policies, procedures, and guidelines.⁶ LAFCO must reach its own independent decision on each proposal it considers.⁷

LAFCO has several obligations related to the preservation of agricultural and open space lands. LAFCO may adopt standards for evaluating “the effect of the proposal on maintaining the physical and economic integrity of agricultural lands,” which LAFCO must consider in its review of a proposal.⁸ LAFCO must guide development away from prime agricultural lands, unless doing so would not promote orderly development.⁹ LAFCO also must encourage development of vacant or non-prime agricultural lands within a local agency’s jurisdiction before open space lands outside of the local agency’s jurisdiction are developed.¹⁰ LAFCO considers the extent to

³ Gov. Code, § 56107(a).

⁴ Gov. Code, §§ 56300, 56375(g).

⁵ Gov. Code, § 56301.

⁶ Gov. Code, § 56375(a)(1).

⁷ *San Mateo County Harbor Dist. v. Bd. of Supervisors of San Mateo County* (1969) 273 Cal.App.2d 165, 168.

⁸ Gov. Code, §§ 56375(g), 56668(e). Agricultural lands include commercial agricultural lands, fallowed lands, and lands enrolled in an agricultural subsidy or set-aside program. (Gov. Code, § 56016.)

⁹ Gov. Code, § 56377(a).

¹⁰ Gov. Code, § 56377(b).

which a proposal satisfies these requirements, and the extent to which the proposal is consistent with applicable general and specific plans.¹¹

DISCUSSION

A. The Third and First Versions of the Proposed Policy Reflect LAFCO's Statutory Authority and Obligations

The purpose of this policy is to provide a framework for LAFCO to use when it evaluates applications that will lead to the conversion of prime agricultural, agricultural, and open space lands.¹² The policy will apply to applications for changes in “organization, reorganization, the establishment of or change to a sphere of influence (SOI), the extension of extraterritorial services, and other LAFCO actions.”¹³

The policy recognizes that LAFCO does not have land use planning authority, and that the preservation of prime agricultural, agricultural, and open space lands is a cooperative effort among LAFCO and land use planning agencies.¹⁴ The policy includes several goals generally related to (1) ensuring orderly development, (2) encouraging local agencies to cooperate in their agricultural preservation efforts, and (3) avoiding impacts to commercial agriculture.¹⁵ A further goal of the policy is to:

“Mitigate the impacts that will result from a LAFCO approval that will lead to the conversion of prime agricultural, agricultural, and open space lands using the Policies and Guidelines included in this Agricultural and Open Space Preservation Policy as an input to defining and assessing mitigations.”¹⁶

The policy does not mandate specific mitigation measures. Rather, the policy provides that applications “should” discuss mitigation measures that will mitigate project impacts to prime agricultural, agricultural, and open space lands, and “should” compare the mitigation proposed by the applicant with the “examples” of mitigation included in the policy.¹⁷ The policy provides that certain mitigation measures will generally be considered satisfactory by LAFCO, but these

¹¹ Gov. Code, § 56668(d), (h).

¹² Policy, pp. 2-3. Policy citations are to the third version of the policy unless otherwise noted.

¹³ Policy, p. 3.

¹⁴ Policy, p. 2.

¹⁵ Policy, pp. 4-5.

¹⁶ Policy, p. 5 (Goal 7).

¹⁷ Policy, p. 7 (Guidelines I.f- I.h.). The policy does not “impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements.” (Gov. Code, § 56375(a)(6).)

measures are not required.¹⁸

The policy also requires each applicant to provide LAFCO specific information about a proposal's impact to prime agricultural, agricultural, and open space lands.¹⁹ This information, and the mitigation proposed by each applicant, will enable LAFCO to determine (1) whether and how a proposal will affect the physical and economic integrity of prime agricultural, agricultural, and open space lands, (2) whether and how development can be guided away from prime agricultural lands, (3) whether and how development can be guided to vacant or non-prime agricultural lands within a local agency's jurisdiction before open space lands outside of its jurisdiction are developed, and (4) whether a proposal is consistent with applicable general and specific plans, all of which are among LAFCO's statutory obligations.²⁰

Finally, the policy also will assist LAFCO to independently consider, as a CEQA responsible agency, the environmental effects of a proposal as shown in the CEQA lead agency's certified environmental document, and to consider feasible mitigation measures or alternatives within LAFCO's powers.²¹ Although LAFCO generally does not act as a CEQA lead agency, when it does act in that capacity, the policy will assist LAFCO to determine appropriate mitigation measures for project impacts to prime agricultural, agricultural, and open space lands.²²

B. The Adoption of the Third (or First) Version of the Policy is not a Project under CEQA

A "project" under CEQA is defined as "the whole of an action", including any action by a public agency, "which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..."²³ A "project" does not include a public agency's administrative activities, including "general policy and procedure making."²⁴ The policy does not appear to be a project under CEQA because it only provides a framework to be used by LAFCO to exercise its existing statutory powers and to satisfy its existing statutory obligations.

¹⁸ Policy, pp. 7-8 (Guidelines 3 & 4).

¹⁹ Policy, pp. 6-7 (Guideline 1).

²⁰ See Gov. Code, §§ 56375(g), 56377(a) & (b), 56668(d), (e) & (h). The policy does not prioritize agricultural and open space lands above other lands in a way that is inconsistent with the priority given to agricultural and open space lands by these statutes.

²¹ Cal. Code Regs., tit. 14, § 15096(f)-(g). If any such mitigation measures or alternatives are feasible and would substantially reduce or avoid a significant project impact, LAFCO must adopt those measures or alternatives. (Cal. Code Regs., tit. 14, § 15096(g).)

²² Cal. Code Regs., tit. 14, § 15126.4.

²³ Pub. Res. Code, § 21065; Cal. Code Regs., tit. 14, § 15378(a).

²⁴ Cal. Code Regs., tit. 14, § 15378(b)(2).

In *City of Livermore v. Local Agency Formation Commission of Alameda County* (1986) 184 Cal.App.3d 531 (“*City of Livermore* case”), the Court of Appeal considered whether Alameda County LAFCO’s sphere of influence guideline amendments constitute a project under CEQA. Alameda County LAFCO amended its sphere of influence guidelines, to provide that “future incorporation of urban development outside of an existing sphere of influence would be based on a county plan, not a city plan.”²⁵ The effect of LAFCO’s decision was to cause future development to be placed under the jurisdiction of the county. Alameda County LAFCO stated that the changes incorporated actual informal policies, and, therefore, it argued that the action was exempt from the definition of a “project” under CEQA, pursuant to CEQA Guidelines Section 15378(b)(2).²⁶ The First District Court of Appeal, however, concluded that the revisions to the sphere of influence guidelines were a project under CEQA, and that Section 15378(b)(2) only applies to “ministerial policymaking.”²⁷ The Court of Appeal distinguished the sphere of influence guidelines from ministerial policymaking, stating:

“The sphere of influence guidelines *influence* LAFCO decisions about development plans and future growth of cities and service areas. The guidelines play a part in *determining* whether growth will occur in unincorporated areas and whether agricultural land will be preserved or developed. They may change the focus of urban development by *promoting* county plans over city plans. *These potential effects certainly impact the environment.*”²⁸

Three and one-half years after it issued its decision in the *City of Livermore* case, the First District Court of Appeal issued a decision in *Northwood Homes, Inc., v. Town of Moraga* (1989) 216 Cal.App.3d 1197 (“*Northwood Homes* case”), which concluded that a town’s adoption of guidelines for implementing a voter-enacted ordinance – the Moraga Open Space Ordinance (MOSO) – was not a project under CEQA. The town voters had enacted the MOSO to amend the open space element of the Town’s general plan.²⁹ After the MOSO was adopted, Town planning staff developed MOSO implementation guidelines.³⁰ The MOSO implementation guidelines were not the subject of CEQA environmental review before they were adopted by the Town Council.³¹ The Court of Appeal concluded that the adoption of the implementation

²⁵ *City of Livermore, supra*, 184 Cal.App.3d at p. 536.

²⁶ *City of Livermore, supra*, 184 Cal.App.3d at pp. 542-543.

²⁷ *Id.*, at pp. 538-539.

²⁸ *Id.*, at p. 538 (italics added).

²⁹ *Northwood Homes, Inc., supra*, 216 Cal.App.3d at p. 1200. (The voter-enacted ordinance was not a project under CEQA, pursuant to CEQA Guidelines Section 15378(b)(3).)

³⁰ *Id.*, at p. 1206. The MOSO implementation guidelines included, for example, criteria for determining whether an area was “high risk.” (*Id.*, p. 1206 fn. 10.)

³¹ *Id.*, at p. 1206.

guidelines did not constitute a “project” under CEQA, pursuant to CEQA Guidelines Section 15378(b)(2).³² The Court of Appeal distinguished the implementation guidelines from the sphere of influence guideline amendments at issue in the *City of Livermore* case, by explaining that the revised sphere of influence guidelines were similar to a general plan amendment “in that they had a potential impact on the environment.”³³ The implementation guidelines, however, did “no more than provide the procedural implementation (e.g., definitions of terms, application procedures) of the land use decisions reflected in MOSO – itself an enactment exempt from CEQA requirements.”³⁴

Unlike the sphere of influence guidelines at issue in the *City of Livermore* case, the Agricultural and Open Space Preservation Policy does not commit to, influence, determine, or promote any proposal in a way that could result in a direct, or reasonably foreseeable indirect, physical change in the environment. The policy requires information to be submitted to LAFCO so that LAFCO can satisfy its existing statutory obligations. Therefore, the policy is not a project under CEQA pursuant to the Court of Appeal’s decision in the *Northwood Homes* case.

Further, an activity is a “project” under CEQA only if it has “the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”³⁵ In other words, an activity must be “an essential step that culminates in an action which may affect the environment” to be considered a “project.”³⁶ But an agency action that “portends no particular action affecting the environment” will not be considered a “project.”³⁷ LAFCO’s policy does not impose any specific mitigation requirements on proposals, so the policy has no potential for affecting the physical environment. The policy also portends no particular future actions. Therefore, the policy is not a project under CEQA and no environmental review is required.³⁸

Note that, for CEQA purposes, a policy that resembles or expands upon the second version of the policy could be distinguished from the first and third versions of the policy. A policy that resembles or expands upon the second version of the policy would include what could be described as discretionary mitigation requirements. This causes the policy to be a project for

³² *Id.*, at p. 1207.

³³ *Id.*

³⁴ *Id.*, at p. 1206.

³⁵ Cal. Code Regs., tit. 14, § 15378(a); see also Pub. Res. Code, § 21065.

³⁶ *Fullerton Joint Union High Sch. Dist. v. State Bd. of Educ.* (1982) 32 Cal.3d 779, 797.

³⁷ *Id.*

³⁸ CEQA also requires environmental review to be timed to occur, “as early as feasible in the planning process to enable environmental considerations to influence project program and design and *yet late enough to provide meaningful information for environmental assessment.*” (Cal. Code Regs., tit. 14, § 150004(b) (italics added).) Without project-specific information of as-yet-unknown future projects, it would be premature to evaluate speculative environmental impacts of a policy that does not require any specific mitigation measures.

CEQA purposes because the policy arguably would do more than provide procedural implementation of existing legal requirements. The policy could be viewed as influencing proposals in a way that could result in a direct or reasonably foreseeable indirect physical change in the environment.³⁹ If the Commission were to consider adopting a policy that resembles or expands upon the second version of the policy, we would need to evaluate, first, whether a CEQA exemption applies. If an exemption does not apply, a CEQA initial study would be needed to determine if the policy may have a significant effect on the environment.⁴⁰ If the LAFCO Commissioners desire to adopt a policy that resembles or expands upon the second version of the policy, this office and LAFCO's CEQA consultant should determine the appropriate action to be taken under CEQA before the policy is adopted.

Even though the adoption of the third (or first) version of the policy is not a project under CEQA, as part of the policy adoption the Commission could direct staff to file a CEQA notice of exemption. This action is permissible, and it will start a 35-day statute of limitations for bringing a CEQA lawsuit.⁴¹

SMS

H:\Client Matters\LAFCO\M110216 (LAFCO Ag Policy).wpd

cc: Lou Ann Texeira, LAFCO Executive Officer

³⁹ *City of Livermore, supra*, 184 Cal.App.3d at p. 538.

⁴⁰ See Cal. Code Regs., tit. 14, § 15063(a).

⁴¹ See Pub. Res. Code, § 21167(d); *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.* (2006) 139 Cal. App. 4th 1356, 1385. A CEQA notice of exemption can be filed even if an activity is not a project under CEQA (See *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1019-1020 (“If the project is exempt from CEQA, either because it is not a project as defined in section 15378 of the Guidelines or because it falls within one of several exemptions to CEQA ... The agency may prepare and file a notice of exemption, citing the relevant section of the Guidelines and including a brief statement of reasons to support the finding.”)); see also Kostka & Zischke, *Practice Under the California Environmental Quality Act*, p. 5-105.

Frequently Asked Questions

Contra Costa Local Agency Formation Commission

Agricultural & Open Space Preservation Policy

The questions and answers below pertain to the Contra Costa Local Agency Formation Commission (LAFCO) and the Commission's Agricultural & Open Space Preservation Policy (AOSPP).

What is a Local Agency Formation Commission (LAFCO)?

LAFCO is an independent regulatory agency that receives its powers directly from the California State Legislature. LAFCO regulates the boundaries of cities and most special districts under its jurisdiction, encourages orderly boundaries, ensures the efficient delivery of services, discourages urban sprawl, and preserves agricultural lands and open space.

What Does LAFCO Do?

LAFCO is responsible for reviewing proposed jurisdictional boundary changes including annexations and detachments to/from cities and special districts, incorporation of new cities, formation of new special districts, and the consolidation, merger, and dissolution of existing special districts. LAFCO is also responsible for reviewing extraterritorial service agreements between local governmental agencies and establishing and reviewing spheres of influence (SOIs) for cities and special districts. LAFCO has authority to approve a proposal, with or without conditions, or deny a proposal.

Who Runs LAFCO?

Contra Costa LAFCO is composed of seven regular commissioners: two members from the County Board of Supervisors; two members who represent cities in the county; two members who represent independent special districts in the county, and one public member. There are also four alternate commissioners, one from each of the above categories. LAFCO staff consists of an Executive Officer, LAFCO Clerk, legal counsel and various support services provided under contracts.

Why Does LAFCO Have an AOSPP?

One of LAFCO's responsibilities is to protect agricultural lands and open space. Agriculture and open space are vital to Contra Costa County and offer environmental, economic, quality of life and other benefits.

Does LAFCO's AOSPP Prioritize the Preservation of Agricultural and Open Space Lands Over Orderly Growth and Development?

No. LAFCO is charged with balancing sometimes competing state interests of orderly development with discouraging urban sprawl, preserving open space and agricultural land, and efficiently extending government services. The AOSPP focuses primarily on the preservation of agricultural and open space lands. Contra Costa LAFCO has a multitude of other policies and procedures that deal with orderly growth and development, the extension of services, and numerous other issues.

What is the Purpose of LAFCO's AOSPP?

The purpose of LAFCO's AOSPP is to 1) provide guidance to an applicant on how to assess the impacts on agricultural and/or open space lands of applications submitted to LAFCO, and to explain

how the applicant intends to mitigate those impacts; 2) provide a framework for LAFCO to evaluate, and process in a consistent manner, applications before LAFCO that involve or impact and/or open space lands; and 3) explain to the public how LAFCO will evaluate and assess applications that affect agricultural and/or open space lands.

What Will I Find in LAFCO's AOSPP?

LAFCO's AOSPP contains Goals, Policies and Guidelines. The *Goals* support the importance of agriculture and open space lands in Contra Costa County, and help guide LAFCO's decisions regarding boundary changes and the preservation of agricultural and open space lands. The *Policies* provide for a mitigation hierarchy which 1) encourages avoidance of impacts to prime agricultural, agricultural and open space lands, 2) minimizes impacts to these lands, and 3) mitigates impacts that cannot be avoided while pursuing orderly growth and development. The *Guidelines* provide further direction regarding the application of LAFCO's Goals and Policies; advise and assist the public, agencies, property owners, farmers, ranchers and other stakeholders with regard to LAFCO's expectations in reviewing an application that involves agricultural and/or open space lands; and provides sample mitigation measures to address such lands. In addition, the AOSPP contains some general observations as "food for thought." Nothing in LAFCO's AOSPP is construed to automatically disqualify an application.

Can LAFCO stop me from selling my agricultural land to a developer?

No. LAFCO has no direct land use authority and has no role in who owns land. LAFCO's AOSPP encourages mitigation that will result from a LAFCO approval that will lead to the conversion of prime agricultural, agricultural, and open space lands to at least the degree specified in the AOSPP.

Can LAFCO's AOSPP force me to put a conservation easement on my property?

No. LAFCO's policy will require that a LAFCO application that will convert agricultural and/or open space land to an urban use mitigate for the loss of land (e.g., paying a fee, purchasing a conservation easement from a willing farmer or rancher, otherwise supporting agriculture business, etc.).

Do agricultural conservation easements allow public access on my land?

Public access may be allowed but is not a required component of an agricultural conservation easement. An agricultural conservation easement is an agreement between a willing farmer or rancher and a land trust. Farmers and ranchers can negotiate various easement terms, including whether to allow public access. Most agricultural conservation easements do not allow public access.

Do agricultural conservation easements restrict the way that farmers can farm?

The property owner and the land trust negotiate the terms of the easements. Current agricultural easements in East Contra Costa County provide farmers with broad discretion in how they farm their land.

LAFCO's AOSPP Requires a Land Use Inventory. Where Can I Find This Information?

LAFCO's AOSPP requests that the applicant reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction *for the proposed land use*. The land use inventory may be one that has been prepared by the applicable land use agency. The County and cities are required to prepare a Housing Element, which includes a "Sites Inventory and Analysis." In

addition, many counties and cities maintain GIS data layers which include an inventory of vacant parcels.

LAFCO Requires an Agricultural and Open Space Impact Assessment as Part of an Application to LAFCO. What if the Applicant Fails to Complete, or Partially Completes the Assessment?

Depending on the nature of the proposal, the application may be deemed incomplete until the needed information is provided. LAFCO staff is available for pre-application meetings and to assist with applications. There is no fee for these services.

What If My Application to LAFCO Will Convert Agricultural or Open Space Land to a Non-Agricultural or Non-Open Space use – Can LAFCO Impose Mitigation Measures?

LAFCO can impose terms and conditions on any proposal, including, but not limited to, those measures identified in the AOSPP.

What if the Application to LAFCO Will Convert Agricultural or Open Space Land to a Non-Agricultural or Non-Open Space use, and the Applicant Has Already Paid an Agricultural Mitigation Fee (e.g., City of Brentwood) and/or Paid into a Comparable Conservation Program (e.g., East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan)? Will LAFCO Take This Into Consideration? Can LAFCO Impose Additional Measures?

Yes. These types of measures are recognized and included among LAFCO's list of sample mitigation measures and LAFCO can consider these as mitigation. Yes, LAFCO can impose additional mitigation measures if it believes that the proposed measures do not adequately mitigate the impacts to agricultural and/or open space lands.

What if Only a Portion of My Project Area Impacts Agricultural or Open Space Land?

LAFCO considers each application on its own merits. When reviewing an application, LAFCO must consider at least 16 different factors, one of which is “*the effect of the proposal on maintaining the physical and economic integrity of agricultural lands...*” No one factor is determinative. The AOSPP will apply only to the portion of the project area that consists of prime agricultural, agricultural, or open space land.

What if the Project Area is Currently Designated for an Agricultural or Open Space Use (by the County), and the Annexing City has Pre-Zoned the Project Area for a Non-Agricultural or Open Space Use – Can LAFCO Deny the City's Request to Annex the Property?

Yes. LAFCO has broad discretion to approve, with or without conditions, or deny a proposal. The applicability of the AOSPP to a parcel is determined by several factors and zoning is only one of these factors.

What if the Project Area is Currently Designated for an Agricultural or Open Space Use, and is Within a Voter Approved Urban Limit Line – Can LAFCO Deny the Request to Annex the Property?

Yes. LAFCO has broad discretion to approve, with or without conditions, or deny a proposal. LAFCO consider the location of a parcel vis-a-vis urban limit lines and urban growth boundaries as a factor in its deliberations.

Kate Sibley

From: Juliet Ryan-Davis <juliet.ryan.davis@gmail.com>
Sent: Tuesday, September 20, 2016 10:30 PM
To: Kate Sibley
Subject: Please support local agriculture

Juliet Ryan-Davis
136 B Amherst Ave
Menlo Park, CA 94025

September 21, 2016

Dear Kate Sibley,

I am writing to urge the Contra Costa LAFCo to adopt strong policies in support of local agriculture.

Farming and ranching contributes so much to the Bay Area food culture, economy, and environment. But Contra Costa County is losing agricultural land at alarming rates, partly due to the incentive for farmers and ranchers to sell their land to sprawl developers.

Please consider adopting a policy that does the following:

1. Mitigates at a three-to-one ratio each acre of farmland lost to development
2. Uses mitigation funds to permanently preserve agricultural land

These policies are critical to the success of agriculture in Contra Costa County. Adopting them will protect our agricultural land and help local farmers and ranchers thrive.

Sincerely,
Juliet Ryan-Davis

On Oct 25, 2016, at 6:42 PM, "vendor1@goairtight.com" <vendor1@goairtight.com> wrote:

Dear Official,

My name is Don Dudan and I am writing you in support of the draft LAFCO Agricultural and Open Space Preservation Policy (Policy). We appreciate the work that LAFCO commissioners and staff have put into the Policy, and think that it should be strengthened by requiring a mitigation ratio of at least 1:1 for annexations affecting open space and agricultural land.

This modest change is in agreement with what many other LAFCOs across the state have done, and would help to mitigate the effects of development that has already greatly reduced the amount of agricultural land in Contra Costa and across the Bay Area. I ask you to support the draft Policy and incorporate the modest change of a 1:1 mitigation requirement.

Thank you.

—
Don Dudan
50 Layman Ct
Walnut Creek CA 94596

On Oct 26, 2016, at 9:37 AM, Business Seven <business77@gmx.com> wrote:

Hello,

My name is Douglas Bright and I am writing you in support of the draft LAFCO Agricultural and Open Space Preservation Policy (Policy). I appreciate the work that LAFCO commissioners and staff have put into the Policy, and think that it should be strengthened by requiring a mitigation ratio of at least 1:1 for annexations affecting open space and agricultural land.

This modest change is in agreement with what many other LAFCOs across the state have done, and would help to mitigate the effects of development that has already greatly reduced the amount of agricultural land in Contra Costa and across the Bay Area. I ask you to support the draft Policy and incorporate the modest change of a 1:1 mitigation requirement. Thank you.

Thank you,

Douglas Bright
Hercules, Calif.

From: nabilamaniya@hotmail.com [<mailto:nabilamaniya@hotmail.com>]

Sent: Saturday, October 29, 2016 9:59 AM

Subject: LAFCO Agricultural and Open Space Preservation Policy

Dear LAFCO Representatives,

My name is Nabila Maniya. I live in Walnut Creek, am an avid hiker, and love the Bay Area trails. I am writing you in support of the draft LAFCO Agricultural and Open Space Preservation Policy (Policy). We appreciate the work that LAFCO commissioners and staff have put into the Policy, and think that it should be strengthened by requiring a mitigation ratio of at least 1:1 for annexations affecting open space and agricultural land.

This modest change is in agreement with what many other LAFCOs across the state have done, and would help to mitigate the effects of development that has already greatly reduced the amount of agricultural land in Contra Costa and across the Bay Area. I ask you to support the draft Policy and incorporate the modest change of a 1:1 mitigation requirement. Thank you.

Regards,
Nabila